

## The Conduct of a Personal Injury Action – Phase 1

Personal injury actions of a value in excess of \$10,000.00 are brought in Supreme Court and are begun by preparing, filing and serving the commencement documents (the writ of summons and statement of claim) on the Defendants. The Defendants then have a certain time within which to appear and then to prepare, file and serve a Statement of Defense. Personal injury actions of a value less than \$10,000.00 are brought in Small Claims court and are not the subject of this article.

Sometimes, we're back in Supreme Court now, the Defendant will also claim back against the Plaintiff in a Counterclaim. Sometimes there are also demands made for further particulars of the claim. These documents are collectively called the "pleadings". They define the scope of the inquiry and set out the issues in the case.

Often it will take a while before the pleadings "close" and the issues in the suit are defined. Occasionally, the Defendant will not defend and the plaintiff will then be entitled to obtain a judgment in default. In such a case, it will still be necessary for the plaintiff to have the quantum of damages assessed, usually by way of an assessment hearing.

Even if the defendant fails to defend and the plaintiff gets a default judgment it is nonetheless possible for the defendant to get a court order "opening up the judgment". While the courts are not overly sympathetic to those who sit on their behinds while they should have been defending the action, defendants may be given a second chance to defend if they can show that they have an arguable defence to the claim, that the plaintiff was not prejudiced by the delay and that they didn't drag their feet too much. However, such "Johnny come lately's" are often required to pay the plaintiff's "thrown away costs" before they are allowed that second chance.

If there is a default judgment taken against the defendant, it will not be necessary to prove it was the plaintiff's fault as that issue is deemed to be decided in the plaintiff's favor when the defendant does not bother defending. Unlike actions for such things as debts, charges for goods or services rendered and that sort of thing, however, personal injury actions are not for recovery of specific amounts so a hearing on the quantum (how much is it worth) issue will be necessary if the parties cannot agree on a value.

Assuming there is a defence, the next stage in the process is the discovery process where each sides demands to see the documentary evidence of the other side. That helps them to know what kind of case they have to meet.

Such documents as repair bills, doctor's clinical notes, statements to ICBC and that sort of thing are compellable and must be produced if demanded. Often Interrogatories (questions that must be answered by way of affidavit) or Notices to Admit are used to elicit information from the other side.

Eventually, if the suit is not settled, the parties will proceed to the second phase, examinations for discovery, and, thereafter, to the final phase, the trial. However, those will have to wait for another day or until the newspaper has a lot more empty space to fill, whichever comes first.