



# A GUIDE TO SELECTING & RETAINING AN ATTORNEY

## INTRODUCTION

It is a sad fact of life that many persons with brain injury do not receive, or will not receive, adequate compensation for their injury and losses. Unfortunately, an inadequate result may be directly traceable to the fact that the patient's attorney did not have an adequate understanding of the injury or its long-term consequences. Sometimes, lawyers do not have enough education, knowledge or experience to be able to analyze, understand, prepare, and present a legitimate claim for compensation on behalf of a person with brain injury. What is worse for the person relying on the lawyer for help is that many lawyers do not really appreciate or believe in the reality or the significance of so-called mild traumatic brain injury.

Just as a person sustaining a traumatic brain injury needs specialized medical care, treatment, and therapy, so also do they need specialized legal representation. In our society, no one would let their podiatrist perform heart surgery on them, and no one would let a five year old fly an airplane and yet, many persons who have sustained traumatic brain injury obtain legal representation from the same lawyer who did their real estate closing or a friend's divorce, without realizing that there are lawyers who specialize in this type of injury litigation throughout North America.

Our system of justice is an adversarial system, and the amount of money paid out by defendants or insurance companies for injuries is usually more in tune with the quality of legal representation than it is with the seriousness of the injuries. The results of your lawsuit will have an important and long-term impact on some aspects of quality of life and the more qualified and experienced the lawyer is the better that result is likely to be.

The purpose of this article is to assist and empower persons and families affected by traumatic brain injury to be able to select and hire the most qualified attorney possible for these types of cases. In most states, claimants have the ability to retain an attorney by the use of what is called a contingent fee agreement. This means that the attorney does not receive any fee or payment unless money is recovered on behalf of the individual, and then the attorney's fees are paid as a percentage of the amount recovered. *In reality, this means that every person in the United States has the absolute ability to hire the best and most qualified attorney specializing in representing*

*persons with brain injury*. This is a crucial right that people who are consumers of legal services all too often underestimate in making decisions about selecting and hiring attorneys.

As consumers, we all know how to evaluate and purchase things like cars, refrigerators, houses, and the like, but when it comes to hiring professionals like lawyers, we are often at a loss. It is hoped that this article will take some of the mystery out of hiring an attorney and make it easier for people to make this important decision.

## BASIC INFORMATION

Any attorney representing someone with a brain injury must know, at the very least, some things about the literature concerning traumatic brain injury, in terms of the types of serious, permanent and disabling consequences that can result. For example, the following quotations illustrate the type of information that any attorney involved in a traumatic brain injury case should know:

1. [In concussion cases] “permanent damage, in the form of microscopic destructive foci, can be inflicted on the brain by what are regarded as trivial head injuries.” (Levin, Benton & Grossman)
2. “Perplexity, distractibility and fatigue are the most troublesome problems consequent to brain damage in adults...” (M. Lezak)
3. “Although alteration of consciousness is an important early sign of developing intracranial pathology, the absence of this finding does not preclude the evolution of a significant lesion...” (Bailey & Gudeman, eds.)
4. “With minor diffuse damage the patient is likely to have little disturbance of consciousness, although delayed effects may result in eventual deterioration.” (R. M. Reitan & D. Wilson).

Any attorney involved in this type of injury must know that a person can have a serious, permanent and disabling injury even though:

5. The person is not knocked out at the scene of the crash or trauma.
6. There was not a “big” car crash.
7. The person may be walking, talking and even exchanging their driver’s licenses at the scene of the crash.
8. The person may not realize that he or she sustained a traumatic brain injury, or even associate problems with an accident.
9. The person did not sustain any cuts, broken bones or major injuries in the crash.
10. The person may have a negative skull x-ray, CT scan, MRI, EEG and all other tests.
11. The brain injury was not diagnosed in the emergency room.
12. The person may only have an attention and concentration deficit.
13. The person may be described as emotionally unstable, focused on their deficits, or depressed.

## HOW TO INTERVIEW THE PROSPECTIVE LAWYER

First and foremost, claimants must be certain that their lawyer absolutely and sincerely believes that they are injured. If one goes to a large law firm, and is assigned to the last person on the letterhead, that is a clue that the case may not be being treated as seriously as it would if it was being handled by a senior partner. All injured persons deserve respect and dignity in the handling of their cases, including the return of telephone calls and being kept up-to-date in terms of what is going on in their case.

It is strongly recommended to readers that when they go to see the attorney the following questions not only be asked, but that written answers be received. The questions that are recommended are the following:

1. How many cases similar to mine have you been involved with as the principal attorney over the past three years?
2. What were the results in terms of settlements or verdicts for the last five cases that you handled involving injuries similar to mine?
3. What percentage of your practice of law is devoted to cases and injuries similar to mine?
4. Will you use a case manager in my case, and if not, why not?
5. How many seminars or conferences have you attended over the past two years involving presentations on injuries similar to mine?
6. How many articles have you written over the past three years involving any aspect of injury similar to mine?
7. Please list three textbooks that you own and refer to when developing or discussing information on injuries similar to mine?
8. Are you a member of your local, provincial or state brain injury association, the National Head Injury Foundation, the Canadian Brain Injury Coalition, the Association of Trial Lawyers of America Traumatic Brain Injury Litigation Group or any other groups concerned with traumatic brain injury?
9. Would you and your law firm be able and willing to spend in advance as much as \$50,000 in the investigation, preparation and presentation of my case, if necessary?
10. Will you use any of the following experts in the analysis and presentation of my case, and if not, why not:
  - *Neuropsychologists*
  - *Forensic Psychiatrist*
  - *Life Care and Rehabilitation Planning Specialist*
  - *Accident Reconstruction Expert*
  - *Vocational Economic Analyst*
  - *Economist*
  - *Biomechanical Engineer*

## USE OF A CASE MANAGER

One of the most important functions that an attorney can fulfill for a person who has sustained a moderate to severe traumatic brain injury is helping that client obtain the best and most appropriate medical care, treatment, rehabilitation and therapy available. Anyone who has ever been involved in the weeks and months following a moderate to severe traumatic brain injury, whether family member, health care provider, lawyer or insurance company representative, know that the information gathering and decision making demands placed on the family are enormous and overwhelming.

The lawyer specializing in cases involving traumatic brain injury may make use of a privately retained case manager for the purpose of assisting the family in understanding all of the care and treatment that their loved one needs. The case manager can help and guide the family and patient in understanding what resources are available that can best and most reasonably meet the treatment and recovery needs of the patient.

Many times the attorney specializing in traumatic brain injury (i.e., the neurolawyer) is in a unique position to retain a case manager, and to know how a case manager can help and guide the family and injured person in

making meaningful and appropriate decisions in a difficult and trying time. Some may say that it is the attorney's sole job to litigate and get money, but many believe that the responsibility goes beyond that. Lawyers representing persons with brain injury should know, as a part of their repertoire of information, who the best, most qualified and most credible case managers are.

## CONCLUSION

It is sincerely hoped that the use of this article will assist people in obtaining the best and most qualified attorney to assist them in cases involving traumatic brain injury. Remember, *you are the employer*, and you are doing the hiring, and neither you nor your family should be afraid to ask questions. As consumers of legal services, you have the absolute right, in the initial interview, to ask the attorney various questions about his or her background and work in the field of your injury, and to find out exactly which attorneys will be working on your case.

No one ever wants to be injured, and no one ever wants to be involved in the legal system, but when someone is injured because of the negligence or wrongdoing of another, specialized legal representation is available.

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