



MEDICAL MALPRACTICE

As a victim of medical malpractice, you face many challenges. You may have profound pain and loss resulting from your injuries and a compromised sense of trust in the medical system. On top of that, you and your family now face the difficult task of bringing forth a successful lawsuit.

Medical malpractice differs from other types of personal injury litigation, creating significant hurdles for those injured and for their loved ones. Many feel lost.

We can help. Bogoroch & Associates LLP is dedicated to improving the lives of injured victims and their families. Our goal is to achieve the best possible result for you and your family, while holding the medical practitioner accountable for his or her actions.

Medical Malpractice Explained

Medical malpractice occurs when you suffer an injury due to the negligence of a healthcare provider. It can include misdiagnosis or delayed diagnosis; medical, surgical, treatment and anesthesia errors; medication prescription and administration errors; and breaches of informed consent. Hospitals, doctors, nurses, dentists, pharmacists, chiropractors and other healthcare providers can all be found liable for medical malpractice.

Medical malpractice lawsuits usually entitle an injured victim to sue for the following types, or “heads”, of damages:

- Pain and suffering;
- Past lost income;
- Future loss of income/loss of earning capacity; and
- Healthcare expenses/future care costs.

Medical Malpractice is Different from Other Personal Injury Lawsuits

In most forms of personal injury litigation, the injury is usually clearly linked to someone’s substandard action or failure to act. But with medical treatment it is not uncommon to experience a bad outcome that was not caused by any wrongdoing by a healthcare provider. For instance, your doctor may not have been negligent in how they performed your knee replacement, even if the knee replacement fails. Because of this, medical malpractice lawsuits require expert proof to demonstrate that the outcome was caused by substandard actions and not just by an unfortunate consequence of acceptable, if imperfect, care.

Also, while most defendants in personal injury actions are defended by insurance companies, doctors are defended by the Canadian Medical Protective Association (CMPA). This association uses different litigation strategies and have very experienced counsel. Unlike other personal injury lawsuits, which almost

always settle prior to Trial, when the CMPA determines the action is “defensible” the case often proceeds to Trial.

Breach of the Standard of Care and Causation

You must be able to provide two things to establish your healthcare provider was negligent in providing care to you: that they breached the standard of care, and that the breach caused the injury or damage in question. This is known in law as “causation”.

To prove a **breach of the standard of care**, you must demonstrate that the care and treatment provided fell below the generally accepted standards of a similarly qualified professional providing the same treatment. The standard of care is different for every medical specialty. For instance, a family doctor is held to a different standard of care than a general surgeon. It is important to know that the standard of care is not the best care available; the standard is that which a treatment provider cannot fall below.

Determining the standard of care applicable to a particular healthcare provider, and whether it was breached, requires expert evidence. **We consult top medical experts to help us determine the likelihood that a breach occurred so that we can prove it in court.**

Once we can prove that your healthcare provider that their breach caused the injury or damage in question. Causation is often the most challenging hurdle to overcome because medical treatment is complex and can involve various steps and numerous healthcare providers. As well, since you initially consulted with a medical practitioner because of a health issue, it can be difficult to prove your injury is due to negligence in treatment and not from the original issue itself.

If you can show that a healthcare provider’s breach of the standard of care caused the injury or damage in question, your lawsuit will likely succeed.

FREQUENTLY ASKED QUESTIONS (& ANSWERS)

Q: Do I have a time limit to file my lawsuit?

A: As a general rule, you must file a lawsuit within two years of the date of the incident or you lose your right to obtain compensation. However, you may not always realize you suffered an injury or that a healthcare provider was negligent until a later date. In these cases, you may be allowed some flexibility with time limits. **We can advise you as to whether you have exceeded the time limit.**

Q: How long will my medical malpractice lawsuit take to resolve?

A: Your case will take approximately four years to reach a conclusion. The steps in a medical malpractice lawsuit include the following:

1. Collecting the relevant medical records and investigating the merits of the case;
2. Issuing the Statement of Claim;
3. Serving the Statement of Claim on the opposing side;
4. Receiving the Statement of Defence;
5. Completing the Discovery process, including Examinations for Discovery;
6. Conducting Mediation; and
7. Proceeding to Trial, if required.

Many cases can be resolved without a Trial. But if your case does not settle at or after Mediation, additional steps are taken before Trial, such as attending a Pre-Trial conference. Though your lawsuit may take a long time to conclude, we will investigate and evaluate your case, as well as discuss the merits of your case with you at every stage of the proceeding.

Q: How do I start a medical malpractice lawsuit?

A: After our initial meeting, if retained, we will investigate liability by requesting medical reports from your healthcare providers and obtaining expert opinion. Assuming the expert opinion is favourable, we will prepare a Statement of Claim, which will be filed with the court and served to the healthcare providers being sued. A Statement of Claim is a document that explains which parties are involved, the allegations of negligence, and the injuries you suffered as a result.

Q: What happens after I file the Statement of Claim?

A: Once the Statement of Claim is issued and served, we obtain Statements of Defence and conduct the Examinations for Discovery. This is the first major step after issuing the Statement of Claim, and is similar to a Pre-Trial hearing. All parties are required to give evidence under oath about the matters in question. This process allows each side to learn about the evidence supporting each other's cases. After the Examinations for Discovery are completed, we reassess your case to see whether it should go to Trial. We then discuss the estimated costs, and if appropriate, set a date for Trial.

Q: What are the chances that my case will go to Trial?

A: Medical malpractice actions are particularly difficult and risky compared to other personal injury actions, and there is no guarantee that the opposing side will settle before going to Trial. We make every effort to settle your case while continuing to prepare for Trial. We always discuss with you the expert opinions, and your chances of success at Trial, to ensure you make an informed decision about whether to continue with your lawsuit.

THE MEDICAL MALPRACTICE CASES WE HANDLE

Our team of more than 30 lawyers and staff have decades of experience in medical malpractice.

We have covered many different types of cases.

The most common malpractice cases that we deal with include:

- Misdiagnosis
- Delayed Diagnosis
- Labour and Childbirth Injuries, including Brachial Plexus Injuries and Cerebral Palsy
- Preventable Amputations
- Delayed Treatment of Infections
- Incorrect Treatment and Failure to Treat
- Overtreatment
- Surgical and Anesthesia Errors
- Medical Errors
- Prescription Drug Errors
- Hospital and Nursing Home Falls
- Nursing Home Negligence
- Equipment Errors
- Breach of Informed Consent



OUR COMMITMENT TO YOU

At Bogoroch & Associates LLP we pride ourselves in our commitment to our clients.

We put your needs first. We highlight this commitment through our responsiveness and our proactivity, striving to move your case promptly and efficiently through the litigation process. We also do so with no upfront costs.

We accept medical malpractice cases on a Contingency Fee basis. This means we wait to get paid until after your case is settled, and cover the expenses along the way, including fees for expert reports. If you do not win your case, you do not pay us anything. Moreover, if your lawsuit is successful, in Ontario, you are entitled to collect "costs" in addition to your award for damages, which are meant to offset your legal fees.

WHO WE ARE

Lawyers with Over 30 Years Experience

At Bogoroch & Associates LLP, we represent victims of medical and hospital malpractice in Ontario and elsewhere in Canada. Our law firm has been named by *Canadian Lawyer Magazine* as one of the Top 10 Personal Injury Law Firms in Canada. You do not pay unless we recover money for you.

- Consultations are always free
- We take cases on a Contingency Fee basis - we only get paid if we recover money for you

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