



MEDICAL  
MALPRACTICE

**A**s 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. Beyond these challenges, you and your family now face the difficult task of pursuing justice through a complex legal process.

Medical malpractice claims are uniquely challenging, creating significant hurdles for those injured and for their loved ones. Many feel lost about where to turn.

**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 outcome for you and your family, while ensuring that those responsible are held accountable.

### Medical Malpractice Explained

Medical malpractice occurs when a healthcare provider's negligence results in injury or harm. This can include misdiagnosis or delayed diagnosis; medical, surgical, treatment and anesthesia errors; medication prescription or administration errors; and breaches of informed consent. A wide range of healthcare professionals – including, doctors, nurses, dentists, pharmacists, chiropractors, midwives and other healthcare providers – can all be found liable for medical malpractice.

Victims of medical malpractice may be entitled to seek compensation under several categories, or “heads”, of damages:

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

### Medical Malpractice is Different from Other Personal Injury Lawsuits

In most types of personal injury litigation, the link between injury and someone's negligence is relatively straightforward. But with medical treatment it is not uncommon to experience a bad outcome that was not caused by any wrongdoing of a healthcare provider. For instance, your doctor may not have been negligent in how they performed your surgery, even if you experienced a complication. This distinction makes medical malpractice lawsuits particularly complex, requiring expert proof to demonstrate that the outcome was caused by substandard actions rather than just an unfortunate consequence of acceptable, if imperfect, care.

Another key difference lies in how these cases are defended. While most defendants in personal injury actions are defended by insurance companies, doctors are defended by the Canadian Medical Protective Association (CMPA)—a powerful association with a strategic litigation approach and highly experienced lawyers. Unlike other personal injury lawsuits, which typically settle prior to Trial, the CMPA frequently takes cases to trial when it deems the claim to be “defensible.”

### Breach of the Standard of Care and Causation

To establish negligence, a Plaintiff must be able to prove two key elements:

1. **Breach of the standard of care** – the healthcare provider breached the standard of care at the time of the malpractice, and
2. **Causation** – that the breach caused the injury or damage in question.

**Standard of Care:** 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. Importantly, the standard of care is not the best possible care but rather the minimum level of care that a competent professional must provide.

Proving a breach of the standard of care requires expert medical evidence. At Bogoroch & Associates LLP, we consult top medical experts to assess and opine as to whether a practitioner's actions fell below the acceptable standard.

**Causation:** Even if a breach of the standard of care is established, a Plaintiff must also prove causation—that the breach directly resulted in the injury or harm suffered. Causation is often the most challenging hurdle to overcome because medical treatment is complex and can involve various steps and numerous healthcare providers. Also, patients typically seek medical care due to a pre-existing health issue, and thus, it can be difficult to prove whether the harm was caused by negligent treatment or the underlying condition 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, a lawsuit must be filed within two years of the incident, or you lose your right to pursue and obtain compensation. However, medical malpractice cases can be unique—patients may not immediately realize they were injured or that their healthcare provider was negligent. In such situations, the "discoverability rule" may apply, allowing some flexibility in the limitation period. **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 resolution. 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
6. Examinations for Discovery;
7. Mediation; and
8. 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. Although the process can be lengthy, we will evaluate your case, and keep you informed at every stage of the proceeding.

### Q: How do I start a medical malpractice lawsuit?

**A:** The first step in initiating a medical malpractice lawsuit is to meet with us for an initial consultation. If you choose to retain our firm, we will begin by thoroughly investigating your case. This includes:

1. **Requesting Medical Records** – Obtaining relevant records from your healthcare providers.
2. **Consulting Medical Experts** – Securing an expert opinion to assess whether negligence occurred.

If the expert opinion supports your claim, we will prepare a Statement of Claim, which will be filed with the court and served on the healthcare providers being sued. A Statement of Claim is a document which identifies the parties, details the allegations of negligence, and outlines the injuries and damages 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. All parties are required to give evidence under oath, allowing each side to learn about the strengths and weaknesses of the case. After the Examinations for Discovery are completed, the case is reassessed to determine whether it should go to Trial. We then discuss the estimated costs, and if appropriate, set a Trial date.

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

**A:** Medical malpractice actions are among the most challenging and high-risk types of personal injury litigation. There is no guarantee that the opposing side will settle before 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 over 25 lawyers and staff bring decades of experience in handling medical malpractice cases. We have successfully represented clients in a wide range of complex claims. The most common malpractice cases that we handle include:

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

## OUR COMMITMENT TO YOU

At Bogoroch & Associates LLP we pride ourselves in putting our clients first. We understand the challenges you face, and we are committed to guiding you through the litigation process with responsiveness, proactivity, and efficiency.

We believe that justice should be accessible, which is why we accept medical malpractice cases on a Contingency Fee basis meaning:

- No upfront costs – we wait to get paid until after your case is settled
- Pay for Disbursements – we cover the expenses along the way, including fees for expert reports
- No financial risk to you – if you do not win your case, you do not pay us anything.

Moreover, if your lawsuit is successful, Ontario law allows you to recover “costs” in addition to your damages award, helping to offset your legal fees.

## WHO WE ARE

### Trusted Lawyers with Over 40 Years Experience

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

Our Managing Partner, Richard M. Bogoroch and Senior Partner Heidi Brown, are widely regarded as leading personal injury and medical malpractice lawyers and have been recognized by the *Canadian Expert Directory* and the *Best Lawyers in Canada*. Both Richard and Heidi are certified as specialists in civil litigation by the *Law Society of Ontario*.

The information in this brochure is not, nor is it intended to be, legal advice. You should consult a lawyer for individual advice regarding your own situation. Use of this brochure does not create a solicitor/client relationship between Bogoroch & Associates LLP and the reader.

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