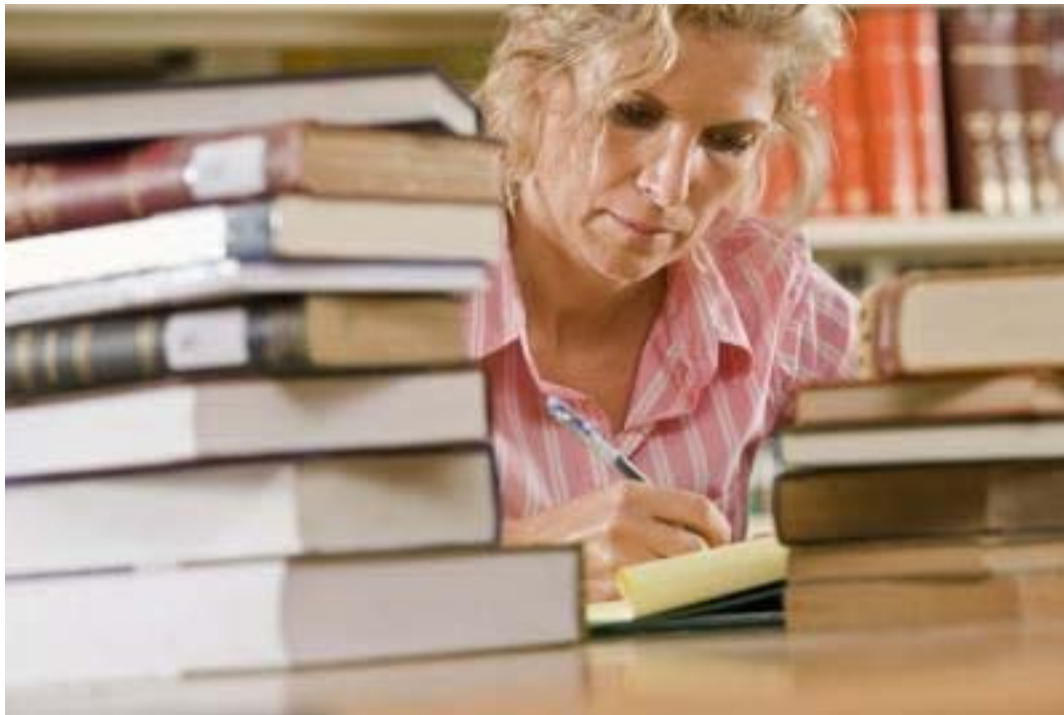


WHEN MIGHT THE COURTS BE THE RIGHT ANSWER FOR INJURED PATIENTS?

*Understanding What Lawyers are
Looking for in Order to Succeed in a
Medical Malpractice Action*

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Much of what lawyers have to do for their clients is done behind closed doors, and NOT in the courtroom, so it is not well understood or appreciated by the public.



▶

Gathering all the facts

Researching the issues

Reviewing legal precedents

Creating coherent legal arguments

Compiling necessary paperwork

cont'd

Serving paperwork on the opposing side

Reviewing opposing side's arguments

Research of opposing arguments

Response to opposing arguments

Filing the materials with the court . . .

After

all

this . . .



THEN
you start your legal arguments!



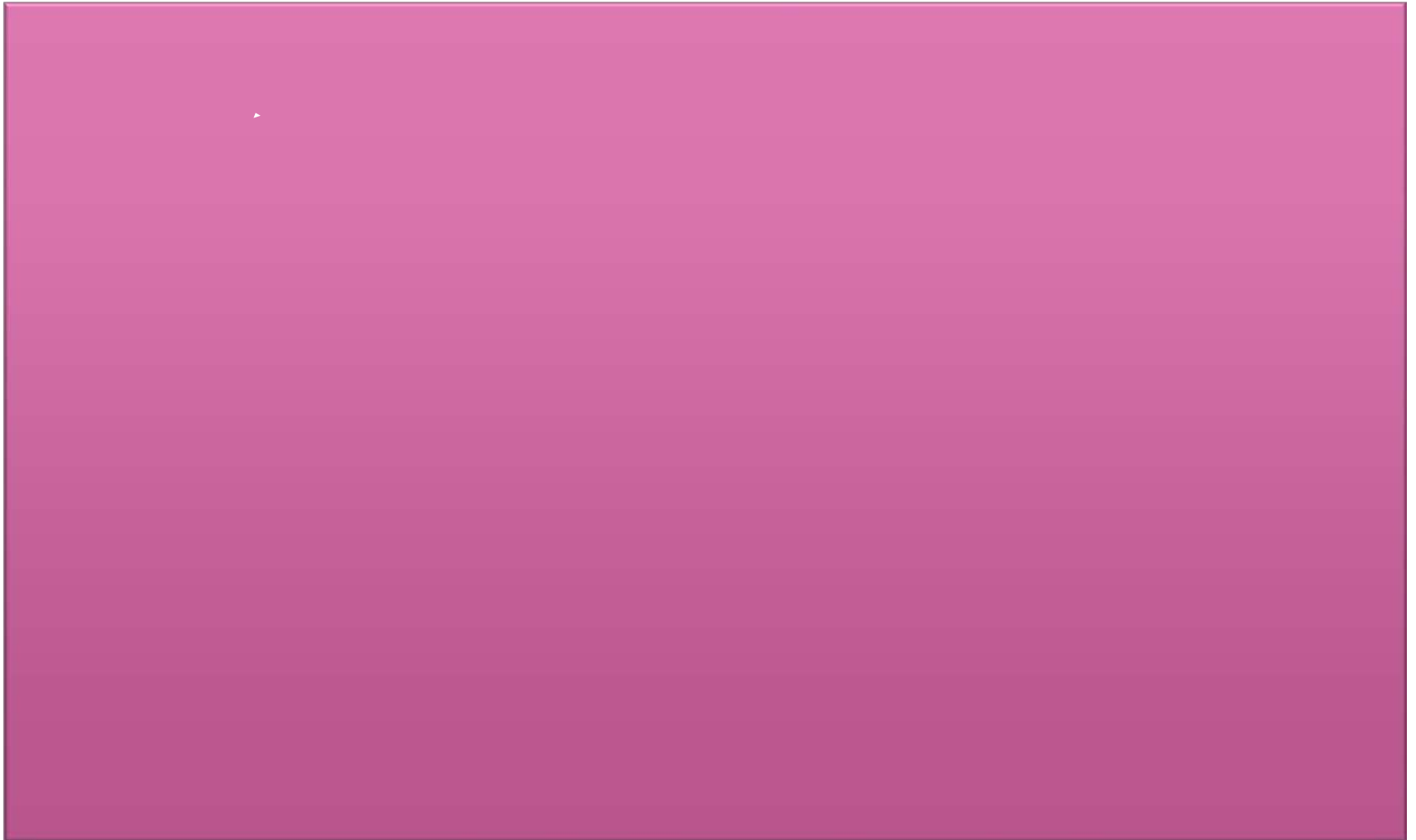
Part I - The Legal Landscape



Medical Malpractice is *NOT* Personal Injury



Medical Malpractice



IMPORTANCE OF GOOD LEGAL REPRESENTATION

No matter how strong a potential medical malpractice case might be, I guarantee you that it can be significantly weakened or entirely destroyed if not handled by a lawyer knowledgeable in this area of law.

The Partnership with the Lawyer

(or what you are asking
your lawyer to do for you)



I

DON'T

HAVE

ANY

MONEY

National Canadian Statistics for 2008

- Only **884** Cases were started against doctors
- Only **88** cases that year proceeded to trial
- Only **13** of those cases **were won by patients**
- **341** were settled out of court
- **574** were dismissed, discontinued, abandoned

30%

\$50,000

to



\$100,000

“David and Goliath Struggle?”

“Give me a break. Just another lawyer spinning tall tales as they belly up to the trough. I too am familiar with the system and what you describe is pure legal fantasy. Malpractice lawyers are The textbook definition of “bullies”. If I ever met a malpractice lawyer who was pulling in less than a doctor, I would die of shock.” - Kirk 21



You want to understand what about your case made it unattractive to that lawyer.

You may be able to rectify the problem with additional information to fill in the gaps or by looking for a lawyer with more specialized expertise in that area of medicine that applies to your case.

1. It is important to get a good and experienced lawyer right up front.

2. It is important to work closely with the lawyer who has been retained.

**SO WHY IS IT SO HARD
TO WIN
A MEDICAL MALPRACTICE ACTION?**

- 1. Subject Matter**
- 2. Court Decisions**
- 3. The CMPA**

1. Subject Matter



2. Court Decisions

Guimond v Guimond Estate, [1996]
N.B.J. No. 591 (NBCOA):

Barbara Ann Guimond and her daughter Jessica were killed in a motor vehicle accident.

The award, COMBINED for the loss of both of them was \$22,677 for Jessica's father and \$39,404.08 for Jessica's sister.

Macartney v Islic, [1996] O.J. No. 1873
(Gen. Div.):

Loss of a 19 year old son.

*The award was \$25,000 for his mother
and \$15,000 for his father.*

Astaphan v Scarborough General Hospital, [1996] O.J. No. 2666 (Gen. Div.):

Damage to a woman's ovary (and she only had one left) and ureter during gynaecological surgery, resulting in permanent damage to kidney and loss of the ovary completely.

\$20,000 awarded

Santos v Traff, [1999] A.J. No. 931:

Woman suffered ureter and bowel injuries from negligently performed hysterectomy, and had to have a colostomy bag.

She was awarded \$50,000 for the damage plus \$15,000 for loss of ability to do house work.

Her husband got \$5,000 for loss of consortium.

Hill v Church of Scientology of Toronto, [1992]

> \$600,000 for general damages

> \$500,000 for aggravated damages

> \$800,000 for punitive damages

Malinowski v Schneider, [2010] A.J. No. 1380:

Chiropractic damage to the spinal cord, resulting in cauda equina syndrome.

\$158,000 for the general damages.

3. The CMPA

CMPA is a “mutual protective association” .

CMPA came to be in 1901 by a special act of Parliament.

“We have struck terror into the evil minded who have sought to besmirch and even blackmail members of our noble profession.”

Since this agreement was put into place, the premiums have risen sharply.

In 1986, Ontario taxpayers paid **\$12 million** to cover 85-95% of a doctor's malpractice premium. In 2007, Ontario taxpayers paid **\$210 million dollars!**

Is it Ever Possible to Win
a Medical Malpractice Case??

YES!!

YES!!

YES!!



গোয়ে খণ্ডিত