

NEWS

▼ CIVIL LAWSUITS

# Personal injury claims don't include 'bonus' jackpot

Many of my columns contain advice that is not expected from the popular culture's generated sleazy image of a personal injury lawyer.

Being honest and forthright, for example, is the direct opposite of what many would expect a personal injury lawyer to recommend.

I'm going to hit you with another one: Do whatever you can, within reason, to make your



ACHIEVING JUSTICE

Paul Hergott

claim as small as possible.

I can hear the sarcastic commentary now: "Oh, OK. I'm going to go to that lawyer. I'm going to hire the lawyer who is going to help me figure out

not how to maximize my claim, but rather to minimize it!"

A personal injury claim is, essentially, a legal right to compensation. What are you being compensated for? Your losses.

The bigger your losses, the bigger your claim.

Conversely, the smaller your losses, the smaller your claim. There is no "bonus."

There is only recovery of loss. When you factor

in the one-third fees you are going to pay your lawyer, you in fact end up significantly "in the red."

Your best hope is to recover compensation for two-thirds of your losses.

The bigger your losses, the further you end up in the red, because more and more is taken by your lawyer in fees.

For a very small claim, with losses of only \$9,000, you end up "in the red" about \$3,000 (\$9,000 minus lawyer fees).

For a larger claim, with losses of \$90,000, you end up "in the red" about \$30,000.

Who benefits from maximizing your losses? Your lawyer. Who loses? You.

That's the dollars and cents argument for keeping your losses as small as possible.

It just so happens that there is also a legal duty to do so. It's called a "duty to mitigate"

A very recent decision of the Supreme Court of British Columbia quotes the following authoritative statement of the law:

"Mitigation goes to limit recovery based on an unreasonable failure of the injured party to take reasonable steps to limit his or her loss. A plaintiff

in a personal injury action has a positive duty to mitigate but if a defendant's position is that a plaintiff could reasonably have avoided some part of the loss, the defendant bears the onus of proof on that issue..."

Turning that into English, you have an actual legal obligation to take reasonable steps to end up as little "in the red" as possible.

If you fail to do so, ICBC won't have to reimburse you for the losses that you could have made smaller had you acted reasonably.

For example, if your injury disables you from returning to your very heavy work as a drywall installer, but you would be able to handle less physically heavy work such as working at a desk or working as a salesperson, you have a legal duty to try to get those other jobs.

If you sit back and do nothing, and ICBC is able to prove that you would have been successful finding alternate work and earning at least a portion of the income you would have earned as a drywall installer, the court will not reimburse you for that portion.

You will end up with zero compensation for

that portion of your losses.

People who are laid off and qualify for Employment Insurance are required to look for work.

The same thing goes for people claiming compensation for injury losses.

The difference is that the Employment Insurance system is not going to hire a lawyer to cross-examine you on how hard you tried to find another job.

This "duty to mitigate" is nothing to worry about. It's not some "dark magic" that ICBC will be able to use to kill your claim.

It's all about acting reasonably. If you are the least bit unsure, get advice early on about what steps you could be taking to mitigate your losses and eliminate the possibility that ICBC can successfully "blame the victim" on this point.

*This column is intended to provide general information about injury claims. It is not a substitute for retaining a lawyer to provide legal advice specifically pertaining to your case. Paul Hergott is a lawyer at Hergott Law in West Kelowna.*

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## Plumbing code update

The City of Kelowna has partnered with Okanagan College to offer affordable training for new requirements in the B.C. Plumbing Code.

The City will host two one-day workshops, June 13 and 14, from 8 a.m. to 3 p.m. each day, at 100-2350 Acland Rd.

The cost is \$125 per person per day. Payment must be submitted at the building department on the second floor of City Hall by June 10.

The workshops are specifically developed to provide cost-effective training for new water pipe sizing requirements brought into effect with the new B.C. Plumbing Code.

"We saw that no one is offering education on the new requirements and we wanted to provide some leadership and ensure our local builders, plumbers and plumbing officials in the Valley have an opportunity to learn about the new water pipe size calculations and other applicable rules," said city development services director Mo Bayat.

The workshop includes coffee and lunch for participants.

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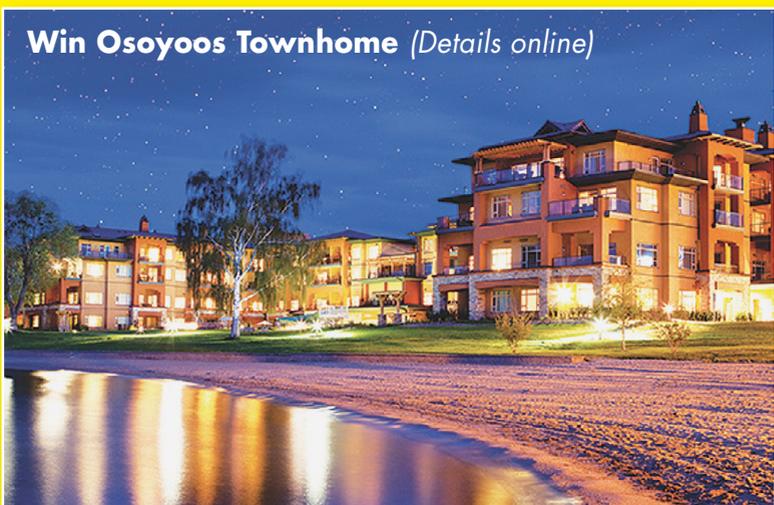
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