

In medical malpractice cases, get a second, or third, opinion

Your doctor screws up—do you have a legal claim?

The issue came up in a recent CBC "Go Public" story about a Kelowna man who suffered a serious stroke. The stroke has left him unable to walk or return to work.

The "screw up" was a failure to properly read an earlier MRI scan. Had dissection of a neck artery been properly identified, the stroke might have been prevented with medication.

Does the man have a legal claim? According to the Go Public story, he consulted a lawyer

Achieving Justice

PAUL HERGOTT



and was told it would be too difficult to prove with certainty his stroke wouldn't have happened regardless.

I suspect the fellow misunderstood the lawyer because the legal test is not one of certainty. Rather, it is one of "balance of probabilities" or "more likely than not". Regardless, I would recommend the man seek

a second opinion.

If there was an error in my medical care and I suffered as devastating an outcome as he did, I would want a second, or perhaps third, legal opinion before choosing not to pursue a claim.

I would also ensure that I consult a lawyer who specializes in medical malpractice claims, which is a very specialized area of personal injury practice. I do not have that expertise and refer such cases to others who do.

Is a serious medical error, in itself, enough for a legal claim? No. In our civil justice system, we pursue fair financial compensation for losses. If there are no losses arising from serious medical error, there is no claim to pursue.

In a "failure to diagnose" circumstance like this one, the question is whether or not the adverse medical result, the serious stroke, would likely have been averted absent the failure. Top medical specialists are consulted to provide opinions to help the court determine whether or not

that "likely" threshold is met, i.e. is there a 51 per cent or more the stroke would have been prevented.

Isn't it enough that there was a chance, however small, that the stroke might have been prevented? If this fellow could turn back time, he might have paid his entire life savings and sold his house for even a 10 per cent chance of preventing the devastating stroke.

Unfair as it may seem, our civil justice system does not provide compensation for the loss of a chance to prevent

a devastating medical outcome unless that chance is greater than 50 per cent.

Without at least that extra one percent, the "balance of probabilities," civil justice

standard is not met, and there is no compensation.

As with any personal injury claim, it is important you obtain a legal opinion about your rights so you can make informed decisions.

Central Okanagan
Division of Family Practice
 A GPSC Initiative

Are you, or someone you know, over 65 and without a family doctor? We can help.

Please call: 250.718.8116
 or email us at: co.agpforme@divisionsbc.ca
www.divisionsbc.ca/cod

Proudly supported by **CAPITAL news**



A GP for Me

Trunk Sale

Saturday, May 23rd, 2015
 8am to noon

Okanagan College
 1000 KLO Road, in parking lot next to student residence buildings
 (Access off Raymer Avenue only)

Great shopping, good bargains!

If you want to sell stuff on sale day, you must pre-register. For more info call the Regional Waste Reduction Office at **250.469.6250**. For more go to regionaldistrict.com/recycle



PREDATOR RIDGE

YOUR AMAZING MOMENTS START HERE

Receive local rates and deals on tee times and more, straight to your inbox.
 Sign up at PredatorRidge.com, or call 250-542-3436.

