

ICBC CLAIMS KNOWLEDGE IS POWER



HERGOTT LAW – YOUR PERSONAL INJURY LAW FIRM

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“Paul & his team’s level of professionalism went above & beyond my expectations. I highly recommend them and will not hesitate to refer others to Paul and his team. I honestly couldn’t have asked for better service.” A.H. / Dec. 17

INFORMATION ABOUT THE CRASH

It is important to “preserve the evidence” of what occurred, who was involved and witnesses so that the critical issue of “who is at fault” can be proven at some point in the future.

Some critical information should be obtained at the scene. The other information can be noted later, but as soon as reasonably possible.

EVIDENCE PRESERVATION AT THE SCENE

Driver(s) and plate number(s) for each vehicle involved. Note - the most reliable way to get this information is to use your cell phone to photograph the driver’s license(s) of each driver and the license plate(s).

Vehicles	Driver Name	Phone Number	Plate Number
V.1			
V.2			
V.3			

WITNESS INFORMATION

The names and contact information for anyone who witnessed the crash should be obtained.

Witnesses	Name	Phone Number	Plate Number
W.1			
W.2			
W3			

THE SCENE ITSELF AND VEHICLE DAMAGE

Use your cell phone to take bunches of photographs of damaged areas of any vehicles involved as well as of the scene. Road and intersection configurations can change over time and it is important to “preserve the evidence” of how things were at the time of the crash. Features like skid marks, vehicle debris and positioning of vehicles can also be critical when later proving what occurred. No cell phone? Ask someone else to help you.

INFORMATION ABOUT THE CRASH - CONTINUED

AS SOON AS POSSIBLE AFTER THE CRASH

After you get home, I recommend writing / typing out a detailed description of what occurred, including where you were coming from, where you were going, road/weather conditions, the moments leading up to the crash, the crash itself and what occurred at the scene after the crash including what the offending driver(s) said to you, discussions you had with any witnesses, and any discussions with attending police officers.

Notes:

REPORTING INJURIES

ICBC Specialist: "When did you first begin experiencing lower back symptoms after the crash?"

Crash Victim: "I don't remember."

ICBC Specialist: "Ok, then, if you can't tell me the symptoms started within hours or days of the crash, I won't say they were caused by the crash."

REPORTING INJURIES - CONTINUED

You risk not being compensated for your injuries unless you are able to very clearly articulate:

- 1. The onset and progression of:
 - a. any worsening of symptoms you might have had before the crash; and
 - b. any new symptoms arising from the crash.
- 2. If you did have some level of symptoms from time to time before the crash, don't pretend they weren't there. Honesty is critical, and all you need to be able to do is be able to articulate the difference between:
 - a. the frequency, patterns and levels of severity of those pre-crash symptoms; and
 - b. the frequency, patterns and levels of severity of those experienced after the crash and on an ongoing basis.

Unless you have a photographic memory, the only way you will be able to do this is by "journaling" your pre-crash condition in exquisite detail, and also the onset and progression of any changes / new symptoms. This should be done as soon as possible and on an ongoing basis while your memory is as good as it's ever going to be.

Here is a tool to get you started:

Injury	Pre-Crash Description	Date of Onset	Description at Onset
Headaches			
Neck			
Upper Back			
Lower Back			

PURSuing MEDICAL CARE

On pages 10 & 11 of this pamphlet, you will see my advice about the critical importance of pursuing and following through with care.

There is no need to keep a log of every date you attend every medical or treatment appointment. Medical and treatment clinics keep very diligent records of your attendances and that clinical material will always be obtained as part of the proper handling of your claim.

It is helpful, though, to keep track of everywhere you attend for care along with the date range of when you attended to make it easier to order all those records and ensure that complete sets of records have been provided.

It is also helpful to note down the reason you discontinue a type of care. By putting your mind to that, you will hopefully ensure not to stop a type of therapy prematurely, before the therapist and/or doctor decide it has done all it can to help get you better.

To assist in keeping track of that information, I recommend that you use this tool (Tx=treatment):

Dr. / Therapist Name	Clinic Name	Date Tx Begins	Date Tx Ends	Why Tx Ended

Please note that ICBC, in their discretion, will often provide full or partial up front funding for medical care. Often, if agreeing to fund care, they will put limits on how long they will provide that funding.

It is critically important that you base your treatment decisions on what your doctor and others on your medical team advise, not on ICBC’s funding decisions.

CONTACT INFORMATION

It is by no means critical to keep track of the following contact information, but it can certainly be helpful!

Report your claim to “Dial-a-Claim”. An adjuster will then be appointed.

Dial-A-Claim:	Lower Mainland: 604-520-8222
	Rest of BC: 1-800-910-4222

Adjuster Name:

Adjuster Direct Phone / Email:

Claim Number:

Law Firm:

Senior Lawyer Direct Phone / Email:

Junior Lawyer Direct Phone / Email:

Case Manger Direct Phone / Email:

Family Doctors / Therapists / Specialists (ie: chiropractor / physiotherapist)

Doctor / Clinic Name	Phone / Email
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RECORDING EXPENSES

If you are unable to prove that you incurred an injury related expense, you will not be reimbursed.

Care providers (physiotherapists, chiropractors, massage therapists, etc.) can provide a printout of expenses incurred through their clinics, so there is no need to keep track of those receipts, except as might be required by your extended medical provider (and sometimes, before lawyers are involved, ICBC requires original receipts).

It is most important to keep track of all other expenses that might not be proved with an account statement. Here is a tool to keep track of those expenses (and please keep associated receipts in an envelope):

[illegible]

RECORDING INCOME LOSS

Assessing income loss can be as easy as reviewing the payroll printout of a consistent wage earner. But it can be incredibly complex and difficult for commissioned salespeople, the self-employed and those who earned part of their income “under the table”.

Even the easiest income loss cases can be compromised if information related to income earned before the crash, income earned after the crash, and how crash injuries have been a factor, has not all been diligently recorded.

Get legal advice as soon as possible to figure out exactly what information and detail needs to be recorded, and evidence collected, so as to be able to prove your losses when it becomes time to do so.

For the easiest income loss claims, the only information that must be recorded is scheduled work hours that are missed, and overtime opportunities that cannot be taken advantage of, because of crash injuries. Here is a tool to get you started:

Date	Hours missed	Overtime Lost	Reason

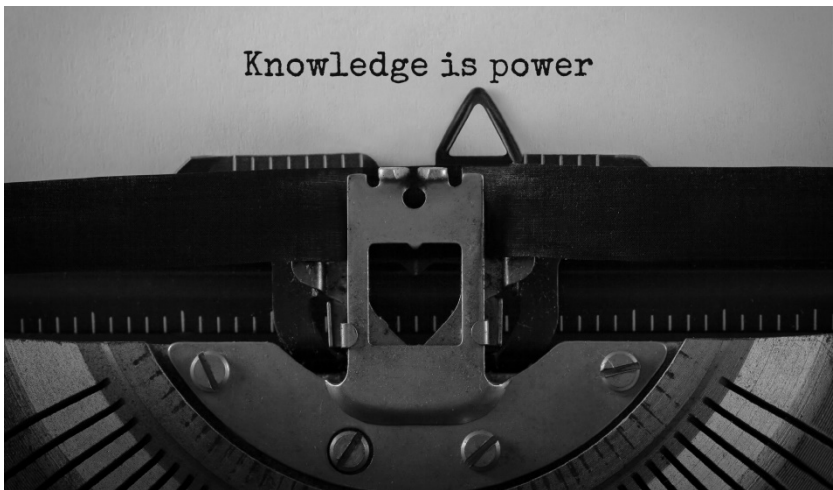
AVOID COSTLY MISTAKES - KNOWLEDGE IS POWER

It is rarely necessary to formally hire a lawyer right away after a crash, *but your claim might well be seriously compromised if you don't become fully informed about your rights, and how to protect them, as soon as possible.*

At Hergott Law, not only will your initial consultation with Paul Hergott be free, but to avoid any sense of obligation, he has a strict policy that you are not allowed to hire him during that initial consultation.

Paul will interview you to learn about your particular claim, and will give you important, custom tailored advice to help you best protect your rights and avoid being taken advantage of by the insurance company.

For your convenience, the initial consultation can occur by telephone or Skype, and will be kept 100%, strictly confidential, i.e. ICBC will not find out about it unless you tell them.



WHAT FOLLOWS IS SOME STANDARD ADVICE THAT WE PROVIDE, BUT A PAMPHLET OF ADVICE CANNOT BE COMPREHENSIVE AND IS NEVER A SUBSTITUTE FOR ADVICE THAT IS TAILORED TO YOUR PARTICULAR CIRCUMSTANCES.

STANDARD ADVICE FOR CRASH INJURY VICTIMS

REPORTING INJURIES

It is really important that your medical team (doctor / whoever you see for care) are fully informed about the nature / extent of your symptoms (both physical as well as psychological) so that they can best recommend care.



I include “psychological” because there are often two types of psychological injuries arising from crash injuries:

1. It is perfectly normal / expected that you might be fearful / anxious out on the roads, your previous sense of safety / security having been replaced by the traumatic experience of a crash. While this psychological “injury” often resolves itself over time as safe driving experiences slowly cause the traumatic memory to fade, it is also often helpful or even necessary to have the assistance of psychological care.
2. It’s not fun to be injured! Not only is there pain, stiffness and other discomforts, but those symptoms often restrict us from our regular work, domestic life and other activities. All of this can impact on our mood. A lowered mood can lead to a “vicious cycle” where the lowered mood impacts negatively on injury recovery, which impacts even more on mood, etc., etc. It is critically important that you be vigilant about how your mood might be impacted, and seek medical care if this arises.

Please understand that pursuing psychological care does not mean you’re “crazy”. It means you understand that psychological injuries and impacts can be treated just like the physical ones, and that you are motivated to move on with your life as quickly as possible.

Psychologists don’t lay you down on a couch to talk about your relationship with your mother. They assess the very real car crash damage and give you tools to help heal from that damage. And where damage is permanent, they help you learn how to live with the loss.

STANDARD ADVICE FOR CRASH INJURY VICTIMS - CONTINUED



PRE-CRASH CONDITION

Pre-crash symptoms (pain, stiffness, etc., that you experienced before the crash) are not, necessarily, problematic to a personal injury claim. In fact, they can be helpful.

Helpful? Yes! Here's an example: before a low speed collision you had low grade neck stiffness. The collision was enough to whip your head forward on that stiff neck of yours, causing a much more serious sprain than would have occurred if you had a flexible neck. Your pre-collision neck stiffness helps give a medical explanation for your post-crash permanent neck injury. The key is being able to:

1. Clearly and credibly articulate the nature / extent / impact of your pre-crash condition; and
2. Credibly articulate the differences between that and your symptoms / functional limitations after the crash.

To assist you in doing that as may be necessary down the road, I recommend that you take some time to “journal” your pre-crash condition (however significant / insignificant it might have been), along with the onset and progression of new / increased symptoms since the crash.

PURSuing MEDICAL CARE

It is critical that you assertively and diligently obtain your doctor's care recommendations, follow them to the fullest, and return to your doctor as directed to ensure your care continues on the right track.



I recommend that you push your therapists (physio / massage / chiro / etc.) for any recommendations they might have for stretching / strengthening or other steps you can take in between treatment sessions to accelerate your recovery. If you are given exercises to do, ensure you inquire about (and follow through with) the recommended duration and frequency.

STANDARD ADVICE FOR CRASH INJURY VICTIMS - CONTINUED

Once you start a recommended course of therapy, please don't "fall off the face of the earth" and stop attending without having a discussion with the therapy provider, or the doctor who recommended the care, to ensure that they have done all they can to help your recovery. Please don't stop a therapy solely on your own assessment that it seems not to be helping, or seems to be setting you back. Rather, pass that information on to the therapy provider or doctor, and let them make the call.

But if your recovery stalls, with ongoing therapies providing only temporary relief (not improving your overall condition), have a serious discussion with the therapy provider and / or your doctor about weaning off that care.

Dollars and cents cannot get in the way. If you are given recommendations you cannot afford, leave no stone unturned to find a way to finance the care. If you run out of options, don't be too proud to ask family, or even friends, for help at a reasonable interest rate (you can pursue reimbursement of reasonably incurred interest as part of your claim).

And please, please don't allow ICBC decisions about what they might or might not agree to "approve" have an impact on your care. Listen to and follow only the recommendations of your medical team.

Why is this important? Well, obviously, it will give you the very best chance of achieving as full and complete a recovery as possible.

But also, you will be hurting your claim if you fail to do so:

1. **You have an actual legal obligation to "mitigate" your losses**, which is a fancy legal term to mean "make as small as reasonably possible". Fail to do so, and ICBC will "blame the victim", blaming you for not getting better;
2. **Is a person with significant symptoms more, or less, likely to be struggling to get better?** Fail to diligently pursue / follow care recommendations gives a perception that you must not be experiencing any significant symptoms;
3. **If you don't go to the end of the earth in your struggle to find a way to get better, I assure you that ICBC will**, and whatever they find will be dangled over your nose as a "magic pill". They will try to avoid compensating you for your future losses, claiming that the "magic pill" will cure you

INCOME LOSS

Ensure that your doctor / physiotherapist / anyone on your medical team is not only clear about how motivated you are to get better, but also clear about how motivated you are to return to work (or continue working as the case may be) in as full a capacity as possible, as quickly as possible.



I recommend that your employer be clear on this as well.

This is the opposite of what people expect of someone “with an ICBC claim” who could otherwise enjoy a bit of a “holiday” until you are pushed to return to work. By taking this approach, you will enhance your credibility and generate the very best evidence of your symptoms and limitations.

If you were unemployed, looking for work at the time of the crash, or became unemployed after the crash, **continue to look for work as if this crash had not occurred**. Keep track of your efforts, and follow through with any interviewing so as to hopefully find work ASAP.

Don’t disclose the fact that you were injured in a crash to a potential employer, and don’t restrict yourself at all in your employment search with concerns about your physical ability to follow through with the work. Once you get a job, do your very best to try / follow through with the work, restricted only to the extent your doctor might restrict you.



CHILDREN’S CLAIMS

Nobody wants to even THINK about their child suffering long term consequences of anything, let alone a car crash. And children quickly learn to live with their “new normal” without even grasping what’s going on.

This is why children’s claims can be the most difficult. Please, protect your child’s future, and get advice ASAP after a crash.

STANDARD ADVICE FOR CRASH INJURY VICTIMS - CONTINUED

LIMITATION PERIODS

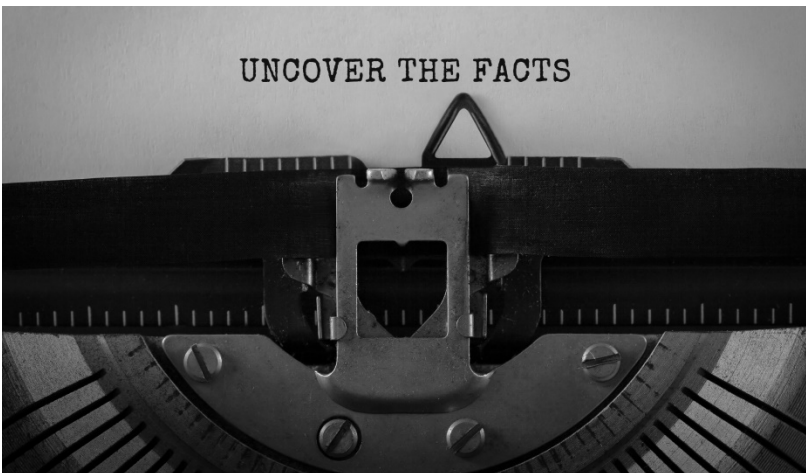
There are deadlines with all legal claims and personal injury claims are no different. Fail to meet those deadlines and your rights arising from the crash might forever be lost.



The deadline for MOST personal injury claims is that a lawsuit must be commenced within two years of the date of the crash. ***There can be much, much shorter limitation periods, so it is my very strong advice that you seek a lawyer's advice about the limitation period applicable to your claim ASAP (on a free, initial consultation basis)!***

Some people are lulled by the insurance company into believing that young people have a longer limitation period. For ICBC claims, that is true for only a portion of the claim. Another portion of the claim can expire two years after the date of the crash regardless of the age of the injured victim.

Commencing a lawsuit is simply a matter of filing some paperwork at the court registry, i.e. it doesn't mean that there will be a trial. A VERY high proportion of personal injury claims settle without the need for a trial.



THE NEXT SECTION WILL SET OUT SOME COMMON NEGOTIATION TACTICS USED BY ICBC

NEGOTIATION TACTICS USED BY ICBC ADJUSTERS

24 HOUR DEADLINES

I was recently consulted by a young lady who was given a 24 hour deadline to accept an ICBC offer, with the consequence that the offer would be reduced if she did not accept it.



It's one of the "oldest tricks in the book", and had the desired effect. The young lady felt pressured, buying into the tactic and frantically reaching out for legal advice. It can be difficult arranging a consultation with a lawyer within a 24 hour window!

Had she not connected with me or another personal injury lawyer, the tactic might well have been successful in manipulating her into accepting an offer that wasn't even in the ballpark of fair.

Providing a deadline for acceptance is a tactic that is used again and again and again by ICBC and other insurance companies, and it's almost always complete nonsense.

If they are prepared to pay a certain amount of financial compensation for injuries and losses on a Tuesday, why would the passage of another 24 hours (or any other time frame) have any impact on that?



LOWBALL OFFERS

This is a classic tactic in an ICBC claim negotiation. They'll start negotiations with lowball offers at \$5,000.00 or less for claims where fair compensation is \$40,000.00 or more. By doing so, they set the stage of the negotiation.

The unsuspecting injury victim knows enough to "not accept ICBC's first offer", and feels like they got a good deal when ICBC goes up to \$15,000.00

NEGOTIATION TACTICS USED BY ICBC ADJUSTERS - CONTINUED

The most “fun” example of this in my practice was where a client retained me after ICBC had offered \$8,000.00 to settle a soft tissue injury claim that ended up settling for fair financial compensation of over \$800,000.00.

How do you protect yourself from this negotiation tactic? Find out the true value of the item you are negotiating for, so that you are not manipulated into an unfair result.

If negotiating for a house, consult an appraiser or real estate agent; if negotiating for a vehicle, consult a vehicle appraiser; if involved in a personal injury claim negotiation, ask a personal injury lawyer for a free claim evaluation.

SETTLING BASED ON OPTIMISM

For most people, pain and other symptoms arising from a soft tissue injury 100% completely resolve. Since an optimistic prognosis can be a self-fulfilling prophecy, medical folks regularly give that prediction.



For many, though, that optimistic prognosis doesn't come to pass.

Some end up with a lifetime of a mild level of pain or discomfort that has a minimal impact on their lives, sort of like a toothache that never goes away. The really unlucky ones develop chronic pain conditions that require lidocaine infusions, facet joint injections or rhizotomies, narcotic medication and other therapies to manage their unrelenting pain.

A sophisticated ICBC adjuster will encourage you to settle your claim while you are riding the wave of optimism. They will make an offer that would be fair if the optimism is well placed. But would be grossly unfair if it is not.

You want so badly to believe your medical team that you are on the road to a full recovery. A representative of your own insurance company, ICBC (though in a negotiation is representing the other driver, not you) is encouraging you to believe that as well.

NEGOTIATION TACTICS USED BY ICBC ADJUSTERS - CONTINUED

You have no idea that there is a very real possibility that you might never, ever fully recover and what that might mean for fair compensation.

Fair financial compensation for a temporary soft tissue injury that completely resolves within a short period of time is in a completely different stratosphere from what's fair to compensate for an injury that never, ever resolves. I'm talking a minimum of tens of thousands of dollars difference. Unless you are reading this, you don't know that information either.

My advice is to fully embrace the optimism of your doctor and believe the true science that the odds are in your favour to achieve a complete recovery. Wait, though, until that beautiful recovery is achieved before entering into a settlement negotiation.

KEEPING YOU IN THE DARK

This is the most insidious of negotiation tactics. It can be used any time a sophisticated insurance adjuster is negotiating with an unsuspecting victim.

The most hurtful and, perhaps, effective: "You should be better by now." This one takes advantage of a lack of knowledge about how soft tissue injuries work. Every medical specialist will admit (even an ICBC "hired gun" in a cross-examination) that some people never, ever fully recover from soft tissue injuries. Yes, most do. Those lucky ones settle their claims, some feeling like they won the lottery because they got a few thousand dollars for a few months of pain. The unlucky ones settle their claims for a few thousand dollars for a lifetime of pain because they are manipulated into thinking that they are somehow the problem.

Another doozy: "Your ongoing pain isn't because of the crash, it's because of the degeneration in your spine". The adjuster points to pre-crash degenerative changes in your spine (a natural aging process), an old injury requiring periodic chiropractic "maintenance" care or other factors in your medical history. They insinuate that if it wasn't for those factors you wouldn't still have pain, so therefore you are not entitled to compensation for that ongoing pain.

NEGOTIATION TACTICS USED BY ICBC ADJUSTERS - CONTINUED

The law is very, very clear. Your vulnerability to a more serious or longer lasting injury is not an excuse that can be used to escape the responsibility to pay fair compensation. The law fairly allows compensation for all injuries and symptoms that would not have arisen had the crash not occurred, even if the seriousness / longevity of those injuries and symptoms would have been far less if it were not for pre-crash vulnerabilities.

Other legalities you are likely to be kept in the dark about? What about reimbursement for mileage expense at \$0.50 per kilometre? ICBC employees are entitled to employment related mileage reimbursement, but are unlikely to mention to an injured victim that you are entitled to compensation for all, not just some, of your losses, including this one.

A much more significant loss that is “overlooked” in negotiations with unsuspecting victims is a loss of capacity to earn income in the future even if there has been very little or no loss of income since the crash. Future job duties might cause more aggravation of your crash symptoms than your current ones; a future employer might not be accommodating of your limitations or might disregard your employment application out of hand because you are “damaged goods”; your ability to tolerate ongoing symptoms in a full time job might diminish as you age.

This often overlooked loss can be tens or hundreds of thousands of dollars over the balance of a career. Avoid being manipulated in an ICBC claim negotiation by getting a free, independent assessment of what’s fair by a reputable personal injury lawyer.



BOTTOM LINE OFFER

At some point in any negotiation, if you push hard enough, you will come up against the portrayal of a brick wall. I say “portrayal” because it is impossible to know whether or not you have, in fact, come up against a brick wall “bottom line” offer.



This is the most effective of tactics insurance adjusters use in the negotiation of a personal injury claim. They tell you in the strongest of terms that the amount offered is the most you will ever be offered, “take it or leave it”. They often throw in some threats such as, “If you don’t accept this amount now, the offer will go down”; or lie to you saying, “Either you accept this from me or you will have to go to trial.”

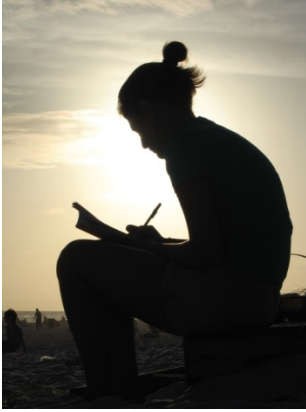
In the over 20 years I have been in legal practice, the insurance company’s offer has always, every time, increased after their bluff has been called and a lawyer retained.

With ICBC, a claim you are negotiating with one adjuster gets automatically transferred from that adjuster who deals with unrepresented claimants to a higher “litigation” level of adjuster. I am often contacted by the new adjuster shortly after being retained with the invitation of picking up the negotiation wherever it had left off.

I know that many, many injured victims don’t call the insurance company’s bluff and instead settle for inadequate, unfairly low levels of compensation for their losses. It’s a very effective negotiation tactic.

“Paul and his team helped me through the entire claim with incredible patience, empathy and professionalism. I would highly recommend Hergott Law for any car crash negotiation with ICBC.” G.B / May 18

JOURNALING



I've given a number of recommendations that you record or "journal" information. It's important. Unless you are able to credibly tell the story about how things were before a crash, what happened in the crash, how things changed and are different, and your losses arising from those changes, you will have no hope for fair, financial compensation.

If you're lucky, and your injuries 100%, completely resolve, then your losses (and therefore your claim) will be on the smaller side.

Smaller claims can usually be resolved directly with ICBC, without a lawyer's help and without the need to commence a lawsuit.

If you are not so lucky, then your losses (and therefore your claim) will be much greater. For those claims, the difference between what ICBC will offer an injured victim and what's fair is usually so vast that involving a lawyer makes financial sense. Those claims rarely require a trial, but always require a lawsuit to be commenced.

There is no way of knowing, immediately after a crash, whether or not you are going to be lucky. You can have two people in the exact same crash, with the exact same types of injuries. One might be lucky enough to enjoy a 100%, complete recovery while the other might be left with some degree of life long, chronic symptoms.

Journaling is not of much value for smaller claims. The value is when it's necessary to extract fair compensation for the bigger claims. **Since there is no way to predict which types of injuries you are facing, I recommend that everyone do the recommended journaling** for the purpose of and in contemplation of the possibility that litigation will be necessary.

As long as your journaling is "in contemplation of litigation", it will be for your eyes only, protected by a type of "privilege" that will keep it confidential. **Journaling is used to refresh your own memory, so that you can credibly tell your story and prove your claim. It is not used to show anyone. There is therefore no need to concern yourself with formatting, spelling, grammar, etc.**

JOURNAL:



Paul Hergott grew up on a Farm in Saskatchewan, a child of parents who had served as missionaries in third world countries. A strong work ethic and humility were instilled, a foundation for a legal career going after huge insurance companies to achieve justice for innocent victims of car crashes.

Paul has practiced litigation in the Okanagan since 1996. Word of mouth referrals led to the growth of the personal injury portion of his litigation practice and establishment of this boutique personal injury practice in 2007.

Paul's weekly column "Achieving Justice" has been published for over 10 years, first with Capital News and then also carried by Castanet. The column not only provides a legal resource, but is a key component of Paul's "One Crash is Too Many" campaign.

When not at the office Paul enjoys the beautiful Okanagan with his wife and children. Paul would be happiest outdoors hiking, biking, skiing or trying to make his annual snow hut even larger than the previous years.

"Paul and the talented team at Hergott Law are exceptional!!! This team is very knowledgeable and friendly; they made this very stressful time, much more manageable for me. Prior to retaining Hergott Law, I felt that ICBC was not offering me fair compensation for the injuries I sustained in a motor vehicle incident. Paul and his team took over dealing with ICBC and attained fair compensation, alleviating so much stress. I would highly recommend retaining Hergott Law's services for any personal injury! I absolutely would use their services again, should I need too, they are exceptional at what they do! You will be in good hands with Hergott Law!" – N.L. / September 2018



HERGOTT LAW

with offices in Kelowna and West Kelowna
and a satellite office in Vancouver

Hergott Law is a boutique personal injury law firm where we act only for the injured victim, never for ICBC or other insurance companies.



We have physical offices in Kelowna and West Kelowna and the availability of a satellite office in Vancouver. With our paperless office systems we help innocent crash victims across British Columbia pursue fair, financial compensation for their injuries and losses.

KELOWNA & WEST KELOWNA

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**Call or e-mail us for a free,
confidential, initial consultation.**

To ensure no feelings of obligation, it is our policy that you are not permitted to retain our services during an initial consultation.
