# Time Management, Client Management, File Management

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*Managing a Litigation Practice*

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## INTRODUCTION

This paper, addressing the managing of a litigation practice, is divided into two sections: discussion about the critical skills necessary to be a good litigator, and a collection of precedents that may be of assistance to a young litigator starting out in this fascinating and complex area of practice.

Our time spent in law school was focused on reading, analysing and regurgitating law. Courses included torts, contracts, criminal law, family law, constitutional, administrative and many other categories of law. However, knowledge and mastery over those areas of law does not necessarily make a good litigator. The most essential skills to being a good litigator were not learned in law school. They may be inherently understood by those who were born to litigate, they may be absorbed by osmosis during our articling year or the early years of associateship at a firm, they are often taught by experienced legal assistants, and by observing excellent legal counsel. The most critical skills in excellent litigation practice are time management, client management and file management. These skills do not fall into the area of substantive law but into the practice and procedure of law. They include lessons in focus, efficiency, multitasking or probably better: serial uni-tasking, politeness, collegiality, cordiality, reasonableness, balance, confidence, and stick-to-itiveness.

## SUBSTANCE V. PROCEDURE

Every lawyer must become a master not only in the substance of law but in the procedures necessary to effectively explain, advocate and litigate that substantive law. The substantive law of the practice of law is that which we learned in law school, and which we continue to learn every day in our practices. In the area of torts, it includes, for example, understanding the proofs of negligence: duty of care, standard of care, breach of the standard of care, causation and damages. In the area on contracts it includes understanding the concepts of offer, acceptance, consideration, rescission, repudiation, amendment, rectification and relief from forfeiture. In constitutional law, it includes understanding and knowledge of the basic *Constitution Acts of 1867 and 1982*, the *Canadian Charter of Rights and Freedoms*, the unwritten principles of constitutional interpretation and quasi-constitutional legislation. In criminal law, it includes all of the case law interpreting the *Criminal Code of Canada*, and the plethora of quasi-criminal legislation and regulation. Substantive understanding of the law may include issues in wills and estates, equity, international law, real property, trusts, security law, construction liens, banking, corporate and commercial law, insolvency, competition, mining, foreign investment, transportation, intellectual property, labour, employment, environmental law, immigration, municipal, taxation, indigenous relations, and the list goes on and on. It is impossible for one litigator to be fully familiar with and expert in all of these substantive

areas of law and many litigators limit themselves to the substantive understanding in only a few of these areas. The advantage, however, of litigation is that issues must be litigated in each of these areas and the litigator has the privilege of learning bits and pieces, as necessary, in each of these areas, sufficient to competently and correctly carrying on the litigation of the matter of substance on the file.

On the other hand, the practice of law is largely about procedure. In civil litigation, the *Alberta Rules of Court* are critical. Many statutes have Regulations, Ministerial Orders and Orders-in-Council setting out policy and procedures. The law of civil procedure addresses many of the issues of process in that area of law. The understanding of the procedure of law includes knowledge of practice in various jurisdictions, the development of skill sets in drafting pleadings, conducting questioning, arbitrating, mediating, and utilizing other forms of alternative dispute resolution. Understanding the procedures of the law is equally important to understanding the substance of the law. Not all gold medalists in law school are great barristers; great barristers know how to identify, simplify and explain the substance of the law by the use of correct procedures, forms, rules and policies. Mastery of substance requires mastery of practice for the optimum benefit to the client.

In civil litigation, mastery of substance includes matters both with respect to liability and with respect to quantum. To be successful on liability and receive no or little quantum is not a result that is desired by clients nor economically viable. To have a magnificent quantum is of no use to a client who loses on liability.

The following is a list of various types and categories of quantum which must always be considered by the excellent litigator:

1. General Non-Pecuniary Damages for Pain and Suffering and Loss of Enjoyment of the Amenities of Life

   (The Trilogy $100,000.00 in 1978 dollars: $347,439.35 in 2016 dollars, (see: http://www.bankofcanada.ca/rates/related/inflation-calculator/ ).\

   Minor Injury Cap: $4,000 in 2004, increased by the annual increase in Alberta CPI effective January 1, 2016 - $4,956:

   (a) is a cap, not a sliding scale;

   (b) non-capped injuries;

   (c) cap calculated at date of injury, not trial.

2. General Pecuniary Damages

A. For Personal Injuries Sustained:

(a) Loss of present income (net of tax and insurance, but not pension);

(b) Loss of future income (net of tax and insurance, but not pension);

(c) Loss of employment (advancement) opportunity;

(d) Loss of present employer sponsored benefits;

(e) Loss of future employer sponsored benefits;

(f) Cost of future care;

(g) Loss of present housekeeping services capacity;

(h) Loss of future housekeeping services capacity;

(i) Taxation gross-up on all future calculations;

(j) Investment management fee (or structured settlement).

B. For Estate of Plaintiff:

(a) For deaths occurring before November 1, 2002 (or in the N.W.T. or Nunuvut). Estate surplus claim for loss of future earnings (see Duncan Estate v. Baddeley [1997] A.J. No. 339 (existence of claim); [2000] A.J. No. 1193 (calculation of quantum) and Brooks v. Stefura [2000] A.J. No. 1192 and 1193 (but see *Justice Statutes Amendment Act*, 2002, s. 8, proclaimed November 1, 2002);

(b) Funeral expenses, special damages, actual financial loss to the deceased or the estate (see *Survival of Actions Act,* s. 5).

C. For Injury to Spouse or Child:

(a) Loss of present income (net of tax and insurance, but not pension);

(b) Loss of future income (net of tax and insurance, but not pension);

(c) Loss of consortium, society and comfort (Spouse);

(d) Nervous shock.