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| Law 435C.001 | Personal Injury Advocacy | 2021 Term 2 |
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**WEEK 7: Pre-Trial Strategies and Procedures**

1. **Interviewing the plaintiff**

* Personal Information
  + Client Identification and Verification –[Law Society Ruled 3-98 and 3-109](https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-clients/client-id-verification/)
  + Contact information
  + Employment information
  + First party insurance policies available (LTD, STD, Extended Health)
* The Accident
  + Vehicle – identities of driver and owner
  + Circumstances of the accident
    - Google Maps
    - Road conditions
    - Parties involved
    - Witnesses
    - Police
    - Other first responders
    - Hit-and-run? *If so, s. 24 of the Insurance (Vehicle) Act requires that you make attempts to identify the motorist involved, and the right of action and recovery against ICBC directly are subject to specific conditions, notice requirements, limitation dates, and amounts.*
    - Identify other possible defendants: Is there a municipality or government body who might have contributed to the accident?
    - Was the client working at the time of the accident?
    - Drugs or alcohol?
    - Seatbelt?
* Injuries
  + Medical injuries
    - Physical and psychological
    - Treatments pursued
    - Physicians and care providers involved
  + Practical consequences of injuries
    - Effect on employment
    - Effect on personal life and relationships
    - Effect on recreational activities
* Explore pre-MVA History
  + Pre-existing injuries or conditions
  + Workplace injuries
* Damages
  + Vehicular
  + Medical and other out-of-pocket expenses
  + Economic losses
  + Non-pecuniary
  + Obtain all documentation of damages, e.g. receipts, work records, etc.
* Plan
  + Explain the process, overall length, and cost
    - Explain the need to collect medical and other sensitive records
  + Explain initial assessment of case – how a case is quantified, etc.
  + Explain settlement and trial

Continuous process

* Review information with the client to ensure they are satisfied with accuracy – consider reducing their information to a witness statement for your client to sign
* Update this information and any statements as you obtain further evidence
* Initial interview and information obtained will help frame theories/themes of the case and provide direction for next steps

1. **Minor Injury Cap – Considerations**

* Keep current:
  + Review CRT determinations as they become available
* Choosing minor injury cases carefully
  + Risk of costs
* Identify potential in each claim early on
  + Gather evidence for other heads of damage
* Inform new clients:
  + What is a “minor” injury
  + Discuss failure to mitigate
  + Discuss CRT process
  + Part 7 benefits
* Regular visits with treatment providers
  + Reminders

1. **Disbursement and Expert Evidence Regulations**

* Choosing experts
  + Limit of three in regular actions
  + Limit of 1 in fast track actions
* Be aware of disbursements.
  + Limit of 6%

1. **Theory / theme(s) of the case**

Initial interview

* During the initial interview of the plaintiff, it is important to assess the plaintiff as a witness, i.e. credibility, reliability, likeability
* Explain your theories of the case to the client and adjust each theory accordingly
* Chronologies
  + Facts
  + Injuries
  + Evidence

Theory of liability

* Consider how the accident occurred and what scenario is most supported by the evidence
* Consider who is involved, how they are involved, and how each person relates to each other
* Consider the law – what do you have to prove and how will you prove it?
* Consider the main issues with respect to liability
  + Is there an absolute defence (i.e. ice on the roadway)?
  + Contributory negligence
  + Apportionment of liability – who has insurance? How much?

Theory of causation

* Consider the main injuries
* Consider pre-existing injuries
* Consider the connection between the injuries and the accident
* Consider the main issues with respect to establishing causation
  + Low-velocity impact collisions
  + Pre-existing injuries
  + Post-accident injuries

Theory of damages

* Consider the practical consequences of the injuries
* Consider the main heads of damages
* Consider the main issues with respect to establishing damages
  + E.g. loss of income may be a significant head of damage
    - Loss of opportunity for promotion or a new job?
    - Loss of overtime hours?
    - Loss of pension?
  + E.g. Loss of housekeeping capacity – What were the plaintiff’s family circumstances at the time of the accident? This could be a big head of damage depending on the facts of the case. See [Kim v. Lin et al, 2018 BCCA 0077](http://www.courts.gov.bc.ca/jdb-txt/ca/18/00/2018BCCA0077.htm) and [Xu v. Balaski, 2020 BCSC 940](https://www.bccourts.ca/jdb-txt/sc/20/09/2020BCSC0940.htm).
  + E.g. Cost of Future Care – is this the kind of permanent injury that may require the plaintiff to have long-term care or services well into the future?
  + E.g. Non-pecuniary damages
    - Stoic plaintiff?
    - Older plaintiff?

Pleadings

* Be sure to name all possible defendants, or if the identities of some defendants are not known at the time the pleading needs to be filed, name “John Doe”, “Jane Doe”, and/or “ABC Company Ltd.” and particularize the claim against each.
* Reduce theories to pleadings – frames the theories of the case
* Plead broadly enough to allow amendments but narrow enough to particularize your claims and relief sought or you’ll face a demand for further particulars
* Only plead facts that form the basis of your claims, not evidence
* Amend pleadings as necessary
  + Theories may change as you investigate and gather more evidence

1. **Investigating the claim**

Who

* Police FOI request
* ICBC FOI request
* Hiring an investigator
* Canvass the client with respect to “before and after” witnesses & accident witnesses
* Witnesses
  + Conduct witness interviews
    - Identify yourself as a lawyer or otherwise
    - Identify your relationship to the litigation
    - Cannot advise what to say or not say
    - Cannot advise who to speak to – no property in a witness
  + Obtain witness statements
    - Adjust as you gather more information

What

* Circumstances of the accident
  + Client, witnesses
    - Failure to interview a key witness can constitute negligence
  + Scene of the accident
  + Police reports
  + Is there CCTV or surveillance footage?
  + Dash cam video?
  + Vehicle black box before vehicle is written off and salvaged?
* Evidence involved
  + What evidence exists
  + Where is the evidence
  + Favourable vs. unfavourable evidence

Continuous process

* Investigate new information as you gather more evidence

1. **Discovery of documents**

Pre-litigation documents

* Secure and preserve all relevant pre-litigation documents
  + Clinical and treatment records
  + Employment records, etc.
  + Photographs
  + Video or sound recordings
  + Statements (oral or written) made by the client

Stage one disclosure

* Initial disclosure obligation (Rule 7-1(1))
  + List of documents – within 35 days of the end of the pleading period, all parties must provide a list of documents that lists all documents that are or have been in the party’s possession or control and that could be used to prove or disprove a material fact and all other documents a party intends to rely on at trial
  + Heavy onus to disclose – do not rely on client’s own recollection of documents
    - Inadequate disclosure can result in personal costs award if production is eventually ordered on a document(s) (*Ross v Henriques,* 2007 BCSC 1381, leave to appeal refused 2008 BCCA 282)
* Additional disclosure (Rule 7-1(10))
  + Disclose any other documents that are materially relevant and intend to be relied on that are not listed under Rule 7-1(1))
* What is a “material fact”?
  + Narrow scope – *Jones v Donaghey,* 2011 BCCA 6
    - A material fact is one where, if resolved, would grant a right to relief for the plaintiff or would constitute a defence for the defendant
    - The pleadings govern the issues of relevance concerning initial disclosure obligations
    - Broad scope of initial disclosure under the *Peruvian Guano* standard is dead (*Edwards v Ganzer,* 2012 BCSC 138)

Stage two disclosure

* Written demand to the other party to disclose specific documents that are relevant and should be disclosed (Rule 7-1(11))
  + Any documents within the power of the other party – broader than possession or control under Rule 7-1(1), i.e. any document the party has the ability to obtain
* Broadens scope of disclosure – return to the *Peruvian Guano* standard (*Edwards v Ganzer,* *supra)*
* If no response is given within 35 days of demand, the demanding party may apply to court for compliance – must give reasonable specificity why disclosure should be made (Rule 7-1(14)) (*Pryzbysz v Crowe,* 2011 BCSC 731)
* Proportionality – court retains discretion to refuse production even if documents are found relevant, e.g. confidentiality outweighs probative value, time and expense outweigh value of production (*Ruzic v Insurance Corp. of British Columbia,* 2008 BCSC 180, affirmed 2010 BCSC 580)

Privileged documents

* Rule 7-1(6) – you can resist disclosure by asserting privilege over a document
* Must still list separately under 7-1(1) but describe document and grounds for privilege in sufficient detail to allow the other party to assess validity of privilege, but without revealing privilege
  + Boilerplate descriptions will not suffice – you must sufficiently describe privileged documents to allow a court to assess the validity of a privilege claim (*Dykeman v Porohowski,* 2010 BCCA 36)
  + E.g. Many defendant’s lawyers vaguely list “Adjusters Reports” as subject to litigation privilege. Don’t accept this assertion at face value. Litigation brief privilege only attaches if at the time the document was created litigation was “in reasonable prospect” and that litigation was the “dominant purpose” for the document’s creation: see *Hamalainen (Committee of) v. Sippola* (1991) 62 B.C.L.R. (2d) 254 at p. 6.

Partial disclosure

* Often in personal injury cases, plaintiff’s counsel may disclose only a portion of certain records such as medical records, claiming that the redacted portions are irrelevant
  + Partial disclosure can lead to interlocutory applications for full disclosure
  + *Hadani v Hadani,* 2012 BCSC 1142: partial disclosure does not mean full disclosure
    - Where a party demonstrates that a redacted portion of records are irrelevant, the opposing party must do more than simply assert relevance based on the pleadings to obtain full disclosure – some evidence must be adduced to establish that the redactions should prove or disprove a material fact, or that a broader class of documents should be disclosed

Continuing obligation to disclose

* Rule 7-1(9)) – Parties have a continuing obligation to serve supplementary lists of documents if subsequent documents not listed come to their attention that relate to a matter in question in the action
* Rule 7-1(21) – If a party fails to disclose a document, they will be precluded from relying on it at trial unless the court orders otherwise, based on:
  + Prejudice
  + Reasonable explanation for non-disclosure
  + Whether exclusion of the document would prevent determination of the issue on its merits
  + Whether disclosure would serve the ends of justice

(*Houston v Kine,* 2011 BCCA 358)

Document disclosure from a non-party

* A party may apply for production of a document in the possession or control of a third party (Rule 7-1(18)(19))
* Reduced disclosure obligations for non-parties
  + Non-parties have limited obligations to accommodate litigation
  + Party seeking production must identify the specific documents sought
* Premature applications – an application for third-party production may be too early if done before being served with the opposing party’s list of documents
* Principles relevant to production of party documents are equally relevant to third-party production (*Kaladjian v Jose,* 2012 BCSC 357)
* Typical document requests in personal injury claim:
  + Medical records, including counselling records
  + Electronic records including information stored on social networking websites
  + Employment records
  + WorksafeBC records
  + Tax returns
  + Police records (this is often done via consent order)

*Discussion: What effect will the cap on recovery for disbursement have on document production?*

1. **Examination for Discovery**

Objectives

* Understand opposing side’s position – know the case to be met
* Confirm opposing party’s evidence under Oath to avoid surprises at trial – or alternatively use inconsistent evidence to impeach the party at trial.
* Obtain admissions of fact to use at trial – avoids necessity to lead evidence at trial

Who to examine

* If opposite party is an individual, you must examine that person (Rule 7-2(1)(5))
* If opposite party is a corporation or other artificial person…
  + Examine the person most knowledgeable about the matters in issue – not necessarily the most senior
  + Corporate examinee can nominate a representative (Rule 7-2(5))
  + Examiner is not bound by examinee’s choice – can apply to court for a different representative (Rule 7-2(5))

Requests during examination / undertakings

* Examinee must answer any question within their knowledge or means of knowledge regarding any matter, not privileged, relating to a matter in question in the action (Rule 7-2(18))
  + Obligation on the examinee to attend prepared or reasonably inform themselves to be able to answer questions
* Information requests or undertakings are used to require the examinee and/or their counsel to inquire into information the examinee cannot answer at the examination
  + Inefficient – hence importance of examining the most knowledgeable person in the first instance, i.e. when choosing a corporate representative

Timing of examinations for discovery

* An examination for discovery can be conducted at any time with at least 7 days’ notice (Rule 7-2(1)(13)). In practice, discoveries are scheduled well in advance.
* Have you properly investigated the claim to maximize the utility of an examination for discovery?
  + Discovery of an adverse party is limited to 7 hours*,* unless the parties agree or the court orders otherwise (Rule 7-2(2))
  + Fast track under Rule 15
    - Discovery of an adverse party is limited to 2 hours total (not per examination), unless the parties agree or the court orders otherwise (Rule 15-1(11))
    - Discoveries must be completed within 14 days before the scheduled trial date (Rule 15-1(12))
  + Considering time limitations, ensure you review all of the opposing side’s documents before conducting any discoveries
    - This may mean waiting until at least one stage of document discovery has occurred
    - … but otherwise always conduct discoveries as early in the process as possible

Preparation and Questioning

* Examiner must thoroughly know the case and the issues before the examination in order to elicit:
  + Key Evidence for trial
  + Admissions
* Preparing a witness for discovery
  + Explain the format and purpose
  + Review the areas on which the witness is likely to be examined
  + Review the relevant documents
  + Conduct a practice run of key anticipated questions
* Open-ended questions
  + Open-ended questions are appropriate in discovery to flesh out all of the facts and evidence, versus at trial where you should know all the answers to questions before asking
  + Note admissions you want to obtain and necessary questions to elicit them with follow-up leading questions – map it out!
* Leading questions
  + After open-ended questions narrow down key issues to address
  + Obtain admissions
    - Frame the question based on evidence already given by the witness
    - If the witness does not accept your position, re-phrase the question to elicit the answer you want
    - Ensure answers are short and simple – to be used as read-ins at trial so you want them to be effective, i.e. understandable
  + Ground the evidence
    - Avoid surprises at trial – material you can use at trial to impeach as necessary

Required reading: [Colbeck v. Kaila et al. 2007 BCSC 689](https://docs.wixstatic.com/ugd/cd08b4_89afa185e03c4510a3fbcf6a9a310680.pdf)

1. **Gathering the evidence**

Testimonial

* Plaintiff
  + Review discovery evidence with the client to ensure accuracy
  + Know your client’s case and think about how to best tell his or her story at trial
* Defendant(s)
  + Cannot contact directly if represented by counsel
  + Discovery process – examinations, discovery of documents, notices to admit, interrogatories
  + Notice to Admit
  + Interrogatories
    - Alternative method to examination
    - Written questions put to opposite side to answer via affidavit
    - Only by consent or with leave of court (Rule 7-3(1))
    - Can help reduce time spent on tangential matters in examination
    - Can help obtain more details from a witness than during examination
    - Issue – responses will be filtered through counsel so less likely to obtain clean or spontaneous admissions
    - Form – Rule 7-3 & *Hou v Wesbild Holdings Ltd.* (1994), 98 B.C.L.R. (2d) 92 (S.C.)
      * Relevant
      * Not in the nature of cross-examination
      * Do not demand discovery of documents
      * Do not duplicate particulars
      * Do not demand names of witnesses
      * Narrower in scope than examinations
      * Focus on obtaining admissions of fact
    - Discretionary – court may defer interrogatories until other discovery processes are completed
  + Previous transcripts from other proceedings
    - Previous discovery transcript or discovered document – implied undertaking means you cannot use a prior transcript without consent of the examined party or with leave of court (*Juman v Doucette*, 2008 SCC 8)
* Non-party witnesses
  + Persuasive form of evidence because they are presumably independent (no interest in the outcome) and reliable
  + Interview as early as possible to know evidence at trial – in the presence of another person if you think this witness may be unreliable or dishonest
  + Witness statements – ground witnesses’ evidence to avoid surprises at trial
  + Previous transcript
    - Where the witness is dead or cannot testify (age, infirmity, sickness, imprisonment, out of jurisdiction, not subject to subpoena) (Rule 12-5(5))
  + Uncooperative witness
    - Pretrial examination (Rule 7-5) – apply to compel a person to attend to be examined under oath on matters at issue in the litigation
      * Only after you have attempted to interview the witness and they refuse or provide conflicting statements
      * Pretrial examination transcript cannot be read-in at trial, unless the witness is unable to testify at trial
    - Deposition (Rule 7-8) – apply to record witnesses’ evidence through recorded/videotaped deposition
      * Only if witness is unavailable for trial
      * Oral examination & cross-examination
    - Subpoena (Rule 12-5(31)) – apply to compel a witnesses’ attendance at trial
      * Consider using for both uncooperative and cooperative witnesses to ensure attendance at trial
* Experts
  + Establish facts that require special training or expertise which an ordinary person does not possess
    - E.g. physiatrist, psychiatrist, mechanical engineer
  + Experts attendance at trial
    - Consider which experts you will require to attend trial and ensure you provide notice
    - Consider which opposing experts you will require to attend trial to cross-examine and ensure you provide notice
    - Be sure to have admissibility argument prepared if you object to an expert’s report or content of the report

Documentary evidence

* Documents “speak for themselves”, versus testimonial evidence which carries risk of poor memory, self-interest, etc.
* Documents created before the commencement of litigation are particularly important as they are presumptively reliable – highlights importance of investigation stage to gather all available evidence early
* Consider admissibility of document, is it hearsay? Can it go in for the truth of its contents?

Physical or real evidence

* Rule 7-6(4) – a party can apply to compel production, inspection, and preservation of any property for the purpose of obtaining full information or evidence
  + Test – whether it is necessary or expedient for the purpose of obtaining full information or evidence
* E.g. photographs of the accident scene or a black box

In preparing for trial, consider what demonstrative evidence you will want to use to assist in persuading your trier of fact of certain conclusions from the evidence

* E.g. Charts, graphs, maps, anatomical models, diagrams, enlarged photographs, videos, computer animations, and simulations
* Must be admissible: is the probative value of the evidence outweighed by its prejudicial effect?

1. **Interlocutory applications**

* Purely interlocutory / procedural – usually can be heard by a Master in Chambers
  + Cannot result in final order
  + E.g. disclosure of documents, adding a new party, amending pleadings
* Final order
  + Any application that can result in a final order must be heard by a Judge in Chambers
  + E.g. application to strike out a pleading, application to determine a point of law, summary trial
* Fast track under Rule 15-1
  + no interlocutory applications before case planning conference or trial management conference is held unless the court waives this requirement or it is an application for a final order

When to make an application

* Importance of issue vs. cost of application
  + Consider which applications are worth fighting in light of the amount of the case and your/client’s resources
* What relief are you seeking?
* Is there another method to obtain the relief? E.g. negotiation
  + Judge or Master hearing the application will have high degree of discretion, i.e. may or may not grant relief, so it may be better to resolve the issue out of court
* Complexity
  + Issues of privilege?
  + Will you need to cross-examine on affidavits?
  + Do you need to prepare written arguments? i.e. time estimate is over two hours
  + Are you applying for a final order?
    - Final orders may be more “worth” pursuing since they can save time and expense at a trial

Process and materials

* Notice of application
  + Factual and legal basis
  + Legal Basis section must give notice to the respondent of the argument to be made – it is not enough to simply state the relevant Rule. See [*Dupre v. Patterson, 2013 BCSC 1561*](https://www.canlii.org/en/bc/bcsc/doc/2013/2013bcsc1561/2013bcsc1561.html)at paras. 44-56 re: the adequacy of materials.
  + No additional written argument is allowed if the hearing is set for less than two hours
* Affidavits to be relied on
  + Interlocutory = hearsay allowed if it identifies the source of information
  + Final order = no hearsay
* Notice to all parties at least 8 days before the application (12 days if summary trial per Rule 9-7)
* Short-leave applications
  + Rule 8-4 – where the nature of the application or the circumstances render service impractical or unnecessary or in case of urgency
  + \*\* always give notice to opposing counsel even if just to inform them of intention to bring short-leave application
  + [O’Callaghan v. Hengsbach, 2017 BCSC 2182](https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc2182/2017bcsc2182.html?autocompleteStr=2017%20BCSC%202182&autocompletePos=1)

[17] Such applications should be restricted to emergent circumstances and should not reward inefficiency, inattention to a particular case, or a lack of oversight. To abridge the time limits imposed by the Supreme Court Civil Rules is, presumably, to prejudice the other party who is, naturally, entitled to rely on timelines imposed by the Rules and to expect the opposing party to do likewise.

[18] In the absence of guiding authorities, I suggest the following considerations, non-exclusive, should guide the parties and the court in considering short leave applications:

a) The application, of course, is to be made by Requisition, usually without affidavits, and may be made before a Registrar, Master, or Judge.

b) While undue formality in the application is discouraged, the application should be made in court, on the record (even if by video or telephone) and not online as an e-filed application.

c) Applicant’s counsel should notify the opposing counsel or party of an intention to apply for short leave so that counsel can appear. At the very least applicant’s counsel should canvass with his or her friend their availability on the proposed chambers date and whether he or she is opposed to the short leave.

d) The applicant should be prepared to give a full accounting of the facts, circumstances, context, and chronology leading to the application for short leave, all of which should establish that the applicant has been affected or surprised by events or developments not reasonably foreseeable.

e) If opposing counsel is not present should, as in the case of without notice applications, be prepared to give both favourable and unfavourable details.

f) If any important or pivotal fact or element is disputed by opposing counsel the applicant should be prepared to offer affidavit evidence on the point and, as always, counsel should not speak to his or her own affidavit if the matter is contested.

g) Busy schedules for the applicant counsel will usually not be sufficient reason for short leave; in that case counsel should arrange for a colleague or agent to speak to the chambers application on the usual notice required by the rules.

[21] In many cases, the applicant can point to genuine circumstances giving rise to surprise or the advent of claims or circumstances the applicant could not have reasonably anticipated. This, and many similar applications, is not in that category. In too many cases, in my view, the defence, either assuming that settlement is likely or simply by applying triage or prioritizing in busy offices with large caseloads, have not given due attention and focus in a timely way to the possible claims and damages of the plaintiff. Lawyers are extremely busy professionals. They have many cases other than the one specifically before the court. Every master and judge knows that. Still, that cannot be permitted to affect the other party’s right to due process and adherence to the rules unless clearly justified; it is the court’s function to prevent that.

* Draft orders stating relief sought – have these vetted by the Registry before the hearing if possible
* Time estimate – overestimate rather than underestimate
  + If > 2 hours, date of hearing must be fixed by registrar

Presenting arguments

* Always speak to opposing counsel before the application to address changes in time, authorities, or other materials or to discuss possible settlement terms. Give notice of all the case law you intend to rely upon. Bring along copies of anything you intend to hadn up to the Bench. Civility is paramount – do not ambush your opposing counsel.
* Time constraints
  + Summarize issues and position concisely
* Note any oral reasons delivered – the result may vary from the relief sought
  + Clarify confusions immediately

1. **Pre-trial case management / Case Planning Conferences / Trial Management Conferences**

Case planning conference

* Brings the parties together early in litigation to frame how the case will proceed
  + Ensure progression of case in accordance with proportionality principle
* Not mandatory
  + By request of court or parties after pleadings are completed (Rule 5-1)
* Case plan proposals
  + Set out party’s proposal for how the case should proceed
  + Plaintiff files first within 14 days after notice of CPC > defendant files within 14 days after plaintiff’s proposal
  + Issues to address
    - Discovery of documents
    - Examinations for discovery
    - Dispute resolution procedures
    - Expert witnesses
    - Witness lists
    - Trial type, length, preferred periods
* Attendance
  + In person or by counsel
  + Exemption from attendance:
    - Not reasonable for attendance given distance and cost of travel
    - Health or compassionate grounds
    - Some other extraordinary circumstances
* Case plan order
  + Rule 5-3 allows a Judge or Master to make a broad range of orders whether or not a party applied for it:
    - Timetable for steps
    - Amending pleadings
    - Discovery issues
    - Experts
    - Length of trial, etc.
  + No final orders unless the parties agree or a party fails to comply with the Rules or a CPC order
* CANNOT use a CPC to micromanage or circumvent normal discovery process:
* *Stewart v. Robinson*, 2014 BCSC 959:
  + In this case, the defendant set down a CPC ordering the plaintiff to disclose areas of expertise that the plaintiff intended to rely on at trial. The defendant also sought updated lists of documents and timelines for discoveries. The court dismissed the defendant’s application and ordered costs against the defendant because the plaintiff was already fulfilling their disclosure duties under the Rules:

[35] While a party may volunteer details of their expert evidence in advance of the 84-day deadline, a CPC is not required for that purpose. The information can simply be provided in correspondence without the necessity of judicial involvement. As the court determined in Dhugha, the omission of the name of an expert or his or her area of expertise from a case plan order does not preclude the admission of that expert evidence at trial.

[36] Thus, the order sought in the defendant’s case plan proposal with respect to experts could not be made by the court. The order proposed by the defence at the CPC with respect to experts is not necessary.

[37] That leads to the next question: was a CPC necessary for any other purpose? In my view, it was not.

[38] An order requiring the parties to exchange further amended lists of documents by certain dates is not necessary. Both counsel acknowledge the duty to provide ongoing document disclosure as required by theSCCR. The suggested deadlines micromanages a case that does not require such management.

[39] An order requiring delivery of a certain therapist’s records by a specified date is also not required. The plaintiff has volunteered to provide those records.

[40] An order identifying the timing and length of examinations for discovery is also unnecessary. The parties have agreed to examination dates. The length of these examinations was not seriously in dispute at this conference and did not require judicial management.

[41] In short, I find that no case plan order ought to or need be made at this time…

Judicial settlement conference (rarely used in B.C. versus other jurisdictions like the Yukon)

* At any stage of the proceedings, the parties or the court may request a settlement conference (Rule 9-2(1))
* Parties meet to explore all possibilities of settlement of outstanding issues
  + Aim to settle or at least prepare for trial
* Pros
  + More control = creative outcomes
  + Less expensive, time-consuming, and stressful than trial
  + Private = before a Judge or Master, no witnesses
  + Even if no settlement is reached, it is a good opportunity to learn the opposite side’s position and boundaries for settlement
* Cons
  + You must give something up
  + Time-consuming if parties are resistant

Mediations

* Can take place at any time if one party files a notice to mediate – requires attendance of opposing parties but does not require settlement
* Parties meet in good faith in order to try to negotiate settlement
* Pros
  + More control = creative outcomes
  + Less expensive, time-consuming, and stressful than trial
  + Private = before a mediator, no witnesses
  + Even if no settlement is reached, it is a good opportunity to learn the opposite side’s position/view of the case and boundaries for settlement
* Cons
  + You usually must give something up: “everyone walks away a little bit unhappy”
  + Time-consuming and tedious if parties are resistant

Trial management conferences

* Mandatory
  + 28 days before schedule trial date unless the court orders otherwise (Rule 12-2(1))
  + No later than 14 days before the TMC, the parties may apply under Rule 8-3(1) for a consent order dispensing with the need for a TMC on the basis that the matter is ready to proceed to trial and can be completed within the time reserved
* Trial briefs
  + Plaintiff serves trial brief at least 28 days before the TMC > defendant serves trial brief at least 21 days before TMC
  + Failure to file trial brief = trial is removed from trial list (Rule 12-2(3))
* Orders
  + Judge or master presiding has broad discretion to make an order whether or not a party applied for it (Rule 12-2(9))
  + No final orders unless the parties agree