

LITIGATING TRAUMATIC BRAIN and SPINAL CORD INJURY CASES

March 25, 2010 | TELUS Conference Centre | Calgary



Hear from and meet with leading medico-legal experts and other distinguished professionals renowned in the field of traumatic brain and spinal cord injuries who will discuss these and other hot button topics:

- Latest developments in diagnosis and treatment options
- Subjective versus “objective” evidence considerations
- Trends in income, economic loss, non-pecuniary and punitive damages claims
- Exploring liability and multiple defendant issues
- Analysing mediation opportunities
- Trial and pre-trial discovery strategies in TBI and SCI cases
- Avoiding pitfalls in settling infant SCI and TBI cases
- Avoiding adverse tax consequences in structuring serious personal injury settlements

and much more...

PROGRAM CHAIR
Bruce Churchill Smith, Q.C.
Partner
Borden Ladner Gervais LLP

PRE-CONFERENCE WORKSHOPS MARCH 24, 2010

Working with Medical and Loss of Income Expert Witnesses in Serious Personal Injury Cases

Dr. Maryana Apel
University of Calgary

Cara L. Brown
Brown Economic Consulting Inc.

Jennifer Lamb
Borden Ladner Gervais LLP

Achieving Quality and Timely Resolution through State of the Art Mediation, Pre-Trial and Settlement Conference Practices

Jim McCartney
McCartney ADR Inc.

**The Honourable
Mr. Justice S. J. LoVecchio**
Alberta Court of Queen's Bench

Marney Lutz
Scott Hall LLP

Greg Rodin
Rodin Law Firm

Dear Colleague,

The recent tragic accidental deaths of celebrities resulting from head or spinal cord trauma have heightened an awareness of liability issues surrounding these misfortunes. At the same time, revolutionary advances in new medical science such as stem cell research and brain scan imaging provide hope for the afflicted to return to a quality life. This good news actually poses a challenge for both personal injury lawyers and insurers. Unlike a death claim or 100% catastrophic impairment, how do you determine damages where quality of life improves, but is never returned to pre-accident form?

To best represent their clients, lawyers need to learn the relevant medical concepts and breakthrough developments from the leading physicians and scientists working at the cutting edge of research, diagnostic and treatment methodologies. Doctors need to learn about what is expected of them in the litigation of these claims, as their successful resolution is often a key ingredient to the accident victim's recovery.

As governments and insurers grapple with spiraling health care costs, effectively managing expensive traumatic brain and spinal cord injury cases is critically essential to control health care costs and insurance premiums.

By attending **Insight Information's LITIGATING TRAUMATIC BRAIN and SPINAL CORD INJURY CASES**, you will hear from a distinguished faculty of preeminent practitioners in this field who will address these and other burning questions:

- Can pain be invisible?
- How do you quantify future income loss claims?
- What can be detected from imaging technology?
- When do you know that your expert report file is complete?
- Does a psychological disability claim complicate an SBI case or is it unrelated?
- Should courts be more vigilant in approving settlements?

We look forward to seeing you at the conference! Don't miss this opportunity to have your questions answered by top experts in their fields.



Bruce Churchill Smith, Q.C.

Partner

Borden Ladner Gervais LLP

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CLE Accreditation

This program has been approved by the Law Society of British Columbia for 4.75 hours.
The pre-conference workshops have been approved by the Law Society of British Columbia for 3 hours each.

WHO SHOULD ATTEND

- Personal Injury Lawyers
- Insurance Defense Lawyers
- In-House Insurance Counsel
- Casualty and Disability Insurance Claims Adjusters
- Mediators and Arbitrators
- Future Care, Vocational, Occupational and Rehabilitation Therapists, Assessors and Consultants
- Medical Professionals
- Personal Injury Paralegals and Law Clerks
- Actuaries, Accountants and Structured Settlement Professionals

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WORKSHOP A | 9:00 A.M. to NOON

Working with Medical and Loss of Income Expert Witnesses in Serious Personal Injury Cases

Dr. Maryana Apel

*Assistant Clinical Professor
Physical Medicine and Rehabilitation
Faculty of Medicine
University of Calgary*

Cara L. Brown

*Principal
Brown Economic Consulting Inc.*

Jennifer Lamb

*Lawyer
Borden Ladner Gervais LLP*

- What type of expert is needed? Evaluating the expert's credentials
- Determining expert credibility
- Using demonstrative evidence to corroborate or discredit the expert
- What are the limits of the expert report?
- Understanding expert qualifications in reading the report
- Working with the treating health care provider
- Reconciling discrepancies in experts' reports
- How to best assist and prepare health care providers for their assessments, pre-trial discoveries, depositions and giving evidence at trial
- Role plays and debriefs on lawyer-health professional interactions throughout the process

Dr. Maryana Apel is a specialist in Physical Medicine and Rehabilitation with sub-specialty in electro-diagnosis and interest in forensic psychiatry and chronic pain management. She is licensed to practice medicine in provinces of Alberta and British Columbia and has been recognised as an expert, testifying frequently at trial in both jurisdictions.

Cara Brown has worked in the legal community for 21 years. She has prepared more than 9,000 reports quantifying economic assessments and damages in civil litigation covering a comprehensive range of cases. She has testified in court proceedings through out Canada(Quebec and new Brunswick excluded) as well as Texas and North Dakota. Cases have included both defense and plaintiff work.

Jennifer Lamb completed her undergraduate studies at McGill University where she received a Bachelor of Arts with Honours in Political Science and Economics in 2000. She attended the University of Alberta Faculty of Law and received her LL.B in 2003. Jennifer was admitted to the Alberta Bar in 2004.

12:00 | 1:00 LIGHT LUNCH WILL BE SERVED FOR DELEGATES ATTENDING BOTH WORKSHOPS

WORKSHOP B | 1:00 P.M. to 4:00 P.M.

Achieving Quality and Timely Resolution through State of the Art Mediation, Pre-Trial and Settlement Conference Practices

Leader: **Jim McCartney**

*Mediator
McCartney ADR Inc.*

The Honourable

Mr. Justice S. J. LoVecchio
Alberta Court of Queen's Bench

Marney Lutz

*Partner
Scott Hall LLP*

Greg Rodin

*Principal and Litigation Counsel
Rodin Law Firm*

- Best practices in preparing materials and strategies for mandatory and private mediations, pre-trial and settlement conferences
- Preparing the party representative for the mediation
- Selecting the mediator or **Judicial Dispute Resolution Judge** ("JDR Judge")
- Timing issues in scheduling the mediation or JDR meeting
- Using demonstrative evidence at mediation
- Tips to follow and traps to avoid in both counsel and party representative conduct in pre-trial settlement processes
- Negotiation strategies which work and avoiding those which don't
- The real meaning of confidentiality in settlement proceedings: overcoming ethical obstacles for the mediator and counsel
- Breaking Impasse; Use of creative strategies and processes
- Impact of the new rules mandating pre-trial ADR

Jim McCartney is a Chartered Mediator and Chartered Arbitrator, Past President of the Alberta Arbitration and Mediation Society and a Director of the ADR Institute of Canada. A litigation lawyer for 34 years, Jim has mediated more than 350 disputes in many legal practice areas including personal injuries and insurance disability claims. He is on numerous ADR rosters, including the Mediation Roster of the Alberta Court of Queen's Bench.

The Honourable Mr. Justice S. J. LoVecchio of the Court of Queen's Bench is Co-chair of the Court's JDR Committee. Previous to his appointment to the Bench, His Lordship was a partner at the national law firm Bennett Jones, where he practiced law in the Commercial Department.

Marney Lutz's practice has been exclusively devoted to civil litigation, primarily in insurance and risk management, with a particular focus on personal injury litigation. She is a frequent lecturer to client groups on civil and insurance litigation. Marney's experience has also included the defence of all types of personal injury claims, particularly catastrophic injury claims, as well as property damage and commercial losses. Marney also has experience defending sexual assault claims on behalf of institutional defendants and "tainted blood" litigation, including the defence of the Canadian Red Cross Society in Hepatitis and Creutzfeld-Jacob disease claims. Much of Marney's practice involves resolution of claims through the mediation process. Marney joined the partnership of Scott Hall in 2003.

Greg Rodin has extensive trial and appellate court experience in all levels of court. He was legal counsel to a number of high profile cases, including lead counsel for David Milgaard in connection with his precedent setting lawsuit against the prosecutors and police involved in his wrongful conviction and incarceration that ultimately led to a landmark compensation award. Greg was called to the Manitoba Bar in 1979. He was admitted to the Alberta Bar in 1996. He established the Rodin Law Firm in 1997.

8:00 | 8:45

Registration and Coffee

8:45 | 8:50

Welcoming Remarks from Insight Information

8:50 | 9:00

Welcoming Remarks from the Chair

Bruce Churchill Smith, Q.C.

Partner

Borden Ladner Gervais LLP

9:00 | 10:00

Medical Fundamentals in Traumatic Brain ("TBI") and Spinal Cord Injury Cases ("SCI")

Traumatic Brain Injury (TBI)

Dr. Maryana Apel

Assistant Clinical Professor

Physical Medicine and Rehabilitation

Faculty of Medicine

University of Calgary

J. Braxton Suffield, Ph.D., R.Psych.

Clinical Neuropsychologist

Dr. J.B. Suffield & Associates

Adjunct Assistant Professor

Department of Psychology

University of Calgary

- Classification of traumatic brain injury
- Severity and outcome predictors
- Objective and subjective signs and symptoms of TBI
- How to distinguish TBI consequences from age-related conditions
- Advantages of new imaging techniques
- Cumulative effect of multiple TBI
- When to ask for expert opinions
- What questions to ask your expert
- Understanding impairment, disability and handicap in TBI patients

Spinal Cord Injury (SCI)

Dr. Daniel McGowan

Clinical Associate Professor

Physical Medicine and Rehabilitation

Faculty of Medicine

University of Calgary

- Spine vs. spinal cord injury
- ASIA Impairment Scale (complete vs. incomplete)
- Patterns of impairment (central cord syndrome and others)
- Prognosis for recovery
- Common symptoms: pain, spasticity, bladder, bowel and skin issues
- Potential complications: autonomic dysreflexia, syrinx and heterotopic ossification
- Rehabilitation management objectives
- Equipment and accessibility issues
- Long term management

10:00 | 10:30

The Role of the Expert Witness in Serious Personal Injury Litigation

Alan S. Rudakoff

Partner

Macleod Dixon LLP

- Determining who is an expert: selecting the right expert
- Preparing medical experts for discovery and trial
- Examining and cross-examining medical experts
- Obtaining, understanding and using medical expert reports
- Understanding the professional responsibilities of health professionals as assessors
- Addressing privilege issues and ethical questions

10:30 | 10:45

Networking Coffee Break

10:45 | 11:45

PANEL DISCUSSION

Successfully Seizing Settlement Opportunities and Negotiating the Best Deal for Your Client

Negotiating and Concluding Settlements

Moderator:

Bruce Churchill Smith, Q.C.

Partner

Borden Ladner Gervais LLP

Madame Justice B.L. Rawlins

Alberta Court of Queen's Bench (Calgary)

Jim McCartney

Mediator

McCartney ADR Inc.

John Rousseau

In-House Counsel and Structured Settlement Broker

McKellar Structured Settlements Inc. (Guelph, Ontario)

- When is the optimal time to mediate serious personal injury actions?
- Selecting the mediator: what should you be looking for?
- Preparing for the mediation
- Drafting the mediation brief and organizing materials
- When is counsel at risk for settling too prematurely? Identifying the right time to settle
- Winning negotiation strategies
- The role of counsel versus plaintiff and insurance adjuster in settlement discussions and at mediation

Best Practices in Settlement Structuring and Tax Planning

- Optimal and creative approaches to structure the settlement: assessing settlement structure options
- Avoiding adverse tax consequences in structuring settlements
- Satisfying provincial health benefit plan requirements
- Subrogation issues
- Court approvals: ensuring the settlement is fair to minors and disadvantaged parties

11:45 | 12:15

Quantifying Past and Future Care Costs

R. Brian Webster, Q.C.

Webster and Associates (Vancouver)

Brain Injury Law

- What to claim and how to build future care costs
- Using rehabilitation to advance the claim

- Successfully using expert and lay evidence on damages reports
- Recent court decisions: Sandhu, Morrison, Gordon and Marcoccia
- Fund management, guardianship and legal fees

12:15 | 1:15

Networking Luncheon

1:15 | 1:45

Loss Mitigation, Resumption of Normal Daily Living and Return to Work Issues

Allan R. Mandel, Ph.D., R. Psych.

President, Mandel & Associates Ltd.

Adjunct Associate Professor

Department of Psychology

University of Calgary

Jennifer Lamb

Lawyer

Borden Ladner Gervais LLP

- Reconciling duty to mitigate and duty to accommodate obligations respecting the accident victim's returning to employment and resuming normal daily living
- Understanding medical expert reports in quantifying damages relating to inability to return to work and resumption of pre-accident lifestyle
- Overcoming the undue hardship threshold
- Special considerations in returning to part-time or reduced pay employment
- Assessing the impact of SCI and TBI on future lifestyle and resulting damages

1:45 | 2:15

Conducting Pre-Trial Discoveries in TBI Cases

Robert J. Hall, Q.C.

Partner

Scott Hall LLP

Edward Pipella, Q.C.

Principal

Pipella Law

- Preparing your client (and yourself)
- Determining objectives to achieve in the examination
- Using discovery to improve your odds at trial
- Advantages of having a checklist
- Dealing with difficult witnesses and opposing counsel
- Obtaining and managing undertakings
- Articulating and resisting refusals
- Wrap up questions: concluding the discovery

2:15 | 2:45

Effective Treatment and Claims Management for Psychological Disability and Cognitive Impairment

Colleen Linney, M. Ed., R. Psych.

Rehabilitation Psychologist

Mandel & Associates Ltd.

Reach Psychology

- Overview of psychological disability following traumatic brain injury and spinal cord injury
- Implications of differential diagnoses and co-morbid conditions
- Pre and post injury risk factors
- Treatment/rehabilitation considerations of psychological disability and cognitive impairment

2:45 | 3:00

Network Refreshment Break

3:00 | 4:00

Tactics and Strategies in Advancing and Defending TBI and SCI Cases

Part A: Plaintiff Perspective

James Cuming

Partner

Cuming Gillespie & Raymaker LLP

- Liability, causation and damages: Do these factors ever coexist?
- Client management : SCI and TBI counsel and support issues
- Defense management: communication, cooperation and litigation
- Understanding functional capacity evaluations, physical demands analysis and other expert reports
- Working up the case
- Identifying the multiple defendants and extent of exposure
- Preparing the injured plaintiff and family members for trial
- Obtaining required expert reports

Part B: Defense Perspective

Kenneth A. Holmstrom

Partner

Chomicki Baril Mah LLP (Edmonton)

- Formulating multiple defense theories
- Spotting commonly made plaintiff assumptions and effectively attacking them
- Ruling out pre-existing disorders
- Working with the insurance adjuster
- Preparing for discovery and trial

4:00 | 4:30

Recent Developments in Assessing Damages

John A. MacIver

Partner

Carscallen Leitch LLP

- Analyzing recent damages awards in TBI and SCI cases: Is there an "upper limit"?
- Measuring difficult to detect TBI
- Trends in income, economic loss, non-pecuniary and punitive damages claims in TBI and SCI cases
- Optimal timing settlement issues in TBI and SCI cases
- Developing a "damages checklist"

4:30 | 5:00

Litigating Infant TBI and SCI Cases

Tara D. Pipella

Lawyer

Pipella Law

- Developmental issues
- Assessing long-term rehabilitation strategies and attendant care needs
- Determining the proper range of damages: quantifying future losses
- Analysing mediation opportunities and pitfalls in settling infant SCI and TBI cases
- The role of the personal injury lawyer in working with medical professionals and the child's family

5:00

Chair's Closing Comments and Conference Concludes

