

THE INTENSIVE SHORT COURSE FIBROMYALGIA AND CHRONIC PAIN CLAIMS

THE SCIENCE, THE LAW, THE STRATEGIES



Attend this information-packed course to learn the latest on how to successfully litigate or mediate these challenging claims. Topics include:

- Critical facts concerning the diagnosis and treatment of chronic pain
- Proving or disproving the invisible injury
- The most effective approaches and techniques for establishing - or challenging - the plaintiff's credibility
- Why the family doctor can be the plaintiff's most important witness
- How YouTube and other social media are being used to build or refute the case on discovery
- Avoiding mistakes which even experienced counsel make in mediating chronic pain cases
- Identifying and dealing with ethical and professional issues

Essential insights and guidance from physicians, counsel, a life care planner and a judge

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STIMULATING...PROVIDED
PRACTICAL SOLUTIONS"**

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Chairs

Alf Kwinter
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Robert W. Traves
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Date and Time

November 19, 2014
9:00 a.m. - 5:00 p.m. EDT/EST

Location

Osgoode Professional Development
1 Dundas St. W., 26th Floor
Toronto, ON

Webcast Available

THE INTENSIVE SHORT COURSE FIBROMYALGIA AND CHRONIC PAIN CLAIMS THE SCIENCE, THE LAW, THE STRATEGIES

Learn from a distinguished faculty what is distinctive about chronic pain/fibromyalgia cases, including the essential medical, psychological and psychiatric facts, the problems they raise, and creative and effective means of resolving them.

Chronic pain syndrome, in its various forms, has been acknowledged as one of the most challenging areas in personal injury litigation. Historically viewed with suspicion, these claims can now attract very substantial damages, sometimes amounting to millions of dollars. Even more everyday claims can be difficult and expensive to resolve.

What do medical experts require from counsel in order to adequately substantiate a case on behalf of either the plaintiff or defendant? How can counsel use experts' specialized knowledge to identify fruitful areas for questioning? What must plaintiff's counsel bear in mind when preparing the lay witness? How can defence counsel educate their insurer-clients and manage their expectations?

This *OsgoodePD* short course will ensure that you are up-to-date on such questions and on the essential science, law, and strategies for establishing or refuting the chronic pain case. Technical experts will share key information from their respective specialties. Top counsel will discuss and illuminate best practices in conducting the case and explore recent court decisions. A judge with extensive experience in the area will weigh in with valuable insights on credibility – the factor on which most of these cases ultimately turn. The day will close with an LSUC-accredited discussion on identifying and addressing ethical and professional issues which you are likely to run into in chronic pain files.

**REGISTER NOW BY VISITING WWW.OSGOODEPD.CA,
CALLING 416.597.9724 OR 1.888.923.3394,
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Chair

Alf Kwinter
Singer, Kwinter

Robert W. Traves
Borden Ladner Gervais LLP

Faculty

Carol Bierbrier, O.T.
*Certified Life Care Planner
and Principal, Carol Bierbrier
& Associates*

Ivan Luxenberg
*M + F Mediation and
Arbitration Services*

Dr. Steve Blitzer
MD, CFPC, *York Central
Hospital, Richmond Hill and
St. Joseph's Health Centre*

Brian E. Lucas
Bell, Temple

Harold Cares
Miller Thomson LLP

Dr. Angela Mailis-Gagnon
MD, MSc, FRCPC
*Director, Comprehensive
Pain Program, Senior
Investigator Krembil
Neuroscience Centre;
Professor, Department of
Medicine, University of
Toronto; Toronto Western
Hospital, University Health
Network*

Daniel J. Fife
*Fife McKeown Trial
Lawyers P.C.*

Cliff Hendler
ADR Chambers

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*Psychiatrist
Comprehensive Pain Program
Toronto Western Hospital
University Health Network*

Michael Shannon
Morse Shannon LLP

Dr. Gordon Ko
MD, RCPSC, CFPC
*The Canadian Centre of
Integrative Medicine*

**The Hon. Justice
Darla A. Wilson**, *Superior
Court of Justice (Ontario)*

Dr. Dinesh Kumbhare
MD, FRCPC, DABPMR
*Physiatrist, MSK
Rehabilitation Program
Scientist, Therapeutics Team;
Associate Professor
Department of Medicine
University of Toronto
University Health Network
Toronto Rehab
University Centre*

*"A thoroughly insightful
and engaging program...very
well-chosen presenters"*

Karen Watt

Department of Justice



AGENDA

8:30-9:00

Registration and Continental Breakfast

9:00-9:05

Chairs' Welcome

9:05-10:30

The Art and Science of Diagnosing and Treating Chronic Pain

Dr. Angela Mailis-Gagnon MD, MSc, FRCPC (Phys. Med.)

Director, Comprehensive Pain Program, Senior Investigator Krembil Neuroscience Centre; Professor, Department of Medicine, University of Toronto; Toronto Western Hospital/University Health Network

In this session, a physician specializing in this area will provide you with the latest thinking and advances regarding the diagnosis and treatment of chronic pain.

- What is pain?
- What is Chronic Non-Cancer Pain (CNCP)?
- How prevalent is CNCP in the Western world and in developing countries?
- The bio-psycho-social model of pain
- Injury without pain and pain without injury
- Factors increasing or decreasing pain
- Review of brain changes in chronic pain
- Nature and scope of treatments for chronic pain
- Fibromyalgia myths and facts.

10:30-10:45

Refreshment Break

10:45-2:15

Building the Case

[Lunch will be provided from 12:00-12:45]

Dr. Steve Blitzer, MD, CFPC, York Central Hospital, Richmond Hill and St. Joseph's Health Centre

Dr. Brian S. Kirsh, MD, RCPSC, Psychiatrist, Comprehensive Pain Program, Toronto Western Hospital, University Health Network

Dr. Gordon Ko, MD, RCPSC, CFPC, The Canadian Centre of Integrative Medicine

Dr. Dinesh Kumbhare, FRCPC, DABPMR, Physiatrist, MSK Rehabilitation Program, University Health Network, Toronto Rehab, University Centre

Carol Bierbrier, O.T., Certified Life Care Planner & Principal Carol Bierbrier & Associates

Dr. Donna Ouchterlony, MD, CFPC, St. Michael's Hospital

Ava M. Hillier, Hillier & Hillier Personal Injury Lawyers

Brian E. Lucas, Bell, Temple

Michael Shannon, Morse Shannon LLP

Two panels (separated by the luncheon break) featuring medical, OT and lawyer expertise, will give you valuable guidance in how to assemble or deconstruct the chronic pain case. Topics will include:

- Proving/disproving the invisible injury
- Who are the most effective experts in proving the case and what is the role of each?
- Communicating with the expert – how much is appropriate in view of *Moore v. Getahun* [2014]?
- Dealing with "before and after" lay witnesses
- Preparation for effective discoveries
- Use of YouTube and other social media in challenging the plaintiffs' credibility
- Limits on the right to record the IME
- How defence counsel can effectively use IMEs
- Applications of the but-for test to multiple accidents
- The family doctor: the plaintiff's key witness?
- Tips on formulating questions for the jury
- Ensuring that future care cost reports are supported by evidence
- How are courts treating the assignment of future benefits?
- Surveillance—effective use, what to disclose and when, etc
- Extent of the plaintiff's duty to mitigate and pursue treatment options
- The defence's onus to justify the proposed treatment

2:15-3:00

Establishing/Challenging Credibility: The Judge's Perspective

The Hon. Justice Darla A. Wilson, Superior Court of Justice (Ontario)

Daniel J. Fife, Fife McKeown Trial Lawyers P.C.

A judge with extensive experience in these cases, and the lead plaintiff's counsel in *Lutes and MacPherson v. Air Canada* [2014], look at what works and what doesn't in dealing with this key issue.

3:00-3:15

Refreshment Break

AGENDA (Cont'd)

3:15-4:15

Taking the Chronic Pain/Fibromyalgia Case Through Mediation

Harold Cares, *Miller Thomson LLP*

Cliff Hendler, *ADR Chambers*

Ivan Luxenburg, *M + F Mediation and Arbitration Services*

- What are the greatest challenges and pitfalls in mediating these cases and what mistakes are made even by experienced counsel?
- How best to sell your case to the other side
- Who should attend?
- Which kinds of doctors make for the best case on a mediation?
- Why mediations fail; how to maximize the odds of success

4:15-5:00

Ethical and Professional Issues in The Chronic Pain/Fibromyalgia Case

Andrew Murray, *Lerners LLP*

Richard F. Horak, *Hughes, Amys LLP*

A variety of ethical and professional challenges commonly arise in chronic pain cases. This session will summarize where a number of the most serious pitfalls lie and how to avoid or surmount them.

5:00

Program Ends



CPD Credits



Osgoode Professional Development has been approved as an Accredited Provider of Professionalism Content by The Law Society of Upper Canada.

LSUC (ON) CPD: 7.25 CPD Hours (6.75 Substantive, 0.5 Professionalism); **BC/NWT/NT/YK/QC/NB:** 6.75 CPD/MCLE credit hours towards professional development requirements; **SK/PEI:** 6.5 CPD/MCLE credit hours towards professional development requirements; **NSBS/MB CPD:** 7.0 CPD/MCLE credit hours towards professional development requirements; **NY CLE Board (on-site participants only):** 8.0 credit hours in the Area of Professional Practice for transitional and non-transitional lawyers. Also eligible for CLE/Insurance Premium Credits Program offered by the **Law Society of PEI** and for Alberta CPD credit with the **Law Society of Alberta**. Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

REGISTRATION

Please complete all registrant information.

Fibromyalgia and Chronic Pain Claims

I will attend: ☐ On site ☐ Via webcast (single viewer)

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Fee Per Delegate

\$695 plus 13% HST for a total of \$785.35.

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca for details. Please inquire about financial assistance.

Date & Time

November 19, 2014

9:00 a.m. to 5:00 p.m. EDT/EST

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

Location

**Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas St. W., 26th Floor
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Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.



4 Convenient Ways to Register

1. **MAIL** your registration form to:
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