

the cross-examiner over-steps his bounds and becomes rude or over-bearing.

Here are seven points which you may find helpful if you were summoned to testify in Court:

1. Be prepared. Preparation cannot be over-emphasized. Just as counsel must thoroughly prepare every aspect of the case, you should prepare thoroughly as well. That means reviewing your clinical notes carefully. Don't be afraid to ask questions of the lawyer who has summoned you to give evidence. Counsel should be more than willing to help you feel comfortable when testifying and to provide you with some insight into the pitfalls that you will face during cross-examination.
2. Be truthful. Everyone knows the old saying "Oh what a wicked web we weave when we try to deceive." There is no need to be less than truthful. Your credibility is on the line. The best cross-examiner will have a difficult time undermining the evidence of a truthful witness.
3. Answer the question that is asked of you, but seek clarification if the question is unclear. A good answer cannot be given to a question if you do not understand what the examiner is asking.
4. Be courteous. Show respect for the civil justice system, the Court and opposing lawyers.
5. Do not argue. You are not the advocate. The lawyer is the advocate. You are there to answer questions and to assist the judge or jury. Argumentative jousting with opposing counsel only serves to annoy the judge but can have a more devastating effect by diminishing your credibility. If you lose credibility with the judge and/or jury, the likelihood that your evidence will not be accepted is increased. On the other hand, you want to defend your position, but this can be accomplished without resorting to a shouting match.
6. Concede the obvious. If the opposing lawyer makes a point during the cross-examination that is obvious to everyone, concede that point. To do otherwise, will waste the Court's time and damage your credibility.
7. You probably know more about your subject area than the cross-examining lawyer will ever hope to know and while you do not want to appear arrogant, you should take comfort knowing that you have the advantage. This often proves to be the case when opposing counsel asks one too many questions and his ignorance of the subject matter becomes apparent.

Conclusion

Appearing in Court can be a daunting thought. It shouldn't be, if you have done your homework and the lawyer calling you to give evidence has made some effort to prepare you for what is to come.

Your role as a witness is an important one, otherwise you would not be called to give evidence. After you have testified, you will experience the satisfaction and pride of having participated in our civil justice system.

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Accident Benefit REPORTER

June - Brain Injury Awareness Month



Brain Injury Awareness Month 2001 kicked off on Friday, May 25 with a live audio/video conference linking Ottawa, Toronto, Hamilton and London. "Building the network" was the theme, as groups in all four cities discussed recent developments in their centres and reviewed plans for June.

Throughout the month of June, groups across the province staged a series of events including live concerts, information fairs, picnics and bicycle safety rodeos designed to promote awareness and understanding of acquired brain injury.

Further details are available from your local brain injury association or the Ontario Brain Injury Association web site at www.obia.on.ca

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The 3rd Inter-Urban Brain Injury Conference - "2001: An ABI Odyssey: The Beginning, the Voyage, The Destination" is being held in London this year on October 25th and 26, 2001. The conference will feature a broad range of symposia, workshops and papers addressing many of the contemporary and pressing concerns to brain injury survivors, their families and members of the health care profession. The Chairs of the conference have accepted a submission by Thomson, Rogers, Frank Martino of Rehabilitation Network Canada Inc. and Dr. John Flannery, Chief of Physiatry at St. John's Rehabilitation Hospital.

Our presentation is entitled "**Bill 59 Rehabilitation Funding Decision Models – Can we do Better?**" It seeks to examine the effectiveness of the current Treatment Plan model in providing accident victims with timely access to recommended rehabilitation, based on an opinion survey of Health Care Professionals. This survey is found within this issue of the *Accident Benefit Reporter*.

We are requesting the assistance of our readers who are health care professionals to complete the enclosed survey and to share your experience with the current Bill 59 Treatment Plan model. We would be grateful if you would complete the questionnaire and return it to us in the enclosed postage paid envelope or by fax at 416-868-3134 no later than July 31, 2001.

Your opinions and recommendations are important. We hope that you will share them with us.

Thanks for your co-operation.

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New Developments in the Diagnosis and Treatment of Mild to Moderate Brain Injury.

I recently had the opportunity to meet with Dr. Anthony Feinstein, Director of the Mild to Moderate Traumatic Brain Injury Clinic at Sunnybrook and Women's Health Sciences Centre in Toronto. The Clinic's mandate is the early detection and early treatment of patients with mild to moderate traumatic brain injury. Dr. Feinstein and a member of the research team kindly demonstrated some of the research projects currently underway at the Clinic. In light of the fact that June is Brain Injury Awareness month, I am taking the opportunity to stray away from a purely accident benefits focus, in order to describe the treatment model and some of the exciting research of Dr. Feinstein and the TBI Clinic.

The TBI Clinic at Sunnybrook is now three years old. The aim of the Clinic is to see all patients within days to weeks of injury. Each patient undergoes a standardized assessment, which is repeated at each subsequent visit. The patient sees a physiatrist, a neuropsychiatrist, an occupational therapist and a physiotherapist. Further, a patient attending the clinic receives a detailed neuropsychological assessment six months following their injury. All data are entered into the database and the Clinic can chart the course of each patient's recovery, or otherwise, over the course of time. This evidence based approach is a unique model of patient care, taking into account not only the physician's assessment of the patient's progress but also the patient's own self appraisal.

On average, 180 plus patients per year visit the Clinic with about 50 percent of patients given follow-up appointments. Presently, the Clinic's database contains over 600 patients with longitudinal data on approximately half of them. The Clinic works closely with the ER physicians, trauma department, neurosurgeons, orthopedic surgeons, and neuroradiologists. Given the presence of all of these disciplines within Sunnybrook, the Clinic can readily access brain imaging, including MRI, CT and SPECT.

The Clinic's research initiatives centre on assessing neuroimaging abnormalities in patients with mild to moderate traumatic brain injury. They use state of the art imaging software to detect functional brain abnormalities. They also combine SPECT analysis with similarly detailed MRI brain data, the latter designed to detect structural abnormalities within the brain of patients who have suffered a mild traumatic brain injury. This study, which is currently running and is due for completion towards the end of 2002, offers the possibility of defining the diagnostic usefulness of SPECT and MRI in patients who have sustained a mild traumatic brain injury.

A second research initiative has focused on improving detection of patients with mild traumatic brain injury within the Emergency Department. It is well recognized that many patients with mild traumatic brain injury escape detection and are left to fend for themselves. This frequently leads to the patient experiencing difficulties within the home and at work and without access to treatment. Dr. Feinstein and his researchers have introduced the Galveston Orientation and Amnesia Test into Sunnybrook's ER, with the hope of increasing awareness of mild traumatic brain injury amongst ER physicians.

A third study is looking at potential genetic markers of outcome following traumatic brain injury. All Clinic patients over the age of 65 are requested to provide a blood sample for genetic screening at six months following injury. Correlates are then sought between their cognitive and emotional outcome and the presence of the APOe4 gene.

Other on-going projects in the clinic include a study looking at the role of gender in predicting outcome following head injury, a study exploring the impact of litigation on symptom expression following head injury, and an important treatment study investigating whether a particular treatment model can enhance outcome following mild head injury. The Traumatic Brain Injury Clinic publishes its data from various research projects and presents their findings at national and international meetings. Through its



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work, the Clinic also hopes to encourage other hospitals with trauma facilities to adopt their approach with respect to detection and treatment of patients with mild to moderate head injury.

Most motor vehicle accident victims who suffer mild to moderate brain injury are restricted to limited no-fault accident benefits of \$100,000 for medical and rehabilitation expenses, limited to a period of ten years. Accordingly, the earlier a mild to moderate brain injury is recognized and treated, the more likely an accident victim will derive benefit from the limited funds available for medical and rehabilitation expenses. The patient care model and the research of Dr. Feinstein and the TBI Clinic are encouraging for all victims of mild to moderate traumatic brain injury.

Anthony Feinstein, MPhil, PhD, MRCPsych, FRCP(C)/Wendy Moore Johns, Partner

Preparing for Court

The prospect of having to give evidence in Court is not one that most of us look forward to. Most people probably feel this way whether they are lay or expert witnesses. The anxiety that surrounds receipt of a Summons to Witness and the appropriate conduct money stems in a large part from a fear of the unknown, after all, most of us don't testify in Court on a regular basis. If it is of any comfort, even the most senior trial counsel experience a little nervousness before rising to conduct an examination in chief or a cross-examination. Most judges realize that testifying in Court is a unique experience and that most witnesses, at least in the beginning, will be somewhat anxious and probably a little nervous.

When summoned to give evidence, you will be giving evidence in chief sometimes referred to as a "direct examination", following which you will be subject to cross-examination by the opposing counsel.

Suppose, for example, you are a healthcare professional called to give evidence with respect to the care or treatment that you have provided to the Plaintiff. Generally, Plaintiff's counsel will take you through your testimony to establish the circumstances under which you came to know the Plaintiff, the care or treatment provided and whether or not and to what extent the Plaintiff responded to that treatment.

If the nature of your evidence is such that you are required and qualified to give an opinion, be prepared to answer questions about your qualifications and expertise in the area concerning which you are about to testify. You will be asked about the patient's history as given to you by the patient or others on his behalf, your diagnosis of the problem, your treatment and your prognosis with respect to further recovery.

The lawyer who has called you to give evidence with respect to these issues is not permitted to ask "leading" questions. A leading question is one in which the answer is suggested. Since the lawyer cannot suggest the answer, you must be thoroughly familiar with the testimony you are about to give. This can be accomplished by a review of the documents you and the others have generated which are in your possession and a pre-trial interview with the lawyer or someone from his or her staff who can tell you about the nature of the evidence that you are expected to give. By testifying on behalf of the Plaintiff, you are helping to build the Plaintiff's case by either providing relevant background information with respect to the treatment and recovery or current information with respect to any residual complaints.

Following the examination in chief, you will be subject to cross-examination by opposing counsel. The purpose of the cross-examination is to weaken the testimony that you have just given. Defence counsel will also, in some cases, try to preview the defence by using your evidence to do so. Counsel will attempt to persuade you to agree on many points that he will argue support the defence theory. In stark contrast to the direct examination, one of the essential tools of cross-examination is that counsel is able to ask leading questions. You must listen to the questions carefully. Do not agree with a suggestion with which you disagree hoping that will shorten your time in the witness box. It usually does not.

Counsel may point out shortcomings in your testimony. For example, a failure to review all of medical reports or a failure to consider important factual history that you may not have known but should have. Although cross-examination can be a grueling experience, the judge will generally step in if