

5th Annual

DISABILITY CLAIMS MANAGEMENT AND LITIGATION

February 27 - 28, 2012 | St. Andrew's Club and Conference Centre | 150 King Street West, Toronto



Featuring Presentations From

Gail Misra
Caley Wray

Adam Beatty
*Cavalluzzo Hayes Shilton McIntyre
& Cornish LLP*

Dr. Carolyn Dewa
Centre for Addiction and Mental Health

Michele Nowski
Desjardins Financial Security

Phil Wolfenden
Gowling Lafleur Henderson LLP

Mark Fletcher
Grosman, Grosman and Gale LLP

Lia Chiarotto
Jonathan L. Dye
Heenan Blaikie LLP

Leola Pon
Hicks Morley Hamilton Stewart Storie LLP

Gordon Jermane
Peter Varela
Manulife Financial

Amelia Leckey
Miller Thomson LLP

Sean McGee
Nelligan O'Brien Payne LLP

Steven Rastin
Rastin & Associates

Shana French
Sherrard Kuzz LLP

Duncan McDuff
Sun Life Financial

Stacey Stevens
Thomson Rogers

Alison C. Bested MD FRCPC
University of Toronto

PROGRAM CO-CHAIRS

Russell Howe
Boland Howe LLP

Eric Schjerning
Blaney McMurtry LLP

Jane Sleeth
Optimal Performance Consultants Inc.

Conference Highlights Include:

DISABILITY CLAIMS LITIGATION

- Building a Medical / Legal Case for Disability Claims Litigation
- Plaintiff and Defence Perspectives on What it takes to Win an LTD Lawsuit
- Chronic Fatigue Syndrome - Still Hunting for the Holy Grail

DISABILITY CLAIMS AND THE WORKPLACE

- Hot Button Issue of Mental Health in the Workplace
- Employee and Employer Rights and Obligations in Disability Claims
- Finding the Threshold for Seeking Accommodation and Undue Hardship

CLE Accreditation:

This program qualifies for 9.75 substantive hours and can be applied towards the 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the Law Society of Upper Canada.

Please note that these CPD hours are not accredited for the New Member Requirement.

Dear Colleague,

As a lawyer, HR or insurance professional who has to deal with the complex subject of disability claims management or litigation, you know the importance of staying on top of the latest medical research, disability claims processing, best practices in managing disability in the workplace, recent case law and key decisions in this area.

This year we have decided to address two major themes - one focusing on disability claims litigation and the other on specific challenges arising in managing disability and disability claims in the workplace. Our intention in developing this two-part conference is to provide timely and relevant information on all aspects of claims management and litigation to collectively identify and address critical and top-of-mind issues in this area.

Day one of this **Insight Information** conference will specifically take a look at the emerging trends and key topics of interest in disability claims litigation and day two will analyze best practices and employee, union and employer rights and obligations in effectively managing disability and accommodation.

No matter which segment of the industry you represent, we are certain that you will find this conference extremely worthwhile and we look forward to seeing you there.

Russell Howe
Partner
Boland Howe LLP

Eric Schjernerig
Lawyer
Blaney McMurtry LLP

Jane Sleeth
Founder and Managing Director
Optimal Performance Consultants Inc.

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For further details, please contact Gene Beil at 416.642.6129 or gbeil@alm.com

WHO SHOULD ATTEND

- Vice Presidents, Directors and Managers of HR
- In-house Counsel Corporate
- In-House Counsel Insurance Companies
- Plaintiff and Defense Counsel
- Claims Directors, Managers and Examiners
- Claims Processors
- Case Managers
- Medical Experts and Consultants

FEBRUARY 27, 2012

Disability Claims Litigation

8:00

Registration and Continental Breakfast

8:40

Welcome Remarks from Insight Information

8:45

Co-Chairs' Opening Remarks

Russell Howe

Partner

Boland Howe LLP

Eric Schjerner

Lawyer

Blaney McMurtry LLP

9:00

Disability Claims Litigation - Building the Medical/Legal Case

Gordon Jermane

AVP & Counsel

Manulife Financial

Stacey Stevens

Partner

Thomson Rogers

- Commencing the action: plaintiff and defence issues in pleadings and party identification
- The utility and conduct of the examinations for discovery
- Building the evidentiary foundation of the case
- Settlement issues and strategies: how to get the other side to agree with you

10:00

Chronic Fatigue Syndrome - Still Hunting for the Holy Grail

Alison C. Bested MD FRCPC

Haematological Pathologist

Lecturer, Faculty of Medicine, University of Toronto

Russell Howe

Partner

Boland Howe LLP

- What is the latest science telling us?
- Is there a gold standard test yet?
- Why insurers hate dealing with Chronic Fatigue Syndrome (CFS)?
- Treatment and rehabilitation - is it a waste of money?

10:45

Networking Coffee Break

11:00

Enforcing Mandatory Rehabilitation Clauses

Eric Schjerner

Lawyer

Blaney McMurtry LLP

- To what extent can insurance companies enforce mandatory rehabilitation clauses? When can a plaintiff refuse to participate in such programs?
- When does a plaintiff's refusal to participate in prescribed rehabilitation amount to failure in their duty to mitigate?
- Who has the responsibility to monitor and evaluate compliance with prescribed rehabilitation or treatment?
- Can insurance companies carve out periods of non-compliance when the claimant refused or ignored prescribed rehabilitation or treatment from payable benefits?

11:45

The Impact of Delays in Communicating or Litigating with a Disability Insurer

Amelia Leckey

Partner

Miller Thomson LLP

Duncan McDuff

AVP and Senior Counsel

Sun Life Financial

- The current law regarding limitation periods and late notice
- Delay in providing information to insurer and its effect on claims handling
- Registrar's orders/dismissal for delay
- Delay arising from circumstances not attributable to the insurer or insured

12:30

Networking Luncheon

1:45

Defence and Plaintiff Counsel Panel - What it Takes to Win an LTD Lawsuit

Eric Schjerner

Lawyer

Blaney McMurtry LLP

Russell Howe

Partner

Boland Howe LLP

- What factors do plaintiff and defence counsel deem paramount in winning an LTD lawsuit?

Disability Claims and the Workplace

8:15

Registration and Continental Breakfast

8:45

Co-Chairs' Opening Remarks

Eric Schjerner

Lawyer

Blaney McMurtry LLP

Jane Sleeth

Founder and Managing Director

Optimal Performance Consultants Inc.

9:00

Hot Button Issue - Mental Health in the Workplace

Dr. Carolyn Dewa

Head, Work and Well-being Research and Evaluation Program

Centre for Addiction and Mental Health

Sean McGee

Leader, Labour Law Practice Group

Nelligan O'Brien Payne LLP

Michele Nowski

Section Manager, Group Disability and Case Management

Desjardins Financial Security

Peter Varela

Director, National Disability Services & Industry Relations

Manulife Financial

- An overview of the types of commonly presenting mental disabilities in the workplace
- Processes - role of the employer in managing an employee who might be dealing with a mental disability
- How do you determine stress or anxiety as a mental disability?
- What proof is required to determine the existence of a mental disability?
- What information do insurance companies require to process mental disability claims?
- Support and treatment options
- How accommodation and return to work for mental disabilities differs from other disabilities

10:30

Networking Coffee Break

10:45

Reviewing Employer and Employee Rights and Obligations in Disability Claims

Shana French

Lawyer

Sherrard Kuzz LLP

- Meds and creds
- Effective use of trial tested experts
- Jury trial vs. trial by judge alone
- Seizing the initiative
- Can insurance companies reasonably predict an LTD trial outcome?
- Dealing with the "mud" defence strategy
- When should a party throw in the towel?

2:45

Networking Refreshment Break

3:00

Discovery in Claims Litigation - Examining the Insurer's Representation

Steven Rastin

Managing Partner

Rastin & Associates

- Pre-examination considerations
- Choosing who to examine - find the decision maker
- Ascertaining the qualifications of the decision maker
- Ascertaining the decision making process
- Looking for critical areas of non-disclosure - manuals, C.V.'s, etc
- Evaluating the validity of the decision to deny
- Looking at the validity of the internal appeal process
- Deciding whether to attempt to build the bad faith case
- Establishing the basis for "Fidler" damages

3:45

Reviewing Recent Cases and Decisions from the Last 12 Months

Stacey Stevens

Partner

Thomson Rogers

In this session we will discuss the most significant decisions of the year issued by courts, as well as review the implications of recent major legislative changes and proposals as it pertains to disability claims cases. The final selection of cases and decisions for this session will take place a month before the conference, so that we can review relevant, timely and up-to-the-minute issues.

4:45

Closing Remarks and Conference Adjourns for the Day

Mark Fletcher

Lawyer

Grosman, Grosman and Gale LLP

- What steps and processes must an employer have in place to review and process disability claims?
- Exploring the limits - seeking and disclosing information
- Managing denial of claims and appeals
- When can an employer conduct surveillance of an employee who is on disability leave?
- Defining a claimant's duty to mitigate
- Accommodation, modification of duties and assisting in return to work

11:45

Managing Physical Non-Visible Disabilities at Work

Phil Wolfenden

Partner

Gowling Lafleur Henderson LLP

Jane Sleeth

Founder and Managing Director

Optimal Performance Consultants Inc.

- Types of physical non-visible disabilities - chronic fatigue, fibromyalgia, chronic pain
- Proving non-visible physical disabilities - how courts view it?
- Managing non-visible physical disability claims
- What information do insurance companies require?
- Accommodation of non-visible disabilities - key considerations
- Putting processes to manage and assist employees with non-visible physical disabilities

12:30

Networking Luncheon

1:45

Handling Medical Information: Request for Information and Independent Assessments

Lia Chiarotto

Partner

Heenan Blaikie LLP

Gail Misra

Partner

Caley Wray

- The circumstances in which employers and insurers can request medical information
- What type of medical information may be requested?
- What can the employer or insurer do when provided with vague medical information?
- What is the employee's duty to respond? What recourse does an employer or insurer have with a non-responsive employee?

- Circumstances when an employer or insurer can require an employee to undergo an independent medical assessment?
- To what extent can an employer rely on the determinations of third party insurers relating to disability?

2:45

Networking Refreshment Break

3:00

Disability and Non-Culpable/Innocent Absenteeism

Adam Beatty

Associate

Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

Jonathan L. Dye

Partner

Heenan Blaikie LLP

- Attendance management policies and specific provisions for disability related absenteeism
- How much does an employee have to disclose about their disability? How far does an employee's right to privacy extend? And what steps does an employer have to take to accommodate an employee's need to be away from the workplace as a result of their disability?
- Can innocent absenteeism due to a disability ever amount to just cause for termination?
- Long-term disability benefits provisions in employment contracts and implications for determining cause for dismissal or frustration of contract

4:00

Finding the Threshold for Seeking Accommodation and Undue Hardship

Leola Pon

Associate

Hicks Morley Hamilton Stewart Storie LLP

- Procedural aspects of accommodation and other factors used to determining undue hardship - views from courts, tribunals and arbitrators
- When do financial costs of accommodation and loss in productivity amount to undue hardship?
- When is there a breach of employment contract where an employee no longer can perform essential duties?
- What medical information can employers obtain and how is this used in demonstrating undue hardship?

5:00

Closing Remarks and Conference Concludes

