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Doug Lennox takes on 200 year old court rule and wins

Interview by Andrea Potter

Photo by Tamara Paul



Early in his career [Doug Lennox](#) exited a successful defence firm to work for the rights of Canadians.

His journey has taken him into the [Class Action](#) arena in Canada, working on some of the most influential class action files and settlements in Canada.

Q. You have practiced class action law for 14 years, how did you get into this practice area?

A. I was working at a defence firm, found class action law really interesting, and wanted to represent individuals, not big corporations. So I switched teams, and started doing plaintiff work.

Q. How has class action law evolved in Canada?

A. It has become a much more established field. When I first started, the area was still relatively new. Courts have acquired a great deal of experience in this area over time, providing precedents to draw upon, and making results in cases more predictable.

Q. What has been your most challenging case and why?

A. They are all challenging in their own way. The Woodlands case has meant a lot, trying to help some of Canada's most disadvantaged. This is a group of children who were abused at the hands of the government and the hired caregivers in a residential school in New Westminster, BC. Years later we are fighting for the rights of the [Woodlands Survivors](#).

Q. Any recent court rulings that have or will change the landscape of class action law in Canada?

A. I think that an important trend is that we will see more class action trials. Most cases, whether class action or individual action, settle. Indeed, the efficient operation of our court system requires that the majority of lawsuits settle. That said, as class actions have become more established in our legal system, more cases have reached the trial stage. Some critics of class actions have suggested that the trials would be too complex and would become unmanageable. But the experience at trials of cases like *Smith v. Inco*, a case dealing with environmental contamination, or *Payne v. Eagle Ridge Pontiac*, a case dealing with misleading sales tactics, shows that these trials work, and that they provide cost-effective access to justice for many Canadians.

Q. You successfully argued a case in Ontario related to contingency fees. What made you take this fight on to have a 200-year-old law updated?

A. When I was in law school, I learned that most Canadian provinces allowed contingency fees, but that Ontario had a 200-year-old rule against it. This didn't make sense to me. Most people can't afford to hire lawyers for an hourly fee. They are much happier with a percentage fee in which they don't pay unless the case is successful. And as I studied Ontario's ancient rule on contingency fees, I found that the original reasons for the rule had been lost over time, and that the rule did not make sense. The rule dated back to the Middle Ages, and had been issued by the King to protect the courts from interference by nobles. The purpose of this rule was to ensure the fairness of the courts for commoners. The rule had never been meant to apply to lawyers who represented ordinary people. When I graduated from law school, I decided that I would try to get this rule changed. By arguing from these old precedents, I was able to persuade the Ontario Court of Appeal that the rule against contingency fees should be dropped.

Q. You have also fought for ordinary Canadians to have access to the Canadian Courts. Tell us about that journey and how has it changed things for the general

public?

A. I did help to get the law in Ontario changed in 2002 to allow contingency fees. This made it easier for ordinary people to hire lawyers, and it also made the process more transparent, so that consumers could better understand how legal fees worked, and could negotiate a fee agreement with a lawyer that made sense for them.

If we don't win,
you pay no fee —
that's our
fee
guarantee ▶

A tool to help children deal with chronic pain

By Millie Strom



Living with chronic pain after a car accident can be overwhelming, frustrating, and frightening. For a child, it can be especially distressing and scary.

To help children learn to identify, describe, and cope with acute or chronic pain, author and former teacher [Cathryn Morgan](#) has written a valuable, illustrated book, *GrrrOUCH! Pain is like a grouchy bear*. Morgan

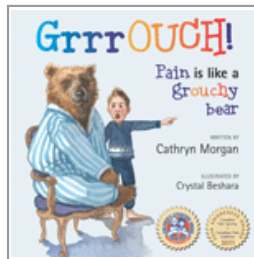
explains, "Pain is an invisible disability. This whimsical book discusses pain from a child's perspective to inspire children to explore, visualize and describe their pain and communicate in a manner that validates their own personal pain experiences."

Morgan, a teacher for 23 years, wanted to pass on to children her own experience and lessons learned from living with, and managing pain. Car accident injuries developed into chronic pain, which prevented this passionate, dedicated teacher from returning to work, so she turned her energies towards developing the book. "Writing this book has been a great distraction, excellent therapy to get me through the pain, and a stepping stone to understanding that what you think about your pain affects the experience of the pain itself," explains Morgan.

"Let your imagination open your heart to see . . . Sometimes you can be stronger than pain will ever be."

from *GrrrOUCH! Pain is like a grouchy bear*, Cathryn Morgan

The book has won two awards, the Pain Awareness Award 2011 from the [Canadian Pain Society](#) and the [Canadian Pain Coalition](#), and the Children's Literature Award 2010-2011 from the Elementary Teachers' Federation of Ontario.



According to the [Special Interest Group on Pain in Childhood](#), children's pain is under-recognized and can effect their social and physical development. In addition, a [UBC Department of Psychology](#) study found that children sometimes blame themselves for the pain and myriad of feelings that accompany a serious injury.

A book like *GrrrOUCH!* is a helpful tool for both health professionals and families who are assisting children dealing with the pain.

The book is available through the author at www.cathrynmorgan.com, or through the publisher at [General Store Publishing House](#).

Take control of your pain: managing chronic pain after a car accident

By Millie Strom



When a person suffers injuries in a car accident, there are two potential types of pain to deal with—acute and chronic. Do you know the difference?

Acute pain serves a very important purpose. It's a warning sign or 'red flag'. When it comes to car accidents, acute pain alerts us that we've been injured and that we should remain calm and let the medics do their rescue

work.

Chronic pain is another matter. It has no purpose other than to make us miserable--and it

excels at that! Yet we can learn to manage chronic pain, and along the path to healing eventually become less reliant on health professionals or medication by being actively involved in our own recovery.

Chronic Pain Self-Management program

If you have chronic neck, shoulder, or back pain—called musculoskeletal pain—or whiplash, repetitive strain injury, or post-surgical pain, consider the [Chronic Pain Self-Management \(CPSM\)](#) program. The University of Victoria offers the program in several communities in British Columbia. The CPSM program is delivered by volunteer lay people in the community, who conduct small, group meetings for 2-1/2 hours per week for six weeks. These volunteers are well-trained and teach people who are living with chronic pain how to manage using the following strategies and tools:

- Managing cognitive symptoms;
- Developing a suitable exercise program;
- Eating healthy;
- Using breathing exercises;
- Problem-solving;
- Strengthening communication skills (for use with family, friends, and health care providers);
- Using medication effectively; and
- Dealing with the emotions of chronic illness (i.e. anger and depression).

The Chronic Pain Self-Management program is designed to complement your work with your current health professionals, by strengthening your own pain management knowledge and skills.

Resources for Chronic Pain

Chronic pain sometimes ebbs and flows, and occasionally you may need to refresh your pain self-management skills. Don't hesitate to ask for help. Here are two valuable resources:

- The [Canadian Pain Society's](#) (pdf) current listing of pain clinics, by province.
- The [Canadian Pain Coalition's](#) National Pain Awareness Week, November 6 - 12, 2011

If you have been injured in a car accident and suffer from chronic pain, you *can* take positive, proactive steps to take control of your pain.

Traffic Injury Research Foundation — help from behind the scene

By Barbara K. Adamski
Photo: Courtesy of TIRF



Although you may never have heard of the Traffic Injury Research Foundation (TIRF), it's very likely that their work has touched your life in some way. The mission of the Ottawa-based charity is simple: *"to reduce deaths and injuries resulting from road crashes."*

"Our focus is on road-user behaviour," says CEO Robyn Robertson. "We're a road-safety research institute. We don't do engineering or vehicle design, or that kind of stuff, but we focus solely on the road user."

TIRF's research is used by federal, provincial and municipal governments both in Canada and abroad. They also provide research and services to agencies such as driver licensing, public health and criminal justice. With regard to justice, TIRF's reports help judges make decisions and help with the actual making of laws.

TIRF does four things. Robertson says, "We measure the magnitudes, characteristics and trends of road-user issues. Is drunk driving getting better? Is it getting worse? Who drinks and drives?"

Second, they do program and policy development. For example, TIRF helps jurisdictions around the world develop graduated driver-licensing programs and are currently providing [technical assistance for ignition interlock programs](#) across the US, in terms of improving implementation delivery.

Third, they do evaluations. One of their most recent evaluations was of the [photo enforcement program in Winnipeg](#).

And fourth, TIRF does knowledge transfer, which, according to Robertson, is probably the most important thing the organization does because "all the research in the world doesn't help you if you're not actually giving it to those who work on the front line everyday, dealing with road-safety issues," she says. To accomplish this, TIRF works with transportation, justice and health practitioners to make sure that they are aware of and understand the research, and are not only able to put it into practice, but also learn about the constraints of some of the operational environments. "You can develop a great program or a great policy, but if it doesn't fit in the real world, it's not really of any value," says Robertson.

One issue that TIRF is currently working on is distracted driving. "We're still learning about it," says Robertson. "Increasing our knowledge of that in the next years will be interesting. It will challenge us in that traditionally what we've done with road safety problems is we pass laws, we enforce them, and we apply sanctions to people who don't comply." And distracted driving is a universal problem, because everybody can be distracted, whereas a very small percentage of the population drink and drive. A lot of behaviours that we take for granted are distracting: changing a CD, eating, chatting with passengers. TIRF hopes to change behaviour through education and awareness rather than through laws, enforcement and sanctions. "It will be a good learning opportunity for us to identify different approaches and to learn to be more effective in dealing with a particular issue as it unfolds," says Robertson.

For a complete list of TIRF issues visit <http://www.tirf.ca/about/expertise.html>.

Class Action News

Hormone Replacement Therapy (HRT)

We are pleased to report that Madam Justice Gropper of the British Columbia Supreme Court certified this lawsuit as a class action on August 4, 2011. This means that the case can move forward to trial. A copy of her decision can be found [here](#).

Dermalive

On August 11, 2011, Mr. Justice Sewell of the British Columbia Supreme Court certified this lawsuit as a class action. The reasons for judgement can be read on the Klein Lyons [Dermalive](#) Page.
