Memorandum

Justice

Legal Services Branch
730 – 405 Broadway
Winnipeg MB R3C 3L6

Date: November 22, 2016

File: HE2200(85)

To: Redacted to protect privacy
Manitoba Health, Seniors and Healthy Living
Legislative Unit
1st Floor, 300 Carlton Street
Winnipeg, MB R3B 3M9

From: Redacted to protect privacy
Phone:
Fax:
Email:

Subject: Research – Upper Spinal / High Neck Manipulation

Please find attached a memorandum dated October 18, 2016 to the writer from Redacted to protect privacy reporting on the results of his jurisprudence and commentary review.

The attached memorandum sets out the parameters and limitations of our research. As discussed and reflected in the memorandum, it should not be considered an exhaustive identification of Canadian case law and commentary related to the use of upper spinal/high neck manipulation.

Our office has conducted this research at the request of Manitoba Health, Seniors and Active Living. However, we understand that the department intends to share the results with the members of the Health Professions Advisory Council established under *The Regulated Health Professions Act*, C.C.S.M. c. R117. This covering correspondence should be included with the attached memorandum when it is shared.

This research should not be shared with any person(s) other than the members of the Health Professions Advisory Council without the prior written consent of this office.

If you have any further questions, please contact me.

Redacted to protect privacy
Crown Counsel

Attachment

Memorandum

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730 – 405 Broadway
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Date: November 22, 2016

File: HE2200(85)

To: Redacted to protect privacy

From:
Phone:
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Subject: Jurisprudence and Commentary Review – Upper Spinal/High Neck Manipulation

Objective

This jurisprudence review surveys the Canadian case law and commentary related to the use of upper spinal/high neck manipulation ("USHNM"). The primary goal of this review was to compile a list of judicial and arbitral decisions that relate to the performance of USHNM. The secondary goal of this review was to compile of list of legal publications and commentary related to the performance of USHNM.

Methodology

Search Methodology

Three legal databases were used to compile relevant case law and commentary:

- LexisNexis Quicklaw ("Quicklaw"),
- Westlaw;
- and CanLII.

On Quicklaw, the "All Canadian Court and Tribunal Case Law" function was used to perform searches, and then the results were examined to determine whether the case or article dealt with USHNM in a substantial way. The assessment of whether USHNM was referenced in a significant manner required some exercise of judgement.

On Westlaw, the general search function was used, and the results were reduced in the same manner. Unlike the other databases, using this search function also brought up commentary.

On CanLII, the general search function was used, and the results were narrowed in the same way.

For each database, the primary search terms that were used were: "cervical spine manipulation", "cervical manipulation", "spinal manipulation", and "high neck manipulation". These searches were performed during the period of September 5, 2016, to October 10, 2016.

Search Criteria

Cases and commentary were included in the survey and deemed as relevant where the performance of USHNM was central to the court, administrative decision-maker, or scholar's analysis. Where a case or commentary either did not involve USHNM or only did in an ancillary way, the source was excluded. Cases and articles released before the year 2000 were also excluded from the survey.

Where a case related to USHNM in a substantial way, and where a decision was rendered at both the trial and appellate level, both decisions were included in the review.

Limitations

It should be noted that the scope of each of the databases is limited. For instance, the contents of the CanLII database are outlined at http://www.canlii.org/en/databases.html. Please advise if you require further information on this issue.

The review is limited to Canadian cases and commentary.

Another limitation of the review is that none of the services reliably canvass tribunal decisions in a comprehensive way. Accordingly, the reader should assume that this review does not capture all relevant Canadian tribunal decisions.

Results of Review

Introduction

This section is broken down into several parts.

The first part is a chart of the results. The chart identifies the following information, for each of the respective databases:

- The number of relevant cases;
- The number of those cases decided by courts;

- The number of those cases decided by administrative tribunals; and
- The number of articles or commentary.

The second part provides a list of relevant cases brought up by each database.

The third part details several pieces of information about each source, and where available, provides a headnote or abstract summarizing the source's content.

Data

Database	Number of Relevant Cases	Decided by Courts	Decided by Tribunals	Number of Relevant Articles/Commentary
Quicklaw	9	9	0	0
Westlaw	12	12	0	2
CanLII	13	11	2	0

Total relevant sources: 20

It should be noted that the databases tended to bring up similar sources; several of the sources are counted twice or three times in the above chart.

As a result, although the databases brought up 36 relevant sources altogether, there were a grand total of 20 separate relevant sources.

Results

Quicklaw
Collin v Jasek, [2000] OJ no 3203 (Ont. CJ.).
Dickson v Pinder, 2010 ABQB 269.
Gallant v Brake-Patten, 2010 NLTD 1.
Gallant v Brake-Patten, 2012 NLCA 23.
Guist v Bolton, 2001 SKQB 170.
Guist v Bolton, 2001 SKQB 211.
Kern v Forest, 2010 BCSC 938.
Lewis v Emanuele, [2000] 95 ACWS (3d) 1155 (Ont SC).
Loffler v Cosman, 2010 ABQB 177.

Westlaw
Collin v Jasek, [2000] OJ no 3203 (Ont. CJ.).
Dickson v Pinder, 2010 ABQB 269.
Gallant v Brake-Patten, 2010 NLTD 1.
Gallant v Brake-Patten, 2012 NLCA 23.
Guist v Bolton, 2001 SKQB 170.
Guist v Bolton, 2001 SKQB 211.

Heughan v Sheppard, [2000] OJ no 2188 (Ont. CJ.).
Kern v Forest, 2010 BCSC 938.
Lewis v Emanuele, [2000] 95 ACWS (3d) 1155 (Ont SC).
Loffler v Cosman, 2010 ABQB 177.
Nette v Stiles, 2009 ABQB 422.
Olsen v Jones, 2009 ABQB 371.

Nola M. Ries and Katherin J. Fisher, "The Increasing Involvement of Physicians in Complementary and Alternative Medicine: Considerations of Professional Regulation and Patient Safety" (2013) 39 Queen's L J 273.
Lorian Hardcastle, "Government Tort Liability for Negligence in the Health Sector: A Critique of the Canadian Jurisprudence" (2012) Queen's L J 525.

CanLII
AW v RG, 2014 CanLII 19936 (Ont. Health Professions Appeal and Review Board). *Dickson v Pinder*, 2010 ABQB 269. *Gallent v Patten*, 2010 NLTD 1. *Guist v Bolton*, 2001 SKQB 170. *Guist v Bolton*, 2001 SKQB 211. *Loffler v Cosman*, 2010 ABQB 177. *Kern v Forest*, 2010 BCSC 938. *Malinowski v Schneider*, 2010 ABQB 734. *Malinowski v Schneider*, 2012 ABCA 125 *Nette v Stiles*, 2009 ABQB 422 *Reid v Maloney*, 2010 ABQB 794. *Reid v Maloney*, 2011 ABCA 355. *SV v MR*, 2013 CanLII 22622 (Ont. Health Professions Appeal and Review Board).

Summary of Sources

This section provides several pieces of information for each of the relevant sources. The following information is detailed for each source:

- The title of the source;
- The citation;
- The forum or journal;
- The database(s) upon which the source was accessed; and
- The headnote or abstract for the source (where available).

The names of the authors were also provided for the articles.

Note that we have reproduced the headnotes and abstracts as appearing on the databases. We caution against relying on the content of the headnotes and abstracts. Where any source is being used as an authority, reference should be made to the full text of the decision/article. We have attached full copies of all sources.

Title	*AW v RG*
Citation	2014 CanLII 19936
Forum	Ontario Health Professions Appeal and Review Board
Database(s)	CanLII
Summary	Unavailable

Title	*Collin v Jasek*
Citation	[2000] OJ no 3203
Forum	Ontario Superior Court of Justice
Database(s)	Quicklaw, Westlaw
Summary (Headnote)	Patient attended chiropractor's office on referral from her family physician because of persistent pain in her low back, hip and leg — Chiropractor performed manipulations to patient's neck — After manipulations, patient had pain in neck radiating to her right shoulder — Patient was later diagnosed with disc herniation — Patient brought action against chiropractor for damages arising from negligence — Action dismissed — Chiropractor performed his duties as responsible chiropractor practising in Ontario during relevant period — Patient's evidence was undermined by patient's failure to contact family physician after manipulations to complain of alleged neck injury, and patient's continued attendance for chiropractic treatment after initial visit — Patient never complained to chiropractor of type or manner of treatment other than complaint of stiffness and tenderness in area after treatment — Risks from chiropractic manipulation of cervical spine of which patients should be warned are stroke and cervical disc herniation — Patient was not advised of either risk — In 1994, stroke was not commonly recognized risk requiring reasonably competent chiropractor to communicate such risk to patient — Accepted practice at time was to obtain consent from patient's orally — Standard of care of reasonably competent chiropractor at time did not require disclosure of disc herniation as material risk of manipulation — Risks communicated to patient by chiropractor were reasonable for competent chiropractor practicing at time in Ontario — No evidence existed that patient would have refused treatment had she been made aware of risks of stroke and cervical disc herniation — Patient was properly informed and consented to treatment given to her by chiropractor in 1994 — Chiropractor's assessment of patient's problem was reasonable — No need existed for chiropractor to see x-rays before treatment — Chiropractor performed treatment upon patient in accordance with standard of care of reasonably competent chiropractor during relevant period — Chiropractor's treatment did not cause disc herniation suffered by patient, but only some temporary soft tissue pain — Chiropractor's treatment did not cause pain complained of in patient's arm, hand and thumb.

Title	*Dickson v Pinder*
Citation	2010 ABQB 269

Forum	Alberta Court of Queen's Bench
Database(s)	Quicklaw, Westlaw, CanLII
Summary (Headnote)	Patient was obese woman that smoked from time to time, but amount that she smoked was in dispute — Patient suffered from neck pain and headache — As result of pain, patient attended chiropractor's (doctor) office where she signed informed consent form upon arrival — Doctor claimed he had exchange with patient related to risk that SMT could cause stroke — Doctor said patient's reaction to such information was flippant — Doctor did not discuss non-chiropractic alternatives — At appointment, doctor used spinal manipulative therapy (SMT) on patient — Later that night patient awoke with searing pain behind her eye and she immediately went to emergency room — Patient had suffered stroke — Patient brought action against doctor alleging that SMT caused her stroke and that doctor failed to obtain her informed consent and that he negligently performed SMT on her — Action dismissed — Epidemiological evidence clearly indicated that it was unlikely that doctor's actions would have caused or contributed to patient's stroke — Patient's history and habits, including her obesity, increased likelihood that she could have had stroke that was unrelated to SMT — Patient was not forthcoming in her activities that could have elevated risk of her having stroke, such as frequency that she used birth control pills or how often she smoked — While timing of stroke was significant, it was not enough on its own to prove doctor caused stroke — Test of material contribution was not appropriate as there was no impossibility of establishing causation using but-for test — But for patient's multiple risk factors, she would not have had her stroke.

Title	*Gallant v Brake-Patten*
Citation	2010 NLTD 1
Forum	Newfoundland Supreme Court (Trial Division)
Database(s)	Quicklaw, Westlaw, CanLII
Summary (Headnote)	Defendant chiropractor performed cervical manipulation on plaintiff — Subsequent to procedure, plaintiff had symptoms of dizziness, tinnitus, nausea and loss of balance — Plaintiff received hospital emergency room treatment same evening after manipulation and was confined to his home for next two days — Plaintiff was diagnosed with permanent impairment of balance function on his right side, complete functional hearing loss of his right ear and tinnitus — Diagnosis had serious consequences for plaintiff's employment and he was required to retire on long term disability pension — Plaintiff brought action against chiropractor for damages — Action allowed — Chiropractor was negligent in discharge of her duty of disclosure — Based on assessment of chiropractor's evidence, she carried out nothing more than perfunctory and inadvertently misleading process of assessing plaintiff as candidate for cervical manipulation — There was no evidence of any explanation provided to plaintiff as to manner in which cervical manipulation may cause stroke — Performance

	of test to determine whether patient was candidate for manipulation in relation to minimal disclosure to plaintiff gave him unjustifiably high level of comfort that risks of harm from type of treatment were virtually non-existent — Person in position of plaintiff would not have consented to cervical manipulation by chiropractor if properly informed of risks and consequences.

Title	*Gallant v Brake-Patten*
Citation	2012 NLCA 23
Forum	Newfoundland and Labrador Court of Appeal
Database(s)	Quicklaw, Westlaw
Summary (Headnote)	Defendant chiropractor performed cervical spine manipulation on plaintiff — After procedure, plaintiff was diagnosed with permanent balance impairment, hearing loss and tinnitus — Diagnosis led to plaintiff's retirement — Plaintiff brought successful action against chiropractor for damages — Trial judge held chiropractor was negligent in discharge of her duty of disclosure and held that person in position of plaintiff would not have consented to cervical manipulation by chiropractor if properly informed of risks and consequences — Chiropractor appealed — Appeal dismissed — Trial judge did not err in finding that chiropractor's cervical manipulation caused plaintiff's injury — Preponderance of evidence demonstrated that trial judge's decision on causation was supportable despite two factual errors in trial judge's reasoning — It could not be said that these two factual errors materially influenced trial judge's finding on causation — While errors might be palpable in that they were obvious, they were not overriding — There was ample other evidence to support trial judge's finding that plaintiff's injury was caused by cervical manipulation.

Title	*Guist v Bolton*
Citation	2001 SKQB 170
Forum	Saskatchewan Court of Queen's Bench
Database(s)	Quicklaw, Westlaw, CanLII
Summary (Headnote)	Patient was receiving chiropractic treatment for injuries from automobile accident — Treatment focused on back and neck — Chiropractor performed cervical spine manipulation to treat patient's headache on January 29 after which patient experience pain in neck and arms — Patient returned to work in April — Patient was seen by neurologist on April 24 who found that neck strain was caused by manipulation and that patient was improving and likely to completely recover — Patient continued to experience neck pain — Patient brought action against chiropractor for damages — Action allowed — Chiropractor did not describe to patient risks associated with cervical spine manipulation — Patient did not give informed consent to risks — Chiropractor's practice was not in accordance with standard practice by reasonable chiropractor

	— Chiropractor should have obtained informed consent to risks — Muscular strain was material risk — Reasonable person in patient's circumstances would not have given informed consent and would reasonably have elected for other treatment for headache — Manipulation caused muscular strain injury to patient's neck — Muscular strain was similar to mild to moderate whiplash — Muscular strain had resolved by April 24 — Patient did not prove that her chronic pain after April 24 was caused by manipulation — Patient's pain after April 24 was likely due to other unrelated causes — Patient was awarded non-pecuniary damages of $20,000.

Title	*Guist v Bolton*
Citation	2001 SKQB 211
Forum	Saskatchewan Court of Queen's Bench
Database(s)	Quicklaw, Westlaw, CanLII
Summary (Headnote)	Patient was receiving chiropractic treatment for injuries from automobile accident — Chiropractor performed cervical spine manipulation to treat patient's headache on January 29 after which patient experience pain in neck and arms — Patient was seen by neurologist on April 24 who found that neck strain was caused by manipulation and that patient was improving and likely to completely recover — Patient continued to experience neck pain — Patient's action against chiropractor for damages was allowed — Patient was awarded non-pecuniary damages of $20,000 — Issue arose as to costs — Patient was entitled to costs — As patient obtained judgment for less than $50,000, issue was whether it was reasonable for plaintiff to have commenced and continued action under general procedure — Issue of consent was being developed within chiropractic profession and could not have been reasonably characterized as simplistic — At time of injury, informed consent was not requirement of professional association — Issues of consent, causation, consequences of injury and duration of pain resulted in complexity requiring expert testimony with opportunity to cross examine — Parties were unable to agree on issues prior to trial and no offers to settle were made — Commencing and continuing action under general procedure was reasonable.

Title	*Heughan v Sheppard*
Citation	[2000] OJ no 2188
Forum	Ontario Superior Court of Justice
Database(s)	Westlaw
Summary (Headnote)	Patient received chiropractic manipulations from chiropractor to alleviate lower back pain due to bladder problems — Patient alleged that during treatment chiropractor manipulated her neck, against her wishes, causing her extreme pain, seizures and convulsions — Patient alleged that her neck swelled and her vision blurred, and that chiropractor had started praying to God to save her life — Patient re-attended at chiropractor's

	office following day and he again manipulated her neck — Chiropractor drove patient to hospital where she was diagnosed with cervical strain, and treated with collar and anti-inflammatory — Patient was subsequently diagnosed as suffering from chronic pain syndrome and fibromyalgia — Patient brought action against chiropractor for damages arising from negligence, breach of duty of care and breach of contract — Action dismissed — Standard of care to be exercised by chiropractor was degree of care, diligence, judgment and skill which is exercised by normal, prudent or reasonable chiropractor under like or similar circumstances with same experience and training — Examination conducted by chiropractor was sufficient to establish clinical impression — X-rays taken prior to treatment did not show any contraindiction to treatment — Although chiropractor should have more closely questioned patient on her use of pain killers, failure to do so had no negative results — While it was unusual to pray in presence of patient, prayer did not impact negatively on patient — It could not be concluded that chiropractor prayed because he felt he had done something wrong— Chiropractor met requisite standard of care with respect to treatment of patient — Nothing in chiropractor's notes suggested that consent to treatment was obtained from patient, but chiropractor believed he followed regular practice of advising patient they may suffer minor discomfort prior to first adjustment — Patient clearly suffered cervical strain as result of chiropractor's treatment — Treating physician at hospital did not consider injury patient sustained to be serious — Chiropractor did not breach duty of disclosure required of him, as he disclosed material risk associated with proposed treatment prior to treatment — Reasonable person in position of patient would have undergone treatment — Patient failed to establish causation — Patient experienced chronic pain prior to treatment by chiropractor, and was involved in numerous incidents which could have resulted in her injuries — Preponderance of medical evidence stated patient had recovered from cervical strain — Chronic pain and fibromyalgia did not arise from chiropractor's actions.

Title	*Kern v Forest*
Citation	2010 BCSC 938
Forum	British Columbia Superior Court
Database(s)	Quicklaw, Westlaw
Summary (Headnote)	Plaintiff went to chiropractors for treatment — Plaintiff received several treatments from doctor T — After treatment with locum Dr. S plaintiff suffered pain — Dr. F then treated plaintiff with adjustment — Plaintiff was diagnosed with spinal cord compression caused by herniated cervical disc which had to be removed and caused continuing pain and impairment — Plaintiff suffered pain and claimed she was unable to work — Plaintiff alleged negligent treatment caused serious bodily harm — Plaintiff brought action for damages against chiropractors — Action dismissed — Duty of care was owed by defendants to plaintiffs — Plaintiff

	clearly suffered damages — While plaintiff's symptoms were aggravated by chiropractic treatment defendants did not breach applicable standard of care — Plaintiff's harm was not caused by defendants acting below standard of care — But for manipulation plaintiff would not have suffered injuries — Serious neurological deterioration occurred during manipulation by Dr. S — Treatment by Dr. S was likely cause of plaintiff's injuries given how soon after treatment she felt more serious pain — It was unlikely that plaintiff would have experienced symptoms soon after manipulation if she had not had treatment — It was highly unlikely that onset of symptoms within very short time of manipulations was coincidence — Injuries were caused by treatment plaintiff received from defendant S — There was no evidence that adjustment by Dr. F caused further material injury after Dr. S's manipulation four days earlier.

Title	*Lewis v Emanuele*
Citation	[2000] 95 ACWS (3d) 1155
Forum	Ontario Superior Court of Justice
Database(s)	Quicklaw, Westlaw
Summary	Unavailable

Title	*Loffler v Cosman*
Citation	2010 ABQB 177
Forum	Alberta Court of Queen's Bench
Database(s)	Quicklaw, Westlaw, CanLII
Summary (Headnote)	Plaintiff consulted chiropractor for stiffness in back and neck — Chiropractor performed assessment but did not order x-rays — Plaintiff suffered herniated disc during chiropractic adjustment to cervical spine — Plaintiff's action for damages for negligence dismissed — Although plaintiff's injury found to have been caused by adjustment chiropractor had met standard of care so no negligence — Although chiropractor's assessment notes were brief they were not evidence of failure to meet standard — Given plaintiff's lack of pain down arms on assessment standard of care at time did not call for x-ray — Guidelines are not standard of care.

Title	*Malinowski v Schneider*
Citation	2010 ABQB 734
Forum	Alberta Court of Queen's Bench
Database(s)	CanLII
Summary (Headnote)	M was injured at work-site — M was examined and treated by chiropractor S on two visits — M was later diagnosed with cauda equina syndrome — M brought action against S seeking damages for negligence — Action allowed — S had duty of care to correctly evaluate and diagnose M's condition at both visits — S was not negligent when he conducted examination on first visit — Experts agreed that testing regime used by S did not require immediate referral of M for other diagnostic

	tests — S did not breach his requirements on that point — S did not breach standard of care for chiropractor practicing in relevant year when he incorrectly concluded that M was more likely suffering from sacroiliac joint injury, rather than lumbar intervertebral disc injury — With respect to re-evaluation at second visit, when faced by apparently unsuccessful initial treatment, S was negligent in not re-examining M to test his initial diagnosis — Standard of care for chiropractor in Canada in relevant year required chiropractor treating person with possible intervertebral disc injury not to conduct spinal manipulation until that patient rested for two to three days — S did not meet his standard of care by immediately proceeding to treat M via chiropractic adjustment without first having recommended period of rest in which M's status might resolve — S's chiropractic adjustment met standard of care for chiropractor adjusting injured sacroiliac joint — Unfortunately, that was not location and character of M's injury.

Title	*Malinowski v Schneider*
Citation	2012 ABCA 125
Forum	Alberta Court of Appeal
Database(s)	CanLII
Summary (Headnote)	M was injured at work — M was taken to chiropractor clinic, where Dr. S examined, diagnosed and treated M — Next day, M had second appointment with Dr. S, where he was again examined and treated — M was later diagnosed with cauda equina syndrome ("CES"), extremely serious neurological condition — M brought successful action against Dr. S seeking damages for negligence — Dr. S appealed — Appeal dismissed — Trial judge's findings that Dr. S should have re-examined M to test his diagnosis, and was negligent in applying spinal manipulation therapy without that information, were grounded in expert evidence — Standard of care selected by trial judge was not based on her own personal opinion — Bed rest and analgesics, wait-and-see approach, was put forward as alternative to spinal manipulation therapy by several experts.

Title	*Nette v Stiles*
Citation	2009 ABQB 422
Forum	Alberta Court of Queen's Bench
Database(s)	Westlaw, CanLII
Summary (Headnote)	Plaintiffs brought action under Class Proceedings Act against number of parties, including Minister of Health and Wellness, who were involved in legislating, regulating and delivering chiropractic care in province — Plaintiff alleged that she was severely injured as result of cervical manipulations performed by chiropractor — Theme of allegations against Minister was that he owed plaintiffs private law duty of care — Minister applied for order striking out allegations against it pursuant to R. 129(1)(a) of Alberta Rules of Court on grounds that no cause of action

	was disclosed — Application granted — Regulation of chiropractors was devolved to College and Association of Chiropractors — Minister only had oversight role — Ministerial oversight did not create private law duty of care — Decision of legislature to devolve authority to regulate chiropractors to College was policy decision with social, political and economic overtones which was not susceptible to judicial intervention — On plain reading of pre-existing and current legislation, it could not be inferred that there was any legislative intent to create private law duties of care with respect to each individual resident of province — Any allegation that legislation or regulations made thereunder created duties of care could not succeed and were struck out — Pleadings did not allege proximate relationship between plaintiffs and Minister sufficient to create private law duties of care — Allegations that Minister owed private law duty of care respecting health care system, including his statutory role, could not succeed and were struck out.

Title	*Olsen v Jones*
Citation	2009 ABQB 371
Forum	Alberta Court of Queen's Bench
Database(s)	Westlaw
Summary (Headnote)	Plaintiff saw defendant chiropractor for bad shoulders — Plaintiff claimed that adjustment by chiropractor caused him significant injuries — Plaintiff brought action for negligence — Action dismissed — Chiropractor did not depart culpably from normal standard of skill, judgment and knowledge of average chiropractor when he took plaintiff's history and performed his clinical examination — Plaintiff's condition presented no red flags which suggested that x-rays should have been ordered — Chiropractor adjusted plaintiff's spine on four occasions and plaintiff reported improvements following first three adjustments — It was reasonable for chiropractor to take reported improvements as confirmation of his diagnosis — Chiropractor did not culpably depart from standard of care when he did not first order x-rays before he adjusted plaintiff's cervical spine — Plaintiff did not establish on balance of probabilities that chiropractor breached standard of care in terms of adjustment performed — Chiropractor was not negligent when he treated plaintiff.

Title	*Reid v Maloney*
Citation	2010 ABQB 794
Forum	Alberta Court of Queen's Bench
Database(s)	CanLII
Summary (Headnote)	Plaintiff hurt her back playing with her grandchild — She had two prior low back surgeries — Plaintiff had three treatments for low back pain by defendant chiropractor M, who used spinal manipulative therapy ("SMT") — Her back became significantly worse after second treatment and after third treatment, her pain level surged — Plaintiff was diagnosed with acute L4-5 disc protrusion for which she underwent two surgeries —

	Plaintiff brought action in negligence against M — Action allowed — M owed duty of care to plaintiff as his patient — Chiropractic manipulation of type undertaken by M posed real risks for someone like plaintiff, who had prior back surgeries — M failed to obtain plaintiff's informed consent by failing to advise her sufficiently of treatment he proposed, and by failing to advise her of risks of that treatment — In failing to inform her of those risks, M breached standard of care of chiropractor and failed to obtain her informed consent — M was not aware of how vulnerable plaintiff was to spinal manipulation in area of her prior surgery, and should have obtained more information before commencing treatment — M was negligent in not obtaining further information to enable him to rule out discal involvement or to determine general health of plaintiff's spine — This disabled him from properly evaluating risk of treating plaintiff, such that it was negligent for him to begin treatment when he did — On balance of probabilities, M's second manipulation of plaintiff's back caused or substantially contributed to her injury and but for that manipulation, injury she sustained when she caught her grandson would have subsided — M's second manipulation caused sequestration of plaintiff's disc and resulted in her having to undergo back surgery.

Title	*Reid v Maloney*
Citation	2011 ABCA 355
Forum	Alberta Court of Appeal
Database	CanLII
Summary (Headnote)	Plaintiff hurt her back playing with her grandchild — She had previously undergone two low back surgeries — Plaintiff had three treatments for low back pain by defendant chiropractor, who used spinal manipulative therapy — Her back felt better after first visit, but it became significantly worse after second visit and after third visit, her pain level surged — Plaintiff was diagnosed with acute L4-5 disc protrusion and underwent two surgeries — Plaintiff brought negligence action against defendant — Trial judge found that defendant's manipulation of plaintiff's back on second visit caused or substantially contributed to her injury and, but for that manipulation, her original injury would have subsided — Appeal by defendant dismissed — Trial judge concluded that plaintiff had no knowledge of risk and possible serious consequences to her of chiropractic manipulation of type undertaken by defendant — She held that in failing to inform her of those risks, defendant breached standard of care and failed to obtain informed consent — There was no error in trial judge's conclusion that in circumstances, defendant failed to obtain informed consent — Applying reasonable person test, she further found that plaintiff would not have consented to treatment had she been adequately informed — Trial judge did not err in concluding that defendant's failure to rule out disc involvement prior to treatment was breach of standard of care — She found that lack of information did not allow defendant to rule out discal involvement — This also prevented him

	from properly evaluating risk of treatment and was therefore negligence — Trial judge did not only or improperly rely on statistical evidence in concluding that defendant caused disc herniation — Her conclusions were grounded in evidence.

Title	*SV v MR*
Citation	2013 CanLII 22622
Forum	Ontario Health Professions Appeal and Review Board
Database(s)	CanLII
Summary	Unavailable

Title	The Increasing Involvement of Physicians in Complementary and Alternative Medicine: Considerations of Professional Regulation and Patient Safety
Authors	Nola M. Ries and Katherin J. Fisher
Journal	Queen's Law Journal
Citation	(2013) 39 Queen's L J 273
Database	Westlaw
Summary (Abstract)	Patients now often ask physicians to integrate complementary and alternative medicine (CAM) treatments into conventional medical practice, creating a tension between respect for patient autonomy and the ideal of evidence-based medicine. Alternative practitioners have sought to capitalize on this growing patient demand by pushing for the right to self-regulation, arguing that they are in the best position to develop policies with respect to their own services. Provincial and territorial legislatures and medical colleges have developed policies on the use of CAM by physicians, on physicians' referral of patients to CAM, and on physicians' acquiescence in the recourse to CAM by patients on their own initiative. Some jurisdictions continue to follow the long-standing pattern of having different regulatory regimes for specific professions, while others have moved to an umbrella statute covering all regulated health professions. Whatever the form of the existing policies, their thrust tends to he quite restrictive, as the medical community has been hesitant to allow physicians to provide or recommend treatments that have not been proven to be scientifically sound by traditional standards. However, some provinces and territories have adopted "negative proof" provisions that allow physicians to offer CAM treatments which pose no more risk than conventional practices. The authors conclude that existing regulatory models send contradictory messages, and should be revised to give physicians clearer guidelines on how to balance patient demand with concerns for patient safety. They point to the need for more research on the practical impact of regulation in this area, and on the impact of CAM in certain fields where patients are likely to be particularly vulnerable.

Title	Government Tort Liability for Negligence in the Health Sector: A Critique of the Canadian Jurisprudence
Author	Lorian Hardcastle
Journal	Queen's Law Journal
Citation	(2012) 37 Queen's L J 525
Database	Westlaw
Summary (Abstract)	For half a century, provincial governments have had a near monopoly over most physician and hospital services. More recently, in response to growing concerns about cost and quality, they have begun to directly regulate hospital governance and patient care in some respects, and have made structural changes to the health system. This expanded role on the part of governments makes it more important to hold them accountable for their decisions--a goal which in the author's view will be furthered by a more receptive judicial attitude to tort claims against government. Unlike lawsuits based on constitutional or administrative law principles, tort claims can readily be based on shortcomings in quality of care, not just access to care. In reviewing government actions, courts have certain advantages, in terms of transparency, answerability to injured parties and remedial powers, over such bodies as commissions of inquiry, auditors general and ombudsmen. In the author's view, a multifaceted approach that couples reliance on such bodies with a broader scope for tort claims will bring greater accountability. In health sector tort cases, however, courts have been reluctant to find that governments owe a duty of care to individual plaintiffs because of a tendency to assume that any such duty would conflict with statutory duties owed to the public as a whole. The author faults the courts for striking claims without due regard for the novelty, complexity and importance of the issues involved in each claim. The test for a duty of care should focus on the actual relationship of the parties, taking into account any expectations, representations or reliance. Later stages of the negligence analysis--in particular, whether the required standard of care has been met--can be relied on to filter out claims based on pure policy decisions by government. Allowing health sector tort claims to proceed to trial, for a full assessment of whether a duty exists and whether the duty has been breached, would more effectively balance the need for governmental accountability against concerns about undue interference in governmental policy-making.

Redacted to protect privacy

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