Court of Queen’s Bench of Alberta

Citation: Olsen v. Campbell Jones, 2009 ABQB 371

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2009 ABQB 371 (CanLII)

Between:

John E. Olsen and Her Majesty the Queen in the Right of the Province of Alberta

Plaintiffs

- and -

Dr. A. Campbell Jones

Defendant

Corrected judgment: A corrigendum was issued on July 21, 2009; the corrections have been made to the text and the corrigendum is appended to this judgment.

Reasons for Judgment
of the
Honourable Madam Justice M.G. Crighton

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I. Introduction

[1] This case involves the alleged negligence of a chiropractor.

[2] The Plaintiff, John E. Olsen, is 62 years old. Until January 2008, he was a grain farmer in Ohaton, Alberta, a small, rural farming community just outside of Camrose. Mr. Olsen has lived and farmed in the Camrose area since he was old enough to reach the pedals on his father's farm equipment.

[3] Mr. Olsen, who was 50 years old at the time, first saw Dr. Campbell Jones at his office in Camrose on October 24, 1997 for "bad shoulders". He returned to Dr. Campbell Jones on October 27 and 29, and again on November 6, 1997. Mr. Olsen claims the only time Dr. Campbell Jones ever adjusted his spine was on November 6, 1997, when he adjusted his 5th cervical vertebra (C-5).

[4] Mr. Olsen claims this adjustment caused significant injuries to his head, neck, shoulders, upper back, arms, hands and left leg and these injuries have caused him sleep disruption, nausea, emotional stress, moderate anxiety and borderline clinical depression. He alleges he was forced to sell his farm in 2008 because of the injuries Dr. Campbell Jones caused. Mr. Olsen claims he continues to the present day to suffer the effects of Dr. Campbell Jones' adjustment and seeks compensation for his injuries and related losses.

[5] Dr. Campbell Jones has been a chiropractor for 47 years. He graduated from Palmer College in Iowa in 1962 and opened his chiropractic practice in Camrose shortly after he graduated. He worked continuously as a full-time chiropractor until 2000, when he began working part-time. Dr. Campbell Jones saw Mr. Olsen as a chiropractic patient in the 1980s.

[6] He defends this action on the basis he obtained Mr. Olsen's informed consent to the chiropractic adjustments he performed on four separate occasions. He says he did not breach the standard of care and, if he did, that breach did not cause the injuries Mr. Olsen says he has suffered. Further, Dr. Campbell Jones contends that if this Court finds he did cause injury to Mr. Olsen, Mr. Olsen's losses are not as large as he claims they are and he failed to take steps to mitigate those losses.

II. Relevant Legal Principles and the Burden of Proof

[7] It is well established that the plaintiff in a medical negligence case must prove on a balance of probabilities that the defendant doctor owes the plaintiff a duty of care, that the defendant doctor's conduct was negligent because the doctor breached the standard of care or failed to obtain informed consent from the plaintiff, that the doctor's negligent conduct caused the injury the plaintiff complains of, and that the injury caused the losses or damages the plaintiff claims to have suffered.

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[8] It also is well established that the Court must analyze these issues in a sequential order, so if the plaintiff fails to prove one of these matters, the Court need not address subsequent issues unless it is expedient to do so for other reasons.

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III. Issues

[9] Dr. Campbell Jones concedes he owed Mr. Olsen a duty of care when Mr. Olsen attended at his office for chiropractic treatment so it is unnecessary to address that issue further. The following issues must still be determined:

(a) What is the expected standard of care?

(b) Did Dr. Campbell Jones' clinical examination of Mr. Olsen fall below that standard of care?

(c) Did Mr. Olsen give his informed consent to the treatment Dr. Campbell Jones provided?

(d) If Dr. Campbell Jones breached the standard of care or failed to obtain Mr. Olsen's informed consent, did Mr. Olsen suffer any injured or damage as a result?

(e) Is Mr. Olsen entitled to any damages?

(i) What is an appropriate award for general damages?

(ii) Did Mr. Olsen suffer a loss of income and, if so, what is the factual basis for the calculation of that loss?

(iii) Does Mr. Olsen have a loss of housekeeping claim and, if so, what loss did he suffer?

(iv) What amount, if any, should be awarded to Her Majesty the Queen in Right of the Province of Alberta for any subrogated claim?

(v) Has Mr. Olsen incurred cost of care and will he have those costs in the future relating to any of the injuries Dr. Campbell Jones caused?

(vi) Did Mr. Olsen fulfill his duty to mitigate his damages relating to his claim for loss of housekeeping, cost of future care and lost income?

IV. Analysis

A. What is the Expected Standard of Care?

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[10] The standard of care is easily articulated in theoretical terms: it is "the degree of care, diligence, judgment and skill which is exercised by a normal, prudent or reasonable chiropractor under like or similar circumstances and with the same experience and training" (***Heughan v. Sheppard***, [2000] O.T.C. 413 at para. 156 (S.C.J.); ***Barber v. Wilson*** (1996), 8 O.T.C. 350 (Gen. Div.)). It is not always so easily articulated in factual terms.

[11] The Plaintiff called two chiropractic experts on the issues of duty of care, standard of care, breach of the standard of care, causation and damages. The Defendant called a chiropractor and tendered the report of a neuroradiologist in response to those experts.

[12] Dr. Barry Gelinas was qualified as an expert in chiropractic to give opinions in that area on Mr. Olsen's behalf. He received his doctor of chiropractic in 1988 from Life Chiropractic College West. He has been licenced to practice chiropractic in Alberta since 1989 and also holds a licence to practice in British Columbia. In 2002, Dr. Gelinas entered medical school at Health Sciences Antigua Medical School, but at the time of trial he had not yet graduated from that program. He founded the Mayfield Pain Clinic which he closed when he enrolled in medical school. More recently, he founded the Interdisciplinary Pain Institute which is now known as the Healthpoint Medical Centres Ltd. Dr. Gelinas acknowledged in cross examination that he has not engaged in a regular chiropractic practice for some time. Since 2004, he essentially has been a professional expert witness.

[13] Dr. H. Michael Carstensen also was qualified as an expert in chiropractic to give opinions on Mr. Olsen's behalf. He received his mechanical engineering degree in 1990 from the University of Waterloo; his doctor of chiropractic degree in 1996 from Logan College of Chiropractic in Chesterfield, Missouri; and his medical degree from Memorial University in Newfoundland in 2008. Dr. Carstensen never practised chiropractic in Alberta and only began practising in Canada, specifically in Newfoundland, in 1998. He quit practising chiropractic in 2005 when he enrolled in medical school. At the time of trial, Dr. Carstensen was no longer a member of the Newfoundland and Labrador Chiropractic Association, and he was not licenced to practice chiropractic in any other Canadian province. At the time of trial, he was a first year resident in diagnostic imagining at the University of Western Ontario School of Medicine, but he had not yet undertaken any diagnostic imaging.

[14] Dr. Campbell Jones called Dr. Brian Lecker, a chiropractor, who was qualified to give expert evidence in acupuncture and in chiropractic, including the nature and causation of neuromuscular and skeletal conditions, including pain, disability and impairment, and the diagnosis and treatment of neuromuscular and skeletal conditions. Dr. Lecker graduated as a doctor of chiropractic in 1978 from the Canadian Memorial Chiropractic College in Toronto. He has been in private practice as a chiropractor in Manitoba since 1978. In addition, Dr. Lecker has been active with his chiropractic association and received the Canadian Chiropractic Association

award of merit. Dr. Lecker has never practice chiropractic in Alberta. He did not specifically give an opinion on the standard of care, but commented on those opinions expressed by Dr. Carstensen and Dr. Gelinas.

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[15] Dr. Dominic Rosso, a neuroradiologist, did not testify at the trial, but his report was tendered in evidence by Dr. Campbell Jones. Dr. Rosso is currently the Director of MRI and Neuro Interventional Services of the Trillium Health Centre in Ontario. He received his MD from the University of Ottawa in 1990. He was qualified to give expert opinions in the field of diagnostic imaging, including the interpretation of diagnostic images of the cervical spine. Mr. Olsen called no evidence from any expert with comparable qualifications.

[16] Dr. Carstensen and Dr. Gelinas testified that the standard of care for chiropractors in Canada, including those in Alberta, is set out in the 1996 Canadian Chiropractic Association's *Clinical Guidelines for Chiropractic Practice in Canada* (the *Glenerin Guidelines*). Their reports consistently referred to the *Glenerin Guidelines* as support for most of the opinions they advanced at trial.

[17] Dr. Gelinas' conclusion about the standard of care is contrary to the disclaimer that he agreed formed part of the *Glenerin Guidelines* which, surprisingly, he acknowledged he had not read before preparing his expert report. That disclaimer says, in part:

> This document contains guidelines for the practice of chiropractic developed by a commission or consensus group of 35 persons established by the Canadian Chiropractic Association (CCA). It provides part of an ongoing effort by the chiropractic profession to provide improved guidelines for practice.
>
> Clinical guidelines are designed to assist clinicians by providing an analytical framework for the evaluation and treatment of common clinical problems. These guidelines are not intended to replace a clinician's clinical judgment or to establish the only appropriate approach for all patients. They are intended to be flexible. They are not standards of care. Adherence to them is voluntary. The Association understands that alternative practices are possible and may be preferable under certain clinical conditions. This document does not necessarily reflect the consensus of all members of the CCA, nor is it intended to be an official policy statement of the CCA.
>
> It is not the purpose of this document, which is advisory in nature, to take precedence over federal, provincial or local laws which may affect chiropractic practice.

[18] Dr. Gelinas could not recall looking at the *Glenerin Guidelines* before 2006, at which time he reviewed them for purposes of this litigation. Even then, although they formed the foundation for most of his opinions, he did not read the general disclaimer. He was unaware of the "disclaimer on use of extract" that cautions against using part of the *Glenerin Guidelines*

without the context of the whole; he was unaware of the assessment criteria, the procedure rating systems or of the glossary; and he was unaware of the Chairman's preface cautioning against viewing the *Glenerin Guidelines* as a "cookbook" given the many factors that may influence treatment.

[19] He could not recall whether he had received any standards of practice from the Alberta Chiropractic Practice Review Board between 1989 and 2007, but it is clear some standards were published.

[20] Dr. Gelinas could not say whether the College had passed any regulations between 1993 and 2007 prescribing the *Glenerin Guidelines* as the standard for practice in the province. The *Chiropractic Profession Act*, R.S.A. 2000, c. C-13 and, more recently, the *Health Professions Act*, R.S.A. 2000, c. H-7, s. 133(1) vests in the College's Council the power to make regulations regarding standards for the practice of chiropractic. Regulations prescribing standards were not enacted in Alberta until 2004, and at no time did the Association adopt the *Glenerin Guidelines*.

[21] Dr. Carstensen did not practice chiropractic in Canada until 1998. Consequently, his evidence does not inform the Court regarding the standard of care in Alberta in 1997.

[22] Dr. Gelinas offered little evidence on what the standard of care was in Alberta in 1997 except in relation to the *Glenerin Guidelines*. For the most part, he testified about what he would or would not do, but it is significant that he described himself in his examination-in-chief as being a "scaredy cat" chiropractor.

[23] I conclude the *Glenerin Guidelines* did not prescribe the standard of care governing chiropractors in Alberta in 1997. They would have provided some guidance to chiropractors at that time, but they would have been applied in light of the chiropractors' medical judgment and the circumstances presented in each individual case.

[24] In general terms, all of the experts agreed a chiropractor practising in Canada at the time, including in Alberta, should have performed a clinical examination. To do that, the chiropractor would have consulted with the patient and obtained a history of the presenting complaint. The experts agreed there was no specific formula for taking a patient history. Following that step, the chiropractor would perform an examination, and that would involve a physical examination and appropriate orthopaedic, neurological, and chiropractic examinations. Based on the results of the history and the physical examination, the chiropractor might order lab tests or special studies such as x-rays. Finally, the chiropractor would have made a diagnosis or formed a clinical impression. The chiropractor would then have devised a treatment plan with goals and timelines, and should have reported all of that to the patient.

[25] The experts agreed there was no rote method for performing these aspects of the clinical examination. They agreed that guidance is found in academic texts on the subject of history taking and clinical examinations and there are many different methods.

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[26] While Dr. Carstensen and Dr. Gelinas both testified they would have done certain orthopaedic tests and certain neurological tests, and that Dr. Campbell Jones breached the standard of care because he did not do them, Dr. Lecker testified chiropractors undertake or order only those tests and examinations that the history and physical examination of their patient indicate are required. The chiropractor must exercise his or her clinical judgment throughout the history taking and clinical examination process.

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[27] I accept Dr. Lecker's evidence as the more accurate description of the standard of care in 1997 for conducting the initial clinical examination. The *Glenerin Guidelines*, to which Dr. Carstensen and Dr. Gelinas referred, support that conclusion. The *Guidelines* offered an algorithm for the initial clinical examination that is described as one method, but they specifically state that "...several methods of examination exist". The *Guidelines* suggested the initial clinical examination "shall include those elements of a general and focussed physical examination that are pertinent to the investigation of the presenting complaint".

[28] Further, Dr. Carstensen agreed there was no rote method for any of the steps in the algorithm, and both he and Dr. Gelinas agreed that "physical examination", "clinical examination" and "chiropractic examination" were not defined in the *Glenerin Guidelines*. Dr. Carstensen acknowledged clinical judgment is applied throughout the examination process and that chiropractic experience would make a difference in that process.

[29] The question then to be asked is whether Dr. Campbell Jones' clinical examination fell below that standard of care.

B. Did Dr. Campbell Jones' Clinical Examination of Mr. Olsen Fall Below the Standard of Care?

1. Expert opinions

[30] Once again, it falls to Mr. Olsen to prove that Dr. Campbell Jones "departed culpably from the normal standard of skill, judgment or knowledge prevailing in the profession" (***Cranwill (Next of Friend of) v. James*** (1994), 164 A.R. 241 at 254 (Q.B.), aff'd (1997), 193 A.R. 204 (C.A.), leave to appeal to S.C.C. ref'd [1997] S.C.C.A. No. 139). The test is an objective one based largely on the facts of the particular case (Ellen I. Picard and Gerald B. Robertson, *Legal Liability of Doctors and Hospitals in Canada*, 4th ed. (Toronto: Carswell Legal Publications, 2007) at 227).

[31] In every medical negligence case, the Court should be careful to assess the evidence in light of the information that was known or that ought to have been known at the time. The evidence should not be viewed with the benefit of hindsight or the taint of any unfortunate result (***McArdle Estate v. Cox***, 2001 ABQB 246 at para. 38, aff'd 2003 ABCA 106, 327 A.R. 129).

[32] Dr. Gelinas' and Dr. Carstensen's opinions were, in summary, that Dr. Campbell Jones, in conducting his clinical examination of Mr. Olsen on October 24, 1997, failed to take a thorough patient history which might have identified any red flags regarding the nature and cause of Mr. Olsen's shoulder pain. Further, Dr. Campbell Jones failed to perform a general and focussed initial examination on Mr. Olsen, which resulted in a further failure on his part to identify any red flags in Mr. Olsen's condition. Dr. Gelinas and Dr. Carstensen agreed that, had Dr. Campbell Jones taken an adequate history and performed a complete physical examination, he would have known that x-rays were indicated in the circumstances before any treatment was administered. As he did not obtain x-rays, he did not factor the findings that would have been made on a review of the x-rays into his working diagnosis. In the opinion of both chiropractic experts, Dr. Campbell Jones departed culpably from the normal standard of skill, judgment and knowledge possessed by the average chiropractor in Alberta in 1997 when he manipulated Mr. Olsen's cervical spine without having ordered x-rays and having taken into account the contraindications that x-rays would have revealed had he obtained them.

[33] Dr. Gelinas and Dr. Carstensen noted Mr. Olsen was 50 years old at the relevant time, had multiple site spinal articular degenerative states, multiple site symptom complexes related to the spine and pelvis, altered vertebral motion segment dynamics, inter-related mechanical lesions, spinal curvatures, and suspicion of pathology and significant trauma. Relying on those facts, they opined that plain film radiography should have been undertaken before treatment.

[34] Both experts expressed the view that the deficiencies in Mr. Olsen's cervical spine that were evident on the x-rays taken on December 31, 1997 and January 20, 1998, would have been revealed if those x-rays had been taken before Dr. Campbell Jones treated Mr. Olsen. The x-rays would have alerted Dr. Campbell Jones to contraindications to chiropractic treatment which might have resulted in him first referring Mr. Olsen to a neurologist, a neurosurgeon or an orthopaedic surgeon, or at the very least modifying his initial treatment to use mobilization rather than manipulation of the cervical spine. As Dr. Campbell Jones did not obtain x-rays, he did not appreciate Mr. Olsen's pre-existing, marked degenerative joint disease at C-5/6 and C-6/7 levels, his posterior facet joint involvement from C-4/7 and his spondylolisthesis of C-5 on C-6. (This condition is defined as a forward displacement or slipping of one vertebra over its fellow below). Consequently, he did not identify the contraindications associated with those conditions and communicate them to Mr. Olsen before he manipulated his cervical spine.

[35] These opinions are clearly premised on the assumption Dr. Campbell Jones' history taking and physical examination, properly completed, would have indicated x-rays were in order.

[36] Dr. Gelinas' and Dr. Carstensen's opinions regarding the inadequacy of Dr. Campbell Jones' history and physical examination were based on their review of Dr. Campbell Jones' file on Mr. Olsen and the notes he took. All of the chiropractic experts, including Dr. Brian Lecker, the expert called on Mr. Olsen's behalf, were critical of Dr. Campbell Jones' records in this case. The paucity of detail in his notes clearly influenced the opinions offered by the Plaintiff's experts about the treatment Dr. Campbell Jones provided to Mr. Olsen. The experts variably described Dr. Campbell Jones' records as cryptic, sparse or lacking in detail. A review of his records

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confirms those descriptions are fair. However, inadequate note-taking does not, by itself, mean Dr. Campbell Jones was negligent as it was not causative of any damage. As Nation J. observed in ***Waap v. Alberta***, 2008 ABQB 544 at para. 11, 95 Alta. L.R. (4th) 167:

> Doctors are not required to keep their records in a particular style or form. The purpose of the notes is to record for the doctor the salient details, as a memory aid, to allow quality of care over time.

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[37] Dr. Campbell Jones did not practice in a multi-disciplinary setting as did Dr. Carstensen and Dr. Gelinas. The importance of more detailed notes in those circumstances is obvious. It is also significant that a review board from the College of Chiropractors of Alberta conducted what appeared to be an internal audit process of sorts in relation to the chiropractors it regulated. Dr. Gelinas confirmed this process. Dr. Campbell Jones testified that someone from the College reviewed his practice every three years. He recalled such a review occurring in 1993 or 1995 and I note his informed consent form was last revised in 1995. Dr. Campbell Jones testified the College never took issue with his practice, including his record keeping.

[38] In any event, Dr. Campbell Jones' file is just another piece of evidence that must be considered along with the trial evidence given by Dr. Campbell Jones and Mr. Olsen.

[39] There are differences in the testimony of Mr. Olsen and Dr. Campbell Jones about what occurred when Dr. Campbell Jones first saw Mr. Olsen on October 24, 1997. That is understandable as the events in question occurred almost 12 years ago. However, before I address Dr. Campbell Jones' and Mr. Olsen's recollections about the history Dr. Campbell Jones took and the examination he performed on Mr. Olsen, there are two related issues that must be resolved as they are relevant to any consideration of the broader issue of Dr. Campbell Jones' alleged negligence. The first involves his patient card for Mr. Olsen; the second, the extent of the treatment he performed on Mr. Olsen.

2. Dr. Campbell Jones' patient card for Mr. Olsen

[40] Dr. Campbell Jones' file for Mr. Olsen consisted of an Informed Consent form the patient is asked to read and sign; a Patient Personal Record form the patient is asked to complete; and three additional documents the chiropractor completes: a Diagnostic Chart, an Adjustment Chart and a Patient Card. In addition, the clinic maintained a Patient Register that every patient signed when they came in to see the chiropractor whether or not they had an appointment.

[41] The Patient Card was a document completed by the doctor setting out a number of questions and answers relating to the patient's history as outlined by the patient, identifying the issue complained of by the patient. This record was in Dr. Campbell Jones' handwriting and it was undated. It listed Mr. Olsen's presenting complaint as "L + R shoulder" on one line and "neck SL stiff" on the next line.

[42] Dr. Campbell Jones did not locate this Patient Card until shortly before trial. In his cross-examination of Dr. Campbell Jones, Mr. Olsen's counsel inferred Dr. Campbell Jones either made the entry on the Patient Card about neck stiffness on November 6th rather than on October 24th, or he created the document after the lawsuit was commenced.

[43] Dr. Campbell Jones testified he sat down to review his file on Mr. Olsen when he was advised by his Association the matter would be proceeding to trial. When he saw it, he did not recall seeing that document among the documents that had been given to Mr. Olsen's counsel nine years before. While Dr. Campbell Jones had no independent memory of the date he made the entry on the Patient Card about Mr. Olsen's neck stiffness, he indicated the entry would have related to his examination of Mr. Olsen and, if he had written it on a date other than when he first saw Mr. Olsen, he would have recorded that.

[44] Dr. Campbell Jones acknowledged his examination for discovery evidence that he examined Mr. Olsen on October 24th for shoulder pain and muscle spasms in his shoulders. However, he was not asked at examination for discovery if those were Mr Olsen's only symptoms or complaints that day. Because the Patient Card had not then been disclosed, he was not asked about it specifically at the time examinations for discovery were conducted.

[45] Dianne Neff, Dr. Campbell Jones' daughter and receptionist, testified that she was very stressed when she learned her father had been sued. She was the one who provided a copy of the file to counsel. She indicated the copier is in the back of the office and it is necessary to leave it to go up front if someone comes into the office. She thought it likely she had been interrupted while copying the file and inadvertently missed the Patient Card.

[46] There is no doubt Dr. Campbell Jones was examined for discovery on specific documents contained in Mr. Olsen's file, but there is no evidence he was ever asked before trial about his usual forms and records or whether the copy of his file, as produced, was complete. It is entirely plausible he never looked at his original file again after he instructed that a copy be sent to his lawyers. As a result, it is also plausible he only appreciated a document was missing from the copied file when he sat down to review the original. I accept Ms. Neff's evidence about how the document might have been missed, and I accept Dr. Campbell Jones' evidence about when the omission came to his attention. Their explanations are credible and I find nothing untoward about the late production of this record.

[47] Mr. Olsen could not explain why Dr. Campbell Jones had written the plural "bad shoulders" on the Patient Card, because he could remember only having had a problem with his right shoulder. He did not recall at trial having had neck stiffness on the day he was examined by Dr. Campbell Jones or ever, but the chiropractic records clearly indicate he was treated in the 1970s for neck pain.

[48] Based on the parties' evidence, I conclude it is probable Mr. Olsen complained of "bad shoulders" on the form he filled out, but when questioned further by Dr. Campbell Jones about his symptoms, he advised him he had both pain in his right and left shoulders and a slightly stiff

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neck. This is consistent with Mr. Olsen's evidence that the pain in his shoulder sometimes got "kind of over to the neck, but not right into the neck" and that his right shoulder "worked the pain over toward his neck". It also is consistent with the adjustments Dr. Campbell Jones made on each visit.

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3. The extent of the treatment Dr. Campbell Jones performed on Mr. Olsen

[49] Mr. Olsen testified he only returned for treatment on November 6, 1997 because Dr. Campbell Jones told him to. Dr. Campbell Jones testified that because Mr. Olsen reported on October 29, 1997 he felt much better, and because Mr. Olsen's neck and shoulder moved better, Dr. Campbell Jones told Mr. Olsen he should not need to return, but to do so if he continued to have difficulty. For that reason, Dr. Campbell Jones was surprised to see Mr. Olsen on November 6.

[50] I do not consider Mr. Olsen's evidence and Dr. Campbell Jones' evidence to be inconsistent on the issue of why Mr. Olsen returned on November 6, 1997. I accept Dr. Campbell Jones' evidence he thought he would not need to see Mr. Olsen again after October 29, 1997, and I accept Mr. Olsen’s evidence that he returned on November 6 - but not because Dr. Campbell Jones instructed him to book another appointment; rather, because he continued to have some difficulties with his shoulder and neck.

[51] Mr. Olsen also testified that Dr. Campbell Jones only adjusted his spine on one occasion, and that was on his last visit on November 6, 1997. Dr. Campbell Jones testified he adjusted Mr. Olsen's spine at the C-5 and T-1 levels on each of his first three visits and adjusted his spine at the C-5 level on November 6.

[52] On the issue of when Dr. Campbell Jones manipulated or adjusted Mr. Olsen's spine, I accept Dr. Campbell Jones' evidence which is corroborated by the Adjustment Record Dr. Campbell Jones prepared following each treatment.

[53] Dr. Campbell Jones testified the Adjustment Record reflects he adjusted Mr. Olsen's spine at T-1 and C-5 on each of Mr. Olsen's first three attendances. He adjusted only at C-5 on Mr. Olsen's last attendance. Dr. Campbell Jones testified he did not record mobilization so it was not possible his notes only referred to mobilizations at C-5 or T-1. He explained that where his records note a spinal segment like C-5 or T-1, as they did in this case, that is an indication he adjusted those segments using a chiropractic adjustment or high velocity, low amplitude thrust.

[54] Mr. Olsen testified that he had never had an adjustment until November 6, 1997. However, the records indicate that Dr. Parsons, another chiropractor, had adjusted his cervical and thoracic spine on several occasions in the 1970's and the 1980's. Mr. Olsen did not recall much about his chiropractic treatment, but he was prepared to acknowledge certain things might have happened notwithstanding he could not recall it. He did recall Dr. Campbell Jones telling him before he left the office each time to rest following the treatment, which indicates to me

something more than a shoulder massage likely occurred. Finally, Dr. Ninian, a general practitioner consulted by Mr. Olsen post-incident, seems to have been under the impression from what Mr. Olsen told him that Mr. Olsen had more than one chiropractic manipulation. He advised Mr. Olsen's lawyers on November 1, 1998 Mr. Olsen had reported to him on December 31, 1997 that he "went off to see a chiropractor to get some treatments. Apparently, he had some manipulations done ...".

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[55] Given the inconsistencies and limitations in Mr. Olsen's recollection of the events, I do not find his memory on this point to be reliable. I prefer Dr. Campbell Jones' evidence as to what his notes reflect about the treatment actually administered which evidence is consistent with Mr. Olsen's report to Dr. Ninian closer in time to the adjustments. Accordingly, I find Dr. Campbell Jones manipulated Mr. Olsen's spine at the T-1 and C-5 levels on October 24th, 27th and 29th and at the C-5 level on November 6, 1997.

[56] I will now consider the adequacy of the initial clinical examination Dr. Campbell Jones conducted beginning with the history he extracted from Mr. Olsen which is the first step in that process.

4. What history did Dr. Campbell Jones extract from Mr. Olsen?

[57] Dr. Campbell Jones had been practising chiropractic for 35 years when Mr. Olsen attended at his office on October 24, 1997.

[58] Dr. Gelinas and Dr. Carstensen acknowledged the *Glenerin Guidelines* do not specify the history a chiropractor should take. They refer to standard texts and journals for the appropriate history and examination techniques. In general, the *Glenerin Guidelines* note that finding a solution to the patient's problem requires "data collection and interpretation" and state that "responses to pertinent historical queries suggest how the examination should be planned, what course it should take, and what areas may require special consideration".

[59] Dr. Gelinas and Dr. Carstensen testified that a history is taken to identify why the patient is consulting with the chiropractor; meaning, what is the complaint that caused him or her to seek out treatment. That complaint then directs the clinical history. They note it is important to learn how long the matter complained of has been an issue, how it has affected the patient's life, what aggravates it or causes it to improve, how severe it is and what conditions contributed to it. They criticized the history taken by Dr. Campbell Jones, but their opinions were based primarily on their review of the documents. Where no information was recorded, they assumed the information was not sought. Dr. Campbell Jones' evidence refutes that assumption.

[60] Dr. Campbell Jones did not have specific memories of having seen Mr. Olsen. That is not surprising given that Dr. Campbell Jones has seen many patients over the number of years that have passed since he treated Mr. Olsen. He based his testimony on his standard practice, his notes, and the general memory or impression he had from his attendance on Mr. Olsen.

[61] Dr. Campbell Jones testified Mr. Olsen would have been given a Personal Information Record to complete before he saw him. On the back of that sheet was the Informed Consent form, which Mr. Olsen would have been instructed by Dr. Campbell Jones' receptionist to sign if he had no questions. If he did have questions, he would have been instructed not to sign the Informed Consent form until he had had an opportunity to address those questions with Dr. Campbell Jones. The Informed Consent form is relevant to a separate issue in this lawsuit and I will address it later in these reasons. For now, I will concentrate on the history Dr. Campbell Jones took and the physical examination he performed in relation to the standard of care expected of him.

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[62] Dr. Campbell Jones testified that, in 1997, he was using a 12 question formula to extract a patient history. He had been using the same Patient Card with those 12 questions listed on it as a means for extracting an appropriate patient history since he had attended chiropractic college. He had taken the form and those questions with him when he had graduated in 1962. The 12 questions appeared on the Patient Card as a series of acronyms, which he interpreted for the Court. They included initials such as "P.O.P.", meaning "position of pain" and "N.L.W.", meaning "normal living and working".

[63] According to Dr. Campbell Jones, it was his standard practice to ask every new patient all of the questions that were listed on his Patient Card for Mr. Olsen, but Dr. Campbell Jones testified it would not have been unusual for him to leave blank sections where the patient provided no information or gave a negative response. That is consistent with the evidence of Dr. Corrigan, Mr. Olsen's treating physician, as to his practice when extracting a patient history. He testified he did not necessarily record negative responses either. It also is consistent with the evidence of other healthcare providers who treated Mr. Olsen and who testified on his behalf regarding their individual practices when conducting an initial clinical examination. All of this evidence supports the conclusion this process involves the exercise of clinical judgment.

[64] Based on his own records, Dr. Campbell Jones indicated he would have known at the time of his examination of Mr. Olsen that he was 50 years old, he was married, and he was a farmer. He knew Mr. Olsen was experiencing left and right shoulder pain and that his neck was slightly stiff when he drove a tractor. He knew from Mr. Olsen that his pain had developed over several months, but was not interfering with his daily living and working. Dr. Campbell Jones learned from the answers to his 12 questions that Mr. Olsen was experiencing no other associated manifestations with his pain and had not suffered any falls, accidents or had any previous surgeries. I am satisfied where Dr. Campbell Jones did not record any medications that Mr. Olsen told Dr. Campbell Jones he was not taking any medications.

[65] Dr. Campbell Jones acknowledged he did not ask Mr. Olsen if he suffered from any degenerative disc disease, spondylolisthesis, posterior facet joint problems, arthritis or osteoporosis. Had he asked those questions, the answer from Mr. Olsen most assuredly would have been "no", given he had not yet been diagnosed with any of those conditions. Dr. Campbell Jones testified there was no indication of these conditions from his physical examination of Mr. Olsen in any event.

[66] Dr. Campbell Jones did not specifically ask Mr. Olsen about the severity of his pain or if it interfered with his sleep. However, in view of Mr. Olsen's information it aggravated him doing tractor work, but otherwise did not affect his daily living and working, it would have been reasonable for Dr. Campbell Jones to assume Mr. Olsen's pain was not overly severe and did not interfere with his sleep.

[67] Dr. Campbell Jones acknowledged he did not ask what aggravated Mr. Olsen's pain or what eased it, but even Dr. Corrigan acknowledged he would not necessarily ask that question when taking a patient history.

[68] Dr. Campbell Jones knew from Mr. Olsen and from his own knowledge that Mr. Olsen had received chiropractic treatment from him 10 to 12 years before and, prior to that, from another chiropractor, Dr. Ladd Parsons. Mr. Olsen told Dr. Campbell Jones he had not seen anyone else about his shoulder problem and Mr. Olsen did not mention the acupuncture and acupressure treatments on it he had received earlier that same year. Mr. Olsen told Dr. Campbell Jones he had not received any previous diagnosis in relation to his complaint, and I accept he told Dr. Campbell Jones he had no low back complaints.

[69] Mr. Olsen's counsel suggested Dr. Campbell Jones knew Mr. Olsen's answer to the question about prior diagnosis was inaccurate because Dr. Campbell Jones would have diagnosed him years earlier as would have Dr. Parsons before him. Dr. Campbell Jones agreed Mr. Olsen's answer was inaccurate on that basis. He testified he expected Mr. Olsen, by age 50, would have consulted with some medical professional and, if there was a problem, it would have been noted. However, Mr. Olsen did not follow up with Dr. Parsons.

[70] In my view, even if Dr. Campbell Jones had pursued the information within his knowledge about Mr. Olsen's prior chiropractic treatment, it is unlikely he would have learned anything more about prior diagnoses that may have been made. His file on Mr. Olsen from the 1980s was no longer available. It had been destroyed in accordance with the clinic's normal destruction policy. Dr. Parsons' file would have been available because it was still available at trial, but his file did not contain a diagnosis. There is no evidence Mr. Olsen, in fact, had received any diagnoses from any healthcare provider other than from Dr. Campbell Jones himself and Dr. Parsons as of October, 1997.

[71] Based on the information he received from Mr. Olsen, it was reasonable for Dr. Campbell Jones to conclude Mr. Olsen had not received any medical diagnoses or medical treatment other than that related to his chiropractic treatments years before. It also was reasonable for Dr. Campbell Jones to assume Mr. Olsen had not continued to have difficulties or he would have seen a healthcare provider as he had done in the past. Mr Olsen told him he had not done so or he would have recorded something more than chiropractic. In addition, it was reasonable for Dr. Campbell Jones to conclude that whatever the chiropractic diagnoses had been years earlier, Mr. Olsen had received positive therapeutic benefit from the treatments administered by him and by Dr. Parsons given he was returning for treatment.

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[72] Mr. Olsen recalled some details of his initial attendance on Dr. Campbell Jones in 1997 and did not recall others. He acknowledged he wrote on his Patient Personal Record that he had referred himself to Dr. Campbell Jones for "bad shoulders", but he could not remember why he wrote that since his current recollection was he attended because he had a problem with his right shoulder. He denied ever having had a stiff neck. Mr. Olsen recalled little else about his discussions with Dr. Campbell Jones except he mentioned to Dr. Campbell Jones that the treatment he had given Mr. Olsen's brother for his shoulder had seemed to work and he thought he might like to try the same thing. Mr. Olsen acknowledged he thought he had the same thing his brother had because they had both played ball and Mr. Olsen assumed that was the cause of his and his brother's shoulder problem. Mr. Olsen recalled that he and Dr. Campbell Jones made some social chit chat and talked about his shoulder. He could not remember any of the specifics.

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[73] Dr. Campbell Jones' counsel asked several medical experts who were called to give evidence on Mr. Olsen's behalf what process they followed in extracting a medical history. The only conclusion that can be drawn from the answers they gave is that there was and is no script for the questions medical professionals ask when extracting a patient history. The experts who testified agreed they ask the questions they deem relevant in the circumstances. As Dr. Lecker noted, it is important to take a thorough history, but in doing so there is always one more question that could have been asked that was not asked.

[74] There are questions Dr. Campbell Jones acknowledged he did not ask, but in my view, the failure to ask every question, or even certain follow up questions, does not indicate a chiropractor has departed culpably from the normal standard of skill, judgment or knowledge prevailing in the profession. The chief complaint informs the history and the history informs the physical exam. These steps together make up the initial clinical examination and must be viewed together to assess whether or not, in performing the initial clinical examination, the chiropractor has breached the standard of care.

5. What physical examination did Dr. Campbell Jones perform on Mr. Olsen?

[75] During the trial, I acceded to the request of Dr. Campbell Jones' counsel that his client be permitted to perform a chiropractic adjustment on him in court so I could see what the various experts had described in their evidence as a chiropractic manipulation or adjustment. I agreed to this on the basis the demonstration would be regarded as a visual aid only, and would not in any way be construed as evidence about what Dr. Campbell Jones did on November 6, 1997.

[76] Dr. Campbell Jones indicated to his counsel he would not adjust his spine unless he found a fixation. After palpating his counsel's spine and neck and having him rotate his neck up and to each side, Dr. Campbell Jones proceeded to perform a chiropractic adjustment of his counsel's neck. In his cross-examination of Dr. Campbell Jones, Mr. Olsen's counsel made much of what Dr. Campbell Jones had failed to do before he adjusted his counsel's neck. Given the

express purpose for the demonstration, I draw no adverse conclusion about what happened in October and November 1997 from that trial demonstration.

[77] Dr. Carstensen and Dr. Gelinas opined that after Dr. Campbell Jones obtained the necessary historical data from Mr. Olsen, he should have performed a proper clinical examination which would have included a neuromuscular skeletal examination, other associated physical range of motion examinations, and orthopaedic and neurological tests.

[78] Mr. Olsen's counsel noted that Dr. Adrian Upton, a neurologist called to give opinion evidence on behalf of Mr. Olsen, had expressed the view that Ms. McDermott, Mr. Olsen's physiotherapist, had performed a very thorough examination and suggested that examination was reflective of the type of thorough examination that should have been done in this case. The difficulty with that argument is there is no evidence before me about what the standard of care might have been for physiotherapists in 1997 and, more importantly, there is no evidence to suggest that standard of care would have been the same for chiropractors in 1997.

[79] Based on what they considered to be Dr. Campbell Jones' inadequate notes and certain examination for discovery evidence, Dr. Gelinas and Dr. Carstensen both concluded Dr. Campbell Jones did not perform an adequate physical exam because he did not perform any neurological or orthopaedic examinations on Mr. Olsen. In their opinion, the motion palpation Dr. Campbell Jones says he performed was nothing more than a chiropractic examination. They felt x-rays should have been taken. Further, they were of the view a chiropractor should establish a differential diagnosis. They differed in their opinion about whether or not Dr. Campbell Jones had done so in relation to Mr. Olsen's chief complaint.

[80] Dr. Gelinas and Dr. Carstensen testified that a chiropractor should formulate a treatment plan after considering any relative or absolute contraindications to treatment, and should then communicate that treatment plan to the patient to obtain the patient's informed consent to treatment. They felt Dr. Campbell Jones had not done so, notwithstanding he told Mr. Olsen after each visit to return in a few days, until October 29, 1997, when Dr. Campbell Jones did not consider it necessary to see him again

[81] Dr. Gelinas and Dr. Carstensen again relied on the *Glenerin Guidelines* to support their opinions. The *Glenerin Guidelines* set out one procedure for the initial clinical examination, outlining in general terms the steps Dr. Gelinas and Dr. Carstensen said Dr. Campbell Jones should have followed with Mr. Olsen. However, the *Glenerin Guidelines* expressly state that procedure is only one of several acceptable methods for a clinical examination.

[82] Dr. Brian Lecker agreed Dr. Campbell Jones' notes were inadequate to identify what he actually did, but contrary to what was suggested by Mr. Olsen's counsel, Dr. Lecker did not concede Dr. Campbell Jones was negligent on that basis. As I have indicated already, Dr. Campbell Jones' notes are relevant to the issue of the extent of the examination conducted by him, but they must be assessed in light of his evidence and that of Mr. Olsen.

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[83] While Dr. Lecker agreed a complete examination would include palpation, a range of motion examination, an orthopaedic examination and a neurological examination, he testified the specific tests the chiropractor would undertake within each of those categories would depend on what the physical examination indicated.

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[84] As I have already noted, Dr. Lecker's evidence regarding the discretionary nature of the overall clinical examination is supported by the *Glenerin Guidelines*. They do not provide a single method for a clinical examination. They do no more than confirm that: the patient interview is important; the clinical examination is an extension of the historical data, the collection of which is guided by the chief complaint; and, finally, the initial examination should include those elements of a general and focussed examination that are pertinent to the investigation of the chief complaint. This algorithm leaves considerable room for clinical judgment and, in my view, Dr. Campbell Jones generally followed that algorithm, notwithstanding he did so differently than Dr. Carstensen or Dr. Gelinas might have done.

[85] The first step in the *Glenerin Guidelines*' algorithm is patient consultation and obtaining a history of the present illness. Dr. Gelinas conceded Dr. Campbell Jones consulted with Mr. Olsen and took a patient history. I already have reviewed the information Dr. Campbell Jones obtained from Mr. Olsen through his 12 question formula. Dr. Gelinas and Dr. Carstensen would have asked more questions but, in my view, that was a matter of clinical judgment and, based on the information Mr. Olsen gave Dr. Campbell Jones, the questions he asked and did not ask were reasonable.

[86] The second and third steps in the algorithm are the physical examination and the medical history and data collection. Dr. Gelinas conceded there was some physical examination conducted by Dr. Campbell Jones. Mr. Olsen confirmed the same in his cross-examination. Based on the evidence, Dr. Campbell Jones performed active and passive range of motion testing on Mr. Olsen's shoulder and neck and engaged the shoulder joint to determine whether there were any grinding sounds that might be associated with arthritis. Dr. Campbell Jones visually observed how Mr. Olsen's neck and shoulder moved and observed the curvature of his spine, noting he had a palpable kyphosis.

[87] Dr. Campbell Jones testified he performed a compression test on every patient he saw to determine if the presenting condition had any nerve involvement, notwithstanding he does not record it in his notes. He testified it is part of his standard practice which he had been doing for 35 years when he saw Mr. Olsen in 1997. At trial, he mislabeled this an Adson's test. In fact, the compression test he described is a Spurling manoeuver. I draw no adverse conclusion from Dr. Campbell Jones having incorrectly labelled the compression test he says he performed and I accept he did this as part of his standard practice. While Dr. Carstensen suggested that orthopaedic examinations ought to have been done, I note he could not remember the names of the various orthopaedic examinations either. Mr. Olsen was not specifically asked in his direct testimony about the compression test, but he had very little recollection of Dr. Campbell Jones having done anything except massage his neck and shoulders. In cross-examination, Mr. Olsen acknowledged he was not prepared to say the compression test had not been done. I am satisfied

Dr. Campbell Jones did conduct a compression test and detected no nerve involvement. Had there been any, Dr. Campbell Jones testified he would have recorded it

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[88] Dr. Carstensen testified that in 1998 when he was practicing, a chiropractor would perform the neuromusculoskeletal examinations and associated physical examinations that "may be deemed necessary in order to delineate the nature of this particular condition the patient is presenting with". He testified the orthopaedic and neurological tests would depend on the initial complaint. For bad shoulders he would want to do range of motion testing to the entire upper quadrant, both active (under the patient's own power) and passive (range elicited outside the patient's own power); and a neck exam because the neck is related to the upper quarter. He could not specifically name the orthopaedic tests beyond these. He also testified the neurological examination he would perform would consist of motor function testing of the upper extremities to make sure there was no neurological compromise. Specifically, he would look for muscle strength, sensation, various sensory modalities and reflexes. Dr. Carstensen agreed there was no rote method for conducting these exams and each involved chiropractic judgment.

[89] Dr. Campbell Jones conducted many of these tests, but the evidence shows he did not conduct all of the tests Dr. Carstensen suggested he should have done. He did not specifically do any sensation tests, reflex tests or muscle strength tests. However, Dr. Carstensen did not suggest that those tests should invariably be done regardless of the feedback received during the clinical examination process. He testified the tests he would do would depend on the complaint and would also depend on chiropractic judgment being exercised after performing any particular test. Dr. Lecker testified the chiropractor would do the tests his or her clinical examination process indicated. Mr. Olsen did not complain of any sensation loss at the time of his treatments and the compression test Dr. Campbell Jones testified he invariably performed elicited no nerve involvement. Even after the adjustment, Mr. Olsen's root or nerve signs, his muscle strength and his reflexes were all normal suggesting they were not involved in the presenting complaint.

[90] Dr. Carstensen acknowledged all of the information in Dr. Campbell Jones' file, including Mr. Olsen's positive response to each previous treatment, formed part of his data collection, the third step recommended in the *Glenerin Guidelines*.

[91] The fourth step is the formation of a clinical impression. Dr. Gelinas conceded Dr. Campbell Jones arrived at a clinical impression on October 24, 1997 and Dr. Carstensen agreed he established a number of diagnoses.

[92] Dr. Gelinas and Dr. Carstensen were of the view Dr. Campbell Jones failed to identify certain absolute or relative contraindications to the chiropractic manipulations he performed. Whether such failure, if any, was a breach of the standard of care, depends on whether the standard of care in the circumstances required that x-rays be ordered and reviewed before any such manipulations were attempted. The experts agreed that spondylosis (meaning dissolution of a vertebra; a condition marked by …separation of the pars interarticularis) and spondylolisthesis, the conditions which Mr. Olsen had and which may be contraindications to chiropractic manipulation in certain circumstances, can only be diagnosed radiographically.

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[93] The fifth step is the formation of a treatment plan with goals and a timeline. Dr. Gelinas agreed it was and is not unusual for a chiropractor to tell a patient to return for follow-up within a certain time range, but he did not consider that to be a treatment plan. Dr. Lecker testified he did not favour long courses of treatment and that he would share that treatment philosophy with his patients. He considered it common that a chiropractor would tell a patient to book another appointment or to see him or her in a few days as part of the treatment plan. In my view, if Dr. Campbell Jones did not develop a treatment plan, nothing turns on that failure. However, I am satisfied he did develop a treatment plan and he communicated that plan to Mr. Olsen when he instructed him to return for further treatment until he discharged him on October 29, 1997. Again, the *Guidelines* do not mandate any particular method for developing and communicating a treatment plan.

[94] The final step in the algorithm is reporting to the patient. Dr. Gelinas conceded Dr. Campbell Jones reported orally to Mr. Olsen.

[95] In conclusion, I accept there are questions Dr. Carstensen and Dr. Gelinas say they would have asked Mr. Olsen, and there are tests they say they would have performed in the circumstances of this case. However, I am satisfied on the evidence that a chiropractor's clinical examination is a process that involves the exercise of chiropractic judgment. The process is not scripted and specific examinations are not mandated in every case involving a particular chief complaint. The question remains whether ordering x-rays would have been required by the standard of care had Dr. Campbell Jones asked those questions and performed those tests.

6. Should Dr. Campbell Jones have ordered x-rays before adjusting Mr. Olsen's cervical spine?

[96] In my view, Mr. Olsen's condition did not raise any red flags that would have alerted the average chiropractor in Alberta in 1997 to request x-rays before proceeding to adjust Mr. Olsen's spine. The experts did not indicate what Dr. Campbell Jones might have done differently if he had asked Mr. Olsen how severe his pain was or if it was interfering with his sleep. He knew it was not interfering with his daily living and working. Dr. Campbell Jones satisfied himself that Mr. Olsen's condition did not appear to have nerve involvement, but he did not test his muscle strength, his sensation or his reflexes and the experts did not suggest those tests would be mandatory in every case involving bad shoulders. However, given those things were normal following the adjustment, it is unlikely such tests would have elicited a positive response. Accordingly, it is unlikely Dr. Campbell Jones would have exercised his chiropractic judgment any differently had he performed those tests.

[97] Based on his interview with Mr. Olsen, Mr. Olsen's questionnaire responses, and on his examination of Mr. Olsen, Dr. Campbell Jones knew Mr. Olsen was 50 years old and was having difficulty with his shoulders and his neck that affected him when he did tractor work. He knew Mr. Olsen's pain had developed over several months, but was not otherwise affecting his daily living and working. He knew Mr. Olsen previously had received chiropractic treatments from

himself and another chiropractor which had been beneficial to Mr. Olsen. He knew Mr Olsen had not seen a doctor about his shoulder and neck complaint and that he had not had any accidents, injuries or illnesses that might have caused or contributed to the problem. He knew Mr. Olsen's condition did not appear to have any nerve involvement and did not generate any grinding or range of motion restrictions.

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[98] All of the experts agreed some disc degeneration would be normal in someone who was Mr. Olsen's age at the time, and Dr. Campbell Jones confirmed he would have expected the same in Mr. Olsen. Dr. Campbell Jones testified that when he performed his chiropractic motion palpation. he concluded Mr. Olsen's vertebra at C-5 was protruding posteriorly (meaning backwards).

[99] Dr. Campbell Jones testified his motion palpation ruled out any concern he had that Mr. Olsen might have had a condition more serious than what he thought was a fixed, protruding vertebra. Clearly, Dr. Gelinas and Dr. Carstensen would have sent Mr. Olsen for x-rays. Dr. Lecker testified that he has treated patients with spondylolisthesis without obtaining x-rays. This suggests chiropractic judgment is involved in the decision to treat without xrays. Dr. Campbell Jones acknowledged he did not refer Mr. Olsen for x-rays to rule out spondylolisthesis, but all of the experts agreed spondylolisthesis most often occurs in the lower spine where Mr. Olsen had no problems and is a rare condition in the cervical spine. Dr. Campbell Jones testified the vertebra was stiff, but otherwise moved normally. He testified that no two vertebrae moved as a unit at any point in Mr. Olsen's cervical spine which would have concerned him.

[100] Dr. Gelinas initially interpreted Chapter 4 of the *Glenerin Guidelines* as mandating x-rays in individuals over 40 years of age. He later conceded that was not an accurate interpretation and the *Glenerin Guidelines* actually outline, for persons over 40, indications for higher justification and usefulness of x-rays. Those indications are: multiple site spinal atricular degenerative states, mulitiple site symptom complexes related to the spine and pelvis, altered vertebral motion segment dynamics, inter-related mechanical lesions, spinal curvatures, suspicion of pathology and significant trauma. However, he maintained his personal opinion that x-rays were mandated in this case because Dr. Campbell Jones had observed an issue with Mr. Olsen's spinal curvature and because Mr Olsen had multiple sites of involvement; namely, his upper thoracic, his neck and his right and left shoulders. As I noted previously, Dr. Gelinas described himself as the "scaredy cat chiropractor".

[101] Dr. Carstensen testified he inferred Mr. Olsen had a back and neck problem in the past for which he sought chiropractic treatment and also had a shoulder problem. From that he concluded when Mr. Olsen attended on Dr. Campbell Jones in 1997, that he had multiple site symptom complexes and multiple site spinal articular degenerative states. Based on Dr. Campbell Jones' observation that Mr. Olsen had a palpable kyphosis in the cervical spine (meaning an abnormal curvature of the spine forming the condition in which the back is humped, or pushed backwards) and the vertebra was protruding backwards, Dr. Carstensen also concluded Mr. Olsen had spinal curvature. He expressed the view that someone 40 years of age and older with those indications should have had a one way ticket to the x-ray department.

[102] The following overview statement in Chapter 4 of the *Glenerin Guidelines*, which concerns diagnostic imaging, emphasizes the importance of limiting the exposure of a patient to x-rays over time:

> The chiropractic profession recognizes that diagnostic x-ray examinations, while offering inestimable benefits, have risks which must be weighed against those benefits. There should always be clinical evidence of need for diagnostic x-ray examination before such are performed.

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[103] Dr. Gelinas agreed with this principle. I conclude from that statement that even the *Glenerin Guidelines* recognize the decision to request x-rays must involve a risk-benefit analysis which in turn requires a chiropractor to exercise his or her clinical judgment.

[104] Dr. Gelinas conceded in cross examination that in 1997 the average chiropractor in Alberta would have been aware of the following general risk factors mandating against chiropractic manipulation without the benefit of x-rays: the patient is older than 65, has a fever greater than 100 degrees Fahrenheit, has a history of prolonged corticosteroid use, has unexplained weight loss, has a history of cancer, has a history of systemic inflammatory arthritides or vasculitides, or endocrinopathies that affect calcium metabolism.

[105] Notwithstanding Mr. Olsen had none of those risk factors, Dr. Gelinas testified x-rays were still mandatory in his case. However, in cross-examination, he told counsel he would not automatically send a 65 year old for x-rays before treating the patient unless the circumstances warranted it, notwithstanding he testified that 85 percent of 60 to 65 year olds have degeneration of their cervical spine. He said that decision ultimately would depend on the chief complaint, the history, and the physical examination, balanced against the concern not to expose the patient to radiation unnecessarily.

[106] Finally, Dr. Lecker testified the decision whether or not to request x-rays is a matter of clinical judgment based on all of the circumstances. He said he has treated patients with spondylolisthesis without first referring the patient for x-rays.

[107] Mr. Olsen had none of the risk factors Dr. Gelinas agreed an average chiropractor practising in Alberta in 1997 would have been looking for. Even if I had accepted that the *Glenerin Guidelines* represented the standard of care which applied in this case, they do not mandate x-rays. They only list the conditions that suggest they might be useful and justified. Dr. Campbell Jones did note a spinal curvature, but again, the significance of that is a matter of judgment. Dr. Campbell Jones did not conclude Mr. Olsen had altered vertebral motion segment dynamics. Rather, he noted the movement was stiff, but no two vertebrae moved as a single unit so the movement, apart from the stiffness, was normal. No expert indicated that a patient with a spinal curvature would in all cases require x-rays. Mr. Olsen's degenerative state could not have been known except from the x-rays. Finally, the *Glenerin Guidelines* refer to "multiple site symptom complexes related to the spine **and** pelvis"(emphasis mine). The Plaintiff's experts appear to have read this section as if it said "spine **or** pelvis" and considered this should have

caused Dr. Campbell Jones to request x-rays because Mr. Olsen's right and left shoulder were involved as was his neck in his presenting complaint. This language was not addressed in their reports or at trial. I read this phrase as suggesting x-rays might be useful and justified where there are multiple site symptom complexes involving both the spine and the pelvis simultaneously in the chief complaint. Mr. Olsen had no issues with his pelvis.

[108] In my view, Dr. Gelinas' and Dr. Carstensen's opinions have been influenced by the results of Mr. Olsen's post-incident x-rays. In other words, they are not free from the influence of hindsight. Based on my review of the evidence, there was nothing about Mr. Olsen's condition detectable on the initial clinical examination that would have alerted Dr. Campbell Jones to the need for x-rays before he proceeded to treat Mr. Olsen's spine. Chiropractic treatment was not contraindicated due to mere disc degeneration, which the experts agreed would have been normal given Mr. Olsen's age. Consequently, Dr. Campbell Jones did not depart culpably from the normal standard of skill, judgment and knowledge prevailing among chiropractors in Alberta in 1997 when he adjusted Mr. Olsen's cervical spine without first obtaining x-rays.

7. Should Dr. Campbell Jones have adjusted Mr. Olsen's spine in the manner he did?

[109] While it is not necessary to consider what the x-rays would have told Dr. Campbell Jones given my finding they were not indicated in the circumstance, even if x-rays had been indicated and obtained, I am satisfied based on the post-incident x-rays, they would not have indicated any absolute or relative contraindications to treating Mr. Olsen with a high velocity, low amplitude adjustment. Therefore, Dr. Campbell Jones would have been acting reasonably had he adjusted Mr. Olsen's cervical spine even in the face of the same x-ray findings as those obtained post-incident.

[110] First, all of the experts agreed that while caution is warranted, spondylolisthesis and spondylosis are not contraindications to chiropractic manipulation unless there is progressive slippage, articular hypermobilty or where the stability of the joint is uncertain. In those circumstances, the conditions may represent a relative contraindication meaning that treatment can be performed using appropriate care and or modification

[111] Dr. Campbell Jones testified he modified his treatment by using a soft adjustment According to Mr. Olsen, Dr. Campbell Jones' treatment became more aggressive over time, suggesting the initial treatments were softer. I also note Dr. Campbell Jones adjusted Mr. Olsen's spine on four occasions. After the first adjustment, it would have been reasonable for him to conclude his diagnosis had been correct and Mr. Olsen was tolerating the adjustment well because Mr. Olsen expressed improvement following that treatment.

[112] Second, while there was some divergence in the evidence about the standard rules of chiropractic adjustment, I accept it was and is a recognized rule of chiropractic adjustment that a chiropractor should not manipulate or thrust an unstable joint. Dr. Gelinas identified this rule. Dr. Carstensen said it was a rule that a chiropractor should not adjust in the direction of the

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slippage. Dr. Lecker agreed with Dr. Gelinas' statement of the rule, but not Dr. Carstensen's. He said a chiropractor should manipulate a spinal segment, thrusting into the posterior elements - into the three-joint complex, but not if the joint is unstable.

[113] Dr. Gelinas and Dr. Carstensen testified they would not have adjusted Mr. Olsen's spine had they had the x-rays that were done on December 31, 1997 and January 20, 1998 - Dr. Gelinas because he could not rule out progressive slippage; Dr. Carstensen because the *Glenerin Guidelines* state that ligamentous laxity with anatomic subluxation or dislocation represent an absolute contraindication to high velocity thrust procedures in the anatomical regions of involvement.

[114] Dr. Carstensen did not identify in his reports what specific parts of the *Glenerin Guidelines* he referenced to state his opinions. In his cross examination he initially agreed that section 13.1 of the *Guidelines* was not relevant in this case. That section states in part that "ligamentous laxity with anatomic subluxation or dislocation, represent an absolute contraindication to high velocity thrust procedures in anatomical regions of involvement." He later testified in the trial that "Mr. Olsen's case, in retrospect represented, at the very least a relative contraindication to treatment, based on the potential for ligamentous laxity due to his spondylolisthesis". However, in his direct evidence, Dr. Carstensen confirmed, signs of ligamentous laxity, if present, would be visible on flexion x-rays and he agreed he was unable to pick up any signs of ligamentous laxity when he reviewed Mr. Olsen's post incident flexion x-rays. He agreed his neck would not likely have looked much different before the adjustment in 1997.

[115] Dr. Rosso, the only neuroradiologist whose opinion evidence was tendered at trial, did not testify but his report was entered as an exhibit. Based on his review of the x-rays, he expressed his opinion there was no evidence of significant ligamentous instability. There was no evidence of abnormal gapping or significant facet movement to suggest ligamentous instability. Dr. Gelinas conceded in his report that it was arguable the x-rays showed no ligamentous laxity. In my view it would have been reasonable for Dr. Campbell Jones to proceed with the cervical spine adjustment even if he had the information subsequently revealed by the x-rays.

[116] On all of the evidence, I find Dr. Campbell Jones did not depart culpably from the normal standard of skill, judgment and knowledge of the average chiropractor practising chiropractic in Alberta in 1997 when he took Mr. Olsen's history and performed his clinical examination. Further, I find Mr. Olsen's condition between October 24 and November 6, 1997 presented no red flags suggesting that x-rays should be ordered. Between October 24 and November 6, 1997, Dr. Campbell Jones adjusted Mr. Olsen's cervical spine on four occasions. Mr. Olsen reported improvement following the first three adjustments. It was reasonable for Dr. Campbell Jones to take that as confirmation of his diagnosis that Mr. Olsen had muscle pain and muscle spasm with fixation at T-1 and C-5. Therefore, Dr. Campbell Jones did not depart culpably from the standard of care when he did not first order x-rays before he adjusted Mr. Olsen's cervical spine. Further, the Plaintiff has not established on a balance of probabilities that Dr. Campbell Jones breached

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the standard of care in terms of the adjustment performed. Consequently, Dr. Campbell Jones was not negligent when he treated Mr. Olsen.

[117] That finding does not end the inquiry. While I have found Dr. Campbell Jones' treatment of Mr. Olsen was not negligent, Mr. Olsen also alleges Dr. Campbell Jones did not obtain his informed consent before he treated him. If Mr. Olsen can prove that allegation, Dr. Campbell Jones will still be found to have been negligent, notwithstanding his treatment met the standard of care.

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C. Did Mr. Olsen Give His Informed Consent to the Treatment Dr. Campbell Jones Provided?

[118] The duty to obtain informed consent from a patient is summarized in ***Mason v. Forgie*** (1986), 30 D.L.R. (4th) 548 at para. 3 (N.B.C.A):

> Since the decisions of the Supreme Court of Canada in ***Hopp v. Lepp***, [1980] 2 S.C.R. 192 and ***Reibl v. Hughes***, [1980] 2 S.C.R. 880, there can be little doubt that medical practitioners have a duty to disclose to their patients the information that the patient requires in order to make an informed decision concerning proposed surgery or therapy. The scope of the duty of disclosure was described by Chief Justice Laskin in ***Reibl v. Hughes*** in these terms (at p. 884):
>
>> In summary, the decided cases appear to indicate that, in obtaining the consent of a patient for the performance upon him of a surgical operation, a surgeon, generally, should answer any specific questions posed by the patient as to the risks involved and should, without being questioned, disclose to him the nature of the proposed operation, its gravity, any material risks and any special or unusual risks attendant upon the performance of the operation.
>>
>> ... even if a certain risk is a mere possibility which ordinarily need not be disclosed, yet if its occurrence carries serious consequences, as for example, paralysis or even death, it should be regarded as a material risk requiring disclosure.

[119] This duty is applicable to chiropractors. What is a material risk will depend on the facts of each case.

[120] In this case, Dr. Campbell Jones used a written consent form provided to him by the Alberta Chiropractic Association. The form indicates it had been revised two years earlier, in 1995.

[121] Mr. Olsen had received many chiropractic adjustments over the years and he came to see Dr. Campbell Jones on his own accord to seek chiropractic treatment for his sore neck and shoulders.

[122] Dianne Neff, Dr. Campbell Jones' daughter and receptionist, testified she gave the Informed Consent form to Mr. Olsen on his first attendance at Dr. Campbell Jones' office in the fall of 1997. Mr. Olsen confirmed that evidence.

[123] The front of the form is for the patient's personal information and the back of the form is the patient's consent to treatment. Ms. Neff was advised by Mr. Olsen that he previously had seen Dr. Campbell Jones, but as she could not find his file, she followed the clinic's standard practice for new patients. She gave Mr. Olsen the form, asked him to complete the Personal Information Record, and requested he read the Informed Consent form on the reverse. She instructed that if he had no questions, he should sign the form. If he did have questions, he should not sign the form and should discuss those questions with Dr. Campbell Jones when he met with him. Ms. Neff testified her father would have picked up the file before going into the examination room to speak with Mr. Olsen.

[124] Mr. Olsen initially testified he did not think he read the document through completely. However, he conceded in his cross-examination he in fact read the form, understood it, and had no questions as he had received chiropractic treatment before. He did not recall any further discussion about it with Dr. Campbell Jones.

[125] Dr. Campbell Jones, on the other hand, testified his name on the Informed Consent form in his handwriting indicated they did discuss the form. He could not recall the discussion specifically, but said Mr. Olsen either had questions and he answered them, or he noted Mr. Olsen already had signed the form, in which case he would have confirmed with Mr. Olsen he had no questions about it. The latter seems more likely in this case.

[126] Mr. Olsen's chiropractic experts, Dr. Carstensen and Dr. Gelinas, testified that because Dr. Campbell Jones failed to take an adequate history and failed to perform an adequate clinical examination, including ordering necessary x-rays, Mr. Olsen did not have adequate information on which to provide informed consent to the chiropractic treatment he received. He would not have known of the contraindications to treatment and would not have known of his degenerative spine condition.

[127] I already have found x-rays would not have been indicated in this case given the facts as they existed on October 24, 1997 and subsequently. Therefore, Dr. Campbell Jones cannot be expected to have discussed the contraindications to treating Mr. Olsen's spondylolisthesis and spondylosis as he could not have known about those conditions. The issue then is whether, based on the information reasonably available to Dr. Campbell Jones, he provided Mr. Olsen with all the information he required in order to give Dr. Campbell Jones his informed consent for the chiropractic manipulation he received.

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[128] I conclude Dr. Campbell Jones complied with the general legal principles governing the law of informed consent, when he required that Mr. Olsen review and sign the Informed Consent form. All of the experts agreed, as do I, that in signing the form Mr. Olsen was consenting to any treatments he received between October 24 and November 6, 1997. When Mr. Olsen received treatments after his October 24th attendance on Dr. Campbell Jones, his consent also was informed by his knowledge of the precise nature of the treatment he would receive and by the experience of his response to each successive treatment.

[129] Even if I had concluded Mr. Olsen did not provide informed consent to the treatment he received, he would still have to prove that a reasonable person in his shoes would not have consented if fully informed, and that his condition would have been better if he had not received the treatment. Mr. Olsen has not met that burden.

[130] I find that Mr. Olsen, presented with all of the information, would have consented to the chiropractic treatment for a number of reasons. His shoulder issue was of longstanding. He previously had sought out acupuncture and acupressure because someone had suggested these forms of treatment. He had sought out chiropractic treatment for his shoulder and neck pain in the past, and he agreed at trial his experiences had been positive ones. The records indicate he had received chiropractic adjustments before, whether or not he recalled them.

[131] Mr. Olsen was not a sophisticated patient. The evidence supports he did not always recall what he was told by his healthcare providers. More importantly, he did not always understand what he was told and asked no questions, notwithstanding his lack of understanding. That is illustrated most clearly by his evidence that he believed his physiotherapist, Denise McDermott, had explained the December 1997 and January 1998 x-rays to him. However, notwithstanding her explanation, he did not realize he had arthritis in his neck even on the date of trial.

[132] Mr. Olsen had no fears or concerns about chiropractic adjustments. He knew from his past experience with Dr. Ladd Parsons that chiropractors adjust necks and he was aware of the material risks, including the most serious risk - the risk of stroke. If that did not deter him, it is difficult to imagine what might have. Dr. Campbell Jones adjusted Mr. Olsen's neck on three occasions before November 6, 1997 and Mr. Olsen returned on that date for further treatment. Further, when he attended at the office of Dr. Greenhorn, another chiropractor, in August 1998, he knew the results of his post-incident x-rays but answered "no" to the question "[d]o you have osteoarthritis or any other degenerative bone disease?" Even though Mr. Olsen said he discussed with Dr. Greenhorn not wanting any manipulation of his neck, Mr. Olsen signed the very same consent form as the one used by Dr. Campbell Jones and an additional one without modification. He also acknowledged Denise McDermott likely told him what she had found in her examination of him, but he was not sure he would really have understood some of the wording. He agreed she could apply mechanical traction to his neck without any apparent question, concern or even understanding of the process, presumably because a health care professional had recommended it.

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[133] Most significantly, Mr. Olsen went back to Dr. Campbell Jones in 1997 because Mr. Olsen believed he had the same problem as did his brother. His brother had recommended Mr. Olsen see Dr. Campbell Jones because Dr. Campbell Jones had resolved his brother's problem.

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[134] I find Dr. Campbell Jones, in fact, did obtain informed consent and, even if he did not, Mr. Olsen would have proceeded in any event had he been given complete information about his treatment.

[135] I have concluded Dr. Campbell Jones did not breach the standard of care and did not fail to obtain informed consent. Therefore, Mr. Olsen has failed to establish Dr. Campbell Jones was negligent and this case must be dismissed.

D. If Dr. Campbell Jones Breached the Standard of Care or Failed to Obtain Mr. Olsen's Informed Consent, did Mr. Olsen Suffer any Injuries or Damage as a Result?

1. Relevant legal principles of causation

[136] Notwithstanding the findings I have made on breach of the standard of care and informed consent, it is necessary that I consider the issues of causation and damages in case it is later determined that I am wrong.

[137] As Justice Sopinka stated in ***Snell v. Farrell***, [1990] 2 S.C.R. 311 at para. 26:

> [c]ausation is an expression of the relationship that must be found to exist between the tortious act of the wrongdoer and the injury to the victim in order to justify compensation of the latter out of the pocket of the former.

[138] In this case, Mr. Olsen must prove that but for Dr. Campbell Jones' treatment, he would not have suffered the injuries he claims to have suffered. That is the classic "but for test".

[139] The cases in this area recognize medicine is not an exact science and it is rare to have a definitive medical opinion of causation. Rather, the issue will be determined based on a review of all of the facts and the medical evidence, including evidence of potential causes not conclusively negated.

[140] Once it is determined, as a matter of fact, that the plaintiff suffered injury or damage as a result of the wrongful act, the Court must determine whether the defendant's breach caused the plaintiff's damages in law, or whether they are too remote to warrant recovery. In doing so, the Court must assess whether a person of "ordinary fortitude" would suffer the injuries factually caused by the defendant (***Marchand v. Brar***, 2008 ABQB 470 at para. 109).

[141] Unusual or extreme reactions to events caused by negligence are imaginable, but not reasonably foreseeable because the law expects reasonable fortitude and robustness of its citizens and will not impose liability for the exceptional frailty of certain individuals (***Mustapha*** at paras. 14 and 15).

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[142] The Supreme Court of Canada in ***Athey v. Leonati***, [1996] 3 S.C.R. 458, explained how the principles of causation operate in situations where the plaintiff has a pre-existing condition. It is necessary to determine the difference between the Plaintiff's pre injury and post injury condition. The Plaintiff should only be compensated for the change that is caused by the injury.

[143] ***Athey*** also discussed the distinction between the "thin skull" and the "crumbling skull" doctrines. The thin skull rule makes a tortfeasor liable for the injuries even if they are unexpectedly severe owing to a pre-existing condition (***Athey*** at para. 34). The crumbling skull rule recognizes that a pre-existing condition may be inherent in the plaintiff's "original position" (***Athey*** at para. 35), in which case the defendant is liable only for the additional damage, not the pre-existing damage" (***Balcom v. MacDonald***, 2000 BCSC 1426 at para. 112).

[144] These legal principles must be applied to all of the evidence in this case to resolve whether the actions of Dr. Campbell Jones caused any injuries or damage to Mr. Olsen, and what other factors might have an impact on that conclusion.

[145] Before the cause of Mr. Olsen's injuries can be determined, it is necessary to review the state of Mr. Olsen's health before October, 1997 and to review what injuries Mr. Olsen alleges resulted from Dr. Campbell Jones' chiropractic treatment. There is no doubt the injuries he alleged at trial were far more extensive than those he alleged in his Statement of Claim filed in 1999.

[146] It is also necessary to consider the impact on Mr. Olsen's post-incident condition, if any, of his pre-existing degenerative disc disease and the impact on Mr. Olsen's post-incident condition of his fall from a grain truck in 1998.

2. The evidence regarding Mr. Olsen's pre-incident health

[147] Mr. Olsen was unaware of his pre-existing degenerative disc disease until December 31, 1997, when his first x-rays were taken. All of the experts agreed it was a condition of long standing and nothing Dr. Campbell Jones did caused it.

[148] Mr. Olsen denied he had difficulty with his neck and back before November, 1997 when he sought treatment from Ms. Hartman, but he acknowledged a long standing problem with his right shoulder.

[149] Ms. Hartman was qualified at trial as an expert in acupuncture and acupressure. She recalled she treated Mr. Olsen's right shoulder in February and March, 1997, but she did not recall she treated Mr. Olsen's back or neck before November, 1997. Dr. Campbell Jones' counsel

submits Ms. Hartman's treatment records suggest otherwise. He further submits that Mr. Olsen was experiencing the affects of his degenerative disc disease for some time before he saw Dr. Campbell Jones, and as recently as several months earlier.

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[150] I agree with Dr. Campbell Jones' counsel. I had considerable difficulty with the reliability of Ms. Hartman's trial evidence for a number of reasons, and I prefer her treatment records that were made closer in time to the event.. Ms. Hartman had detailed recollections at trial, more than 10 years after treating Mr. Olsen, of his symptoms, complaints, and some of their conversations on specific dates. That is surprising given the stark lack of detail in her notes beyond the specific acupuncture points she treated, in addition to the 6 years it took her to respond to counsel's request to produce her chart.

[151] In several instances, Ms. Hartman tried to distance herself from her chart notes, and rely instead on her unsubstantiated, independent recollections. To reinforce her trial evidence she was not treating Mr. Olsen's back and neck in February and March, 1997, she said the brackets around certain acupuncture points in her notes indicated she had been treating his right shoulder and arm as the main area of focus. There are inconsistencies in her notes that call her trial explanation into question, and in her pre trial interview with both parties' counsel, she told them the points inside the brackets represented treatment to one side of the body and those outside the brackets were points treated bilaterally.

[152] I accept Dr. Lecker's opinion that, based on the acupuncture points Ms. Hartman recorded in her notes, she likely was treating Mr. Olsen's neck and upper back as well as his right shoulder and his arm in February and March 1997.

[153] The experts agreed that neck pain and joint stiffness were symptomatically consistent with degenerative disc disease and in my view, the evidence supports the conclusion Mr. Olsen's degenerative disc disease was inherent in his presenting condition when he first attended on Dr. Campbell Jones in October, 1997. The evidence also supports the conclusion he had been experiencing the affects of that disease for a number of years prior to 1997, notwithstanding he was not diagnosed with degenerative disc disease and spondylolisthesis until December 31, 1997. However, it is also clear from Mr. Olsen's evidence, and from the evidence of those who knew him best, that his condition did not preclude him from carrying out his farming activities and it did not preclude him from actively engaging in the social and recreational activities he enjoyed until after Dr. Campbell Jones treated him in November, 1997.

3. Mr. Olsen's post-incident symptoms

[154] Mr. Olsen testified Dr. Campbell Jones adjusted his neck for the first time on November 6, 1997. While I have not accepted that evidence given the documented evidence to the contrary, whether or not there were previous adjustments, Mr. Olsen testified he experienced negative symptoms immediately following the adjustment on November 6, 1997.

[155] He said Dr. Campbell Jones made a quick snap to the left and he heard a crack, like something had broken. This was likely the sound the experts indicated usually accompanies a chiropractic adjustment which is referred to synonymously as gapping or cavitation.

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[156] Dr. Campbell Jones testified Mr. Olsen reported feeling better after each of his chiropractic treatments and, on November 6, 1997, he did not appear distressed, nor did he indicate there was a problem.

[157] Dr. Campbell Jones testified Mr. Olsen paid for all three October appointments on October 29, 1997, which is consistent with his evidence he discharged Mr. Olsen because he appeared to be better. While Mr. Olsen testified he did not think he would have gone back unless Dr. Campbell Jones had told him to, he recalled Dr. Campbell Jones telling him he would not benefit from further treatment. He conceded he did not recall when that was.

[158] Dr. Campbell Jones recorded Mr. Olsen's payment on November 6, 1997, but he did not record anything about Mr. Olsen's reaction. That indicated to him there was nothing of significance to record. He did not recall the adjustment on November 6, 1997 being any different than any other adjustment he had done thousands of times.

[159] Mr. Olsen testified his condition was such that he could do nothing. He was locked up and in a lot of pain. He described himself as disabled. His arm pain and his leg difficulty gradually improved, but he had constant headaches emanating from both sides of the back of his neck and head, grinding in his neck, constant ear ringing and considerable sleep disruption. His worst pain was in a spot five to six inches down his back.

[160] Mr. Olsen testified he returned to Dr. Campbell Jones' office a week or so following November 6, 1997 to discuss the difficulties he was experiencing. There is no note in the Patient Register of Mr. Olsen having attended on Dr. Campbell Jones at any time following November 6, 1997. While he may have considered returning to see Dr. Campbell Jones, and he may have discussed that prospect with his wife, I do not accept that he did so.

[161] The evidence from Mr. Olsen and his family about the symptoms Mr. Olsen experienced following the November 6, 1997 treatment, and when that constellation of symptoms he complained of first manifested themselves, is difficult to reconcile with his medical records for the first year following the treatment.

[162] As I indicated previously, Mr. Olsen first sought treatment on November 26, 1997 from Ms. Hartman. Her records do not assist with the timing of Mr. Olsen's symptoms, but they do indicate she treated Mr. Olsen's upper back and neck. There are other difficulties with her evidence which I have already reviewed.

[163] Between December 31, 1997 and December 29, 1998, Mr. Olsen next sought treatment from Dr. Ninian, a general practitioner at the Smith Clinic; from Dr. Corrigan, his regular family

physician; from Ms. Hartman; and from Ms. McDermott, his physiotherapist. All were qualified in the trial as experts to give opinions in their respective fields.

[164] I conclude from that evidence that prior to December 29, 1998, Mr. Olsen primarily suffered from neck pain and stiffness and left arm and leg numbness, although his leg numbness had subsided by December 31, 1997. His circulation, root signs, cord signs, sensation, muscle wasting and reflexes were all normal on December 31, 1997 and on January 7, 1998. They were not tested on January 20, 1998. Mr. Olsen's neck and arm pain occasionally became sharp and severe, and his pain was aggravated by sitting, driving and sleeping. Mr. Olsen did not complain of dizziness, nausea, constant headaches, ear ringing or leg symptoms until considerably after December 29, 1998. His right shoulder problem arose again in March, 1998, but an x-ray of his shoulder suggested his shoulder was normal.

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4. What was the effect of Mr. Olsen's fall from his grain truck on December 29, 1998?

[165] On December 29, 1998, Mr. Olsen fell from the ladder of his grain truck, a distance of approximately five feet. He landed on his left side and jammed his elbow into his left chest. He heard a crunch and tasted blood. He believed he may have fractured his ribs and went by ambulance to hospital in Camrose. While there was no fracture, his rib cage continued to bother him a month later.

[166] Mr. Olsen testified at trial he fell because his left leg had given out on him. He also testified this fall had no impact on the symptoms he already was experiencing from Dr. Campbell Jones' adjustment, notwithstanding he said he was unable before this fall to tolerate the movement of the lawn tractor on the uneven surface in his yard. Again, while I appreciate how difficult it must be for Mr. Olsen to recall these events that occurred more than 10 years ago, his recollection does not accord with the information recorded closer in time to those events.

[167] Mr. Olsen told Dr. Ninian in December, 1997 his leg difficulties had subsided. He saw Dr. Broad in January, 1999, one month after his fall from the grain truck, and was specifically asked on a questionnaire about his leg function. He denied any clumsiness in his hands or legs, or any unsteadiness. Finally, there is nothing in the evidence to suggest Mr. Olsen told emergency personnel after his fall that his leg had given out on him.

[168] It is clear Mr. Olsen fell from a considerable height and landed on his affected left side. From the description of this fall, I conclude the impact was significant. In my view, the recorded medical evidence does not support Mr. Olsen's belief the fall had no impact on his post-incident condition.

[169] After December, 1998, Mr. Olsen again began to experience constant neck pain, which at some point became bilateral. He experienced creptitus in his neck and marked decreased range of motion in his cervical spine, right occipital headaches, periodic urgent diarrhea (first when he turned his head and later when his neck cracked), increased neck cracking, an increased kyphosis

or spinal curvature, constant ringing in his ears, sharp shooting pains into the back of the head, numbness in his right arm, the return of left leg sensation loss, and a change in neurological signs, specifically absent tricep reflex and weakened tricep and bicep strength.

[170] On January 5, 1999, following 57 physiotherapy appointments, Mr. Olsen called Ms. McDermott to advise her he had fallen from a grain truck and needed to cancel his appointment. He did not return for treatment until June 29, 2005.

[171] Mr. Olsen attended for a physical in March, 2002. On that date, he reported recurrent headaches for the first time, constant rather than occasional numbness in his arm, and constant rather than occasional pain. Dr. Corrigan observed marked restriction in his neck movement to the left, which also was a new symptom. Dr. Corrigan noted reduced left sensation on testing for the first time, but indicated Mr. Olsen otherwise was neurologically sound.

[172] By November, 2004, Mr. Olsen was complaining of decreased sensation in his left leg. In addition, he reported sharp pain in the back of his head on that occasion.

[173] In June, 2005, Dr. Corrigan suggested Mr. Olsen give up farming and go to a pain clinic. Mr. Olsen agreed to discuss the farm with his son, but did not ask Dr. Corrigan for a referral to a pain clinic. Dr. Corrigan did not observe much change in Mr. Olsen's condition; his symptoms would vary, but overall his condition had plateaued.

[174] On June 29, 2005, Mr. Olsen returned to Ms. McDermott for assessment at his counsel’s request. He had not seen Ms. McDermott for any purpose for almost 6 years. At that time, Mr. Olsen's symptoms were considerably worse. Although he had no leg symptoms, his neck was cracking repeatedly, causing pain to shoot into his head; he had constant ringing in his ears; he had right arm pain at the deltoid insertion that caused complete numbness in his right arm which eased if he flexed his neck; and he reported periodic urgent diarrhea when he turned his head. All of these were new symptoms.

[175] By October 21, 2008, when Ms. McDermott next saw Mr. Olsen for re-evaluation for trial purposes, Mr. Olsen's neck pain was bilateral and continuous, extending across both shoulders and up into the back of his head. Mr. Olsen complained he had headaches, ringing in his ears, left arm dysfunction, but not pain and neck crunching. Ms. McDermott agreed this could be consistent with degenerative disc disease. Mr. Olsen also reported decreased sensation in his left leg as well as mild weakness and decreased balance. This was not reported in 1998 or in 2005.

[176] Ms. McDermott also noted hypermobility at C-5/6 and C-6/7 for the first time and hypomobility at C-3/4, as she had observed in 1998. There was tissue swelling from C-6 to T-8, which Ms. McDermott acknowledged could have been caused by the degenerative changes in Mr. Olsen's neck. He also had hypersensitivity to touch from T-3 to T-6, which was new.

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[177] Whether Mr. Olsen appreciated there was a change in his symptoms or not, it is clear from a review of his medical records and the symptoms he reported following December 29, 1998, that his symptoms became more severe over time and affected both sides of his body.

[178] The experts who were called to testify regarding causation had an opportunity to consider all of this medical evidence, including the significance of Mr. Olsen's pre-existing condition and his subsequent fall.

5. The causation opinions at trial

[179] Dr. Carstensen, Dr. Gelinas, Ms. Hartman, and Ms. McDermott all gave causation opinions on Mr. Olsen’s behalf. In addition, Dr. Broad, a neurosurgeon, did not testify, but two of his reports were entered into evidence on the causation issue. One report was dated January 29, 1999; the other was dated July 11, 2002. Dr. Broad was qualified as an expert in neurosurgery.

[180] All of the experts were of the opinion that Dr. Campbell Jones’ chiropractic adjustment caused Mr. Olsen’s injuries. Dr. Broad, in his first report, diagnosed Mr. Olsen as having “probably cervical spondylosis” which he did not attribute to any specific cause. In his second report, he opined that the adjustment caused possibly a nerve root and spinal cord irritation, thereby aggravating Mr. Olsen’s cervical joint disease. Dr. Carstensen testified that in his opinion, the adjustment caused a soft tissue injury. Dr. Gelinas testified that in his opinion, the adjustment aggravated Mr. Olsen’s pre-existing degenerative condition. Ms. Hartman testified that in her opinion, the adjustment caused Mr. Olsen to develop post traumatic hyper irritability syndrome which she could not medically define. Finally, Ms. McDermott endorsed Dr. Broad’s nerve root irritation theory at trial, but she only expressed that opinion in her October, 2008 report.

[181] None of Mr. Olsen’s experts specifically considered his 1998 fall in their reports, but those who were asked about it at trial considered the fall to be irrelevant.

[182] Dr. Campbell Jones’ counsel called Dr. Lecker and Dr. Upton to comment on Mr. Olsen’s experts’ opinions. Dr. Upton, a neurologist, was qualified to give expert evidence in the area of neurology. He also explained the difference between neurologists and neurosurgeons. He testified that neurosurgeons are mostly concerned with the surgical correction of neurological problems, brain problems and spinal cord problems which usually involve some form of subtractive technique. Ordinarily, they are not involved in electromyography or evoked potentials, which are a part of neurophysiology. Neurosurgeons consult neurologists for that. Dr. Upton testified that about one-third of his current patient load consists of referrals from other neurologists who have asked him to make a diagnosis and provide treatment.

[183] While Dr. Lecker agreed a soft tissue injury was possible following a chiropractic adjustment, he thought it unlikely in this case. He testified that Mr. Olsen’s symptoms were not entirely consistent with a soft tissue injury and even the most severe soft tissue injury should

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have healed within a year. In his opinion, Mr. Olsen's symptoms were more likely caused by Mr. Olsen's physically demanding work, which ultimately caused him to develop an intolerance to his job as a farmer.

[184] Dr. Upton rejected all of Mr. Olsen's experts' opinions regarding causation. In his opinion, Mr. Olsen's symptoms were nothing more than those expected from the chronic changes to his spine. However, he did acknowledge that, radiographically, Mr. Olsen's condition did not appear to be progressing.

[185] Dr. Upton and Dr. Lecker both opined that if a significant impact, such as Mr. Olsen's 1998 fall from the grain truck, did not impact him, then it is unlikely the chiropractic adjustment did.

[186] I reject Dr. Carstensen's theory that Dr. Campbell Jones caused a soft tissue injury when he adjusted Mr. Olsen's cervical spine. Dr. Carstensen and Dr. Upton agreed a soft tissue injury could not explain Mr. Olsen's leg symptoms and I agree with Dr. Upton, who characterized Mr. Olsen's symptoms as "variable, non anatomical and very strange". In addition, Dr. Upton testified that if an injury of the type Dr. Carstensen described occurred, Mr. Olsen's immediate symptoms should have shot down. Mr. Olsen testified his immediately shot up.

[187] Dr. Broad was the only expert who specifically advanced the theory that Dr. Campbell Jones' adjustment caused Mr. Olsen to experience a nerve root irritation. However, because of an unresolved, but significant, anomaly with Dr. Broad's second report, I accord no weight to the opinions expressed in it, including his opinion that Dr. Campbell Jones caused Mr. Olsen to experience a nerve root irritation.

[188] Dr. Broad's July 11, 2002 report indicated he saw Mr. Olsen on January 29, 1999 and again on February 6, 2001. Mr. Olsen testified he only saw Dr. Broad once. To further confuse the issue, Dr. Broad only billed for one attendance and that was on January 29, 1999. The evidence regarding Mr. Olsen's attendance at Dr. Broad's office is difficult to reconcile with Dr. Broad's second report and the purported second examination. It seems unlikely Mr. Olsen would have forgotten he attended on Dr. Broad more than once, and coincidentally, that Dr. Broad would have forgotten to bill for that same appointment. There may be an explanation, but Dr. Broad was not called to give it

[189] In my view, all of the evidence supports the conclusion Mr. Olsen was experiencing the affects of degenerative disc disease and spondylolisthesis when he first saw Dr. Campbell Jones in October, 1997, notwithstanding he did not appreciate he had those conditions. However, while these conditions were causing him to experience some problems after more intensive farming and recreational activities, and it is likely they would have caused him to experience more debilitating difficulties as they progressed, they had minimal debilitating impact at the time of the adjustment. Consequently, I conclude the difficulties Mr. Olsen experienced before the adjustment were relatively innocuous in their impact on his daily living and working, but the symptoms he developed after, actually precluded him from performing his farming operations

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without assistance, and prevented him from participating in his usual recreational activities, notwithstanding he made efforts to do so.

[190] The experts agreed they could not say definitively what makes degenerative disc disease symptomatic, but it can be simple everyday activities. I find Mr. Olsen has established, on a balance of probabilities, that Dr. Campbell Jones' adjustment aggravated his pre-existing conditions and amplified his symptoms.

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[191] For similar reasons, I conclude the experts' opinions that Mr. Olsen's 1998 fall was irrelevant to his post-incident condition are untenable. In my view, his condition was objectively impacted by that fall.

[192] Dr. Campbell Jones' experts addressed this issue in negative terms. They opined it was highly improbable a chiropractic adjustment could cause the constellation of symptoms Mr. Olsen complained of while the 1998 grain truck fall would have had no affect whatsoever on Mr. Olsen's condition.

[193] I accept the corollary is also true. If the chiropractic adjustment aggravated Mr. Olsen's degenerative disc disease, which I find it did, it is untenable to suggest that an event involving what I conclude to have been a significant impact did not further aggravate his condition. The experts agreed everyday activities can cause asymptomatic degenerative disc disease to become symptomatic. The most common cause of symptoms is normal wear and tear, and it cannot be ignored that Mr. Olsen had been doing a physical job for decades.

[194] In my view, the medical evidence supports the conclusion the fall from the grain truck further aggravated Mr. Olsen's condition; he experienced new or more severe symptoms after his fall. This compendium of new and more severe symptoms, proximate to the grain truck fall and beyond, suggests the fall had a more significant impact on Mr. Olsen's pre-existing condition than he might have appreciated or acknowledged.

[195] Had I found negligence in this case, Dr. Campbell Jones' liability in these circumstances would not be governed by the principles in ***Athey*** v. ***Leonati***, but rather by the principles in ***Long*** v. ***Thiessen*** (1968), 65 W.W.R. 577 (B.C.C.A.). While the chiropractic adjustment aggravated Mr. Olsen's degenerative disc disease and produced certain symptoms, the fall from the grain truck further aggravated his condition and produced new and more severe symptoms. Dr. Campbell Jones would not be liable to compensate Mr. Olsen for those increased losses. He would be liable only for those losses that occurred between November 6, 1997 and December 29, 1998.

E. Is Mr. Olsen Entitled to Any Damages?

1. What is an appropriate award for general damages?

[196] I will now identify the losses suffered by Mr. Olsen for the period in question attributable to Dr. Campbell Jones' manipulation and assess the compensation Mr. Olsen would have been entitled to receive for those losses if I had found negligence on the part of Dr. Campbell Jones.

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[197] In my view, the medical records noting what Mr. Olsen complained of to his health care providers in the year following the adjustment are the best evidence about the symptoms he was experiencing. Those symptoms essentially were neck stiffness, restricted range of motion in his neck, limited mobility in his neck on flexion and extension, neck pain and left arm pain that was constant for a time and occasionally sharp and severe, left arm numbness and some initial left leg numbness that resolved shortly after the adjustment. All of those symptoms left him unable to participate in his usual recreational and social activities or to perform his farming operations without additional assistance.

[198] Between November, 1997 and the spring of 1998, there was little farm work being done, but Mr. Olsen experienced difficulty with snow removal and grass cutting and with his usual equipment maintenance around the acreage, although his farm ledgers would indicate he was doing some of that work. In the spring of 1998, when farming operations resumed, Mr. Olsen experienced difficulties with those operations as well. His farming operations would have consisted of spring seeding, fall harvest, which included swathing and combining, and grain hauling, which for a time required the use of a manual grain auger that Mr. Olsen had difficulty pulling.

[199] Mr. Olsen seeks $80,000.00 in general damages for pain and suffering based on the presumption the chiropractic adjustment caused all of his symptoms, which he continued to experience right up to the date of trial, with no prognosis for improvement. The cases he suggests support such an award are for more serious symptoms suffered over a longer period of time than I have found attributable to Dr. Campbell Jones here. In my view, the cases Dr. Campbell Jones' counsel produced are more consistent with the symptoms Mr. Olsen experienced before they were further aggravated by his fall. In my view, an appropriate award for general damages would be $20,000.00.

2. Did Mr. Olsen suffer a loss of income and, if so, what is the factual basis for the calculation of that loss?

[200] Mr. Olsen called Mr. Robert McNally, a chartered business valuator, and Dr. Alexander Jenkins, an economist, as experts to calculate his lost income, both past and future, resulting from the injuries Dr. Campbell Jones caused. Those experts also quantified Mr. Olsen's lost housekeeping capacity, past and future, and his cost of future care.

[201] Mr. McNally was qualified as an expert in the general area of calculation of pecuniary damages and business valuation, including loss of income, loss of housekeeping services capacity and loss of future care. Dr. Jenkins was qualified as an expert in the general area of labour economics and the calculation of general pecuniary damages.

[202] These experts used different approaches to calculate Mr. Olsen's income loss. Dr. Jenkins' calculation was done on a tax basis using Alberta wage and salary surveys and Canada census data for a typical farm worker in Alberta. Mr. McNally utilized a tax based calculation to convert Mr. Olsen's farming tax returns, which he considered to be unrepresentative of the money in Mr. Olsen's pocket, into a cashflow analysis, which he considered to be more representative of the dollars in Mr. Olsen's pocket. He then calculated Mr. Olsen's post-incident cashflow and calculated the losses as being the difference between Mr. Olsen's pre-incident cashflow and his post-incident cashflow.

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[203] To make the conversion, Mr. McNally calculated a pre-incident earnings potential by adjusting Mr. Olsen's tax returns for the generous income tax deductions allowed to farmers, certain non arms-length expenses, certain inventory adjustments, inflation factors and other adjustments. The only variable adjusted after November 6, 1997 was the additional wages to replace Mr. Olsen's lost ability to work. Mr. McNally calculated this based on a part-time farm hand as well as on a full-time farm hand to replace Mr. Olsen's labour.

[204] In my view, neither approach is entirely adequate given the evidence in the trial, but Mr. McNally's was more reflective of reality. Dr. Jenkins made his calculations relying exclusively on statistics and made no effort to assess the available evidence, including what Mr. Olsen paid his experienced labourers between 1990 and 2008. While Dr. Jenkins' approach was an interesting academic exercise, it was no more than that and, in my view, it was of little assistance to the Court on the issue of Mr. Olsen's real income loss.

[205] Mr. McNally's approach also had its difficulties given the evidence in the trial. It does not take into account the additional equipment Mr. Olsen acquired which would have required additional operators, or the additional acreage Mr. Olsen acquired after November 6, 1997. Nor did it take into account that Mr. Olsen's crop was hailed out in at least two crop years. Further, farming is a variable operation and it is unrealistic to hold crop prices and crop yields constant. In any event, because of my earlier findings, Mr. Olsen's losses are restricted to the period November, 1997 to December, 1998 and those difficulties likely have less impact during that time frame than they might over the course of a longer period.

[206] I accept Mr. McNally's approach is a proper one. As the owner of a farming operation, Mr. Olsen's loss is not measured by what is stated in his tax returns, but rather by the change in his available cashflow. Absent any better evidence on that issue, I accept Mr. McNally's calculation of Mr. Olsen's loss, which was $6,697.00 for the period November, 1997 to December 31, 1998. Mr. McNally's calculation for Mr. Olsen's lost income for that period is the same whether Mr. Olsen hired a part-time or full-time worker. Pre-judgment interest should be added to that loss as well.

[207] Mr. Olsen is not entitled to compensation for any future loss of income based on my earlier finding, but if I had concluded otherwise, I would not have found his injuries caused him to sell his farm in 2008. The evidence at trial was that Darren Olsen advised his father in 2008 he did not intend to continue farming, but rather he intended to sell his acreage and put the money

into his construction business. Mr. Olsen testified he was keeping the farm for his son, but when his son told him he did not intend to farm, Mr. Olsen did not feel there was any point in him keeping the farm thereafter. Mr. Olsen and Mr. McNally acknowledged the market at that time was at its peak and Mr. Olsen testified he sold his farm for 1.7 million dollars in January, 2008.

[208] In my view, even if Mr. Olsen had not suffered an injury, it is probable he would have sold his farm in 2008 when his son sold his acreage, in light of all the circumstances.

3. Does Mr. Olsen have a loss of housekeeping claim and, if so, what loss did he suffer?

[209] Mr. Olsen called Dr. Brenda Munroe, a human ecologist, to calculate his lost housekeeping hours. She was qualified as an expert in the general area of home economics and loss of household services capacity. In addition, Dr. Munroe, Mr. McNally and Dr. Jenkins all calculated a past and future housekeeping loss for Mr. Olsen. Dr. Munroe used a slightly different time frame for her calculations than did Mr. McNally.

[210] Dr. Munroe testified household labour is important to families, to the economy, and it can be valued. The most conservative method of calculation is the generalist market-alternative, which is the method Dr. Munroe used.

[211] Dr. Munroe estimated Mr. Olsen spent 27 hours per week on household tasks, based on information she received from Mr. and Mrs. Olsen. Mr. Olsen's household tasks largely consisted of outside work, but he did participate in meal preparation during large family gatherings.

[212] For her past loss calculations, Dr. Munroe used a replacement wage rate of $15.00 per hour on the understanding that was the rate Mr. Olsen was paying for replacement services around the farm. However, Mr. Olsen's farm ledgers indicated he actually was paying $10.00 per hour for his farm labour in 1997 and 1998. Dr. Munroe left to Dr. Jenkins and Mr. McNally the task of present valuing that loss, adjusting for contingencies and other labour and accounting functions. However, for their past loss calculations, which are the relevant calculations here, Dr. Jenkins and Mr. McNally simply relied on Dr. Munroe's calculations with some adjustments to account for the different time frames used by Dr. Munroe.

[213] I accept Dr. Munroe's calculations of Mr. Olsen's lost hours in 1997 at 27 hours per week for eight weeks and 23.5 hours per week for 52 weeks in 1998. However, to the extent Mr. McNally calculated Mr. Olsen's loss based on a wage rate higher than $10.00 per hour in 1997 and 1998, that loss is overstated. Accordingly, accepting Dr. Munroe's lost hours, Mr. Olsen's compensation for his lost housekeeping capacity should be $14,380.00, to which I would add pre-judgment interest.

4. What amount, if any, should be awarded to Her Majesty the Queen in Right of the Province of Alberta for the subrogated claim?

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[214] The parties agreed on $1,130.06 as the quantum of the Minister's claim as at February 25, 2009. The amount is primarily related to the compensable period and I award that amount which appears to already include prejudgment interest to that date.

5. Has Mr. Olsen incurred costs of care and will he have those costs in the future relating to any of the injuries Dr. Campbell Jones caused?

[215] Evidence of Mr. Olsen's cost of future care came from Mr. and Mrs. Olsen and from Daun Whitnack, whose report was admitted as an exhibit in the trial. Ms. Whitnack did not testify.

[216] Ms. Whitnack is an occupational therapist and an expert in the cost of future care. Based on her interviews with Mr. and Mrs. Olsen, and in particular her detailed review of the medical documentation, she recommended a number of future care items in the categories of accommodation, medication, medical therapies, specialty supplies and equipment, vocational support, transportation. Even though Mr. Olsen may not see a current need for a number of these items, Ms. Whitnack indicated from her professional point of view, these items will be required by Mr. Olsen over the period of time she indicated in her report.

[217] Mr. Olsen testified he would not use many of the items Ms. Whitnack recommended, nor had he researched many of the items on her list. For example, he did not enroll in a pain management program and questioned its utility, he did not find laser therapy nor heat and ice packs particularly helpful, he owns a cervical pillow but does not find it helpful, he does not intend to use a cane, he does not want to use an Obus Form cushion and is able to sit through church without one, he did not install a walk-in shower or grab bars when he built his new home in early 2008, he has not seen a psychiatrist, and he has not purchased an AMA membership. He testified he could still change a tire by himself in 2007.

[218] In any event, none of the items Ms. Whitnack suggested Mr. Olsen will need actually were acquired during the period November, 1997 to December 29, 1998. Consequently, Mr. Olsen is not entitled to any compensation for the cost of care as none is attributable to the injury caused by Dr. Campbell Jones.

6. Did Mr. Olsen fulfill his duty to mitigate his damages relating to his claim for loss of housekeeping, cost of future care and lost income?

[219] Mr. Olsen actively sought treatment for his symptoms from November 26, 1997 until December 15, 1998. As a result, it is unnecessary to consider the issue of mitigation during the compensable time frame. However, if Dr. Campbell Jones had been liable for Mr. Olsen's injuries over a longer period of time, I would have concluded Mr. Olsen did not mitigate his losses. Mr. Olsen quit going for any form of therapy after December 1998, except when he attended to be assessed for the purpose of the trial. More than one health care provider suggested a pain clinic would be beneficial, but Mr. Olsen did not follow up on their recommendation. I would have reduced the overall award by 20 percent due to Mr. Olsen's failure to mitigate.

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V. Summary

[220] Dr. Campbell Jones did not breach the standard of care and did not fail to obtain Mr. Olsen's informed consent to the treatment applied. Accordingly, Mr. Olsen has not established Dr. Campbell Jones was negligent.

[221] If I had found negligence, I would have concluded Dr. Campbell Jones was liable for the injury and resulting damages suffered by Mr. Olsen for the period from November 6, 1997 until December 29, 1998.

[222] I would have awarded Mr. Olsen the following damages had I found Dr. Campbell Jones to have been negligent:

General damages	$20,000.00
Past loss of income	$ 6,697.00
Past loss of housekeeping	$14,380.00
Subrogated claim	$ 1,130.06
Total	$42,207.06

[223] Pre-judgment interest would have been added to each of those amounts where appropriate, except for the subrogated claim which appears already to include interest.

VI. Costs

[224] Dr. Campbell Jones, as the successful party, is entitled to his costs of this action. If there are any issues in that regard, counsel may address them by scheduling an application for that purpose within 30 days of the date of this judgment.

Heard between March 2nd and 25nd, 2009.
Dated at the City of Edmonton, Alberta this 26th day of June, 2009.

M.G. Crighton
J.C.Q.B.A.

Appearances:

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Corrigendum of the Reasons for Judgment
of
The Honourable Madam Justice M.G. Crighton

Please note that Mr. Richard C. Secord was added as counsel for the Defendant.

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