

CHRONIC PAIN AND  
FIBROMYALGIA

If you suffer from chronic pain, fibromyalgia or chronic fatigue resulting from a car accident, slip and fall or negligent treatment by a healthcare provider, you face significant challenges. The invisible symptoms you suffer from silently are not widely understood by the average person or even by the medical community. Furthermore, the symptoms of your disability are largely subjective and not easily quantified by your **treatment providers**.

**We can help.** Bogoroch & Associates LLP is dedicated to improving the lives of injured victims and their families. Our goal is to achieve the best possible result for you and your family, while holding the responsible party accountable.

### What is Chronic Pain?

Chronic pain is different from acute pain (that is, pain that begins suddenly and directly stems from injury or disease). The International Association for the Study of Pain describes chronic pain as any pain in any area of the body that lasts more than one month beyond the reasonable or expected recovery time for an injury or disease. Chronic Pain Syndrome involves a primary complaint of chronic pain, with the presence of at least six of the following factors:<sup>1</sup>

- Diagnosis of soft tissue injury;
- Multiple symptoms complaints, for example, headaches or fatigue;
- An unsuccessful attempt to return to work;
- Guarded movements or avoidance of many activities – an invalid-like lifestyle;
- Ingestion of multiple pain medications such as analgesics, tranquilizers, etc.;
- Frequent and multiple physician visits;
- Development of family and marital problems;
- Reduction in or loss of libido;
- Broadly-targeted anger, frustration and irritability;
- Anxiety and/or depressive symptoms; and
- Sleep disturbance.

Chronic pain syndrome can substantially interfere with your ability to function in your daily life. It can erode your confidence, self-esteem and general well-being. It can also render you vocationally and functionally-disabled.<sup>2</sup>

### Fibromyalgia Explained

Fibromyalgia can be described as: 1) a history of widespread pain lasting at least three months, and 2) pain in 11 of 18 tender point sites on digital palpation.<sup>3</sup> Widespread pain is pain on the left side or right side of your body, or above or below your waist. If you suffer from fibromyalgia, you also suffer from axial skeletal pain (cervical spine, anterior chest, thoracic spine or lower back pain).

### Challenges Faced with Chronic Pain or Fibromyalgia Lawsuits

Lawsuits involving fibromyalgia, chronic pain or chronic fatigue are among the most difficult, for the following reasons:

- 1) there remains widespread scepticism amongst the medical community regarding these conditions;
- 2) the onset of severe and disabling symptoms is often the result of a relatively minor trauma; and,
- 3) there is an absence of “objective” physical findings.

Many insurers and defence lawyers will not accept your diagnosis of fibromyalgia and will disregard your invisible pain. We understand the nature of your condition and will marshal the evidence necessary to establish its legitimacy. We will neutralize the impact of defence experts and, at Trial, we will ultimately persuade the court to award you fair compensation for your losses.

<sup>1</sup> D. Corey, “Chronic Pain Syndrome: Identification and Management” (1988) 9 The Advocates’ Q. 223.

<sup>2</sup> Minnesota Board of Medical Practice Update Newsletter, Spring 1997.

<sup>3</sup> F. Wolfe, et al., “The American College of Rheumatology 1990 criteria for the classification of fibromyalgia: report of the multicenter criteria committee” (1990) 33:160 Arthritis Rheum 72.



## FREQUENTLY ASKED QUESTIONS (& ANSWERS)

### **Q: Do I have a time limit to file my lawsuit?**

**A:** Generally, you must file a lawsuit within two years of the date of the incident or you lose your right to obtain compensation. However, given the invisible nature of fibromyalgia or chronic pain, you may not realize you suffered an injury until a later date. In these cases, there may be some flexibility with time limits. **We can advise you as to whether you have exceeded the time limit.**

### **Q: How long will my lawsuit take to resolve?**

**A:** The length of your lawsuit will depend on the nature of the triggering event or accident. The steps in a lawsuit include the following:

1. Collecting the relevant medical records and investigating the merits of the case;
2. Issuing the Statement of Claim;
3. Serving the Statement of Claim on the opposing side;
4. Completing the Discovery process, including Examinations for Discovery;
5. Conducting Mediation; and
6. Proceeding to Trial, if required.

Many cases can be resolved without a Trial. But if your case does not settle at or after Mediation, additional steps are taken before Trial, such as attending a Pre-Trial conference. Throughout the litigation process, we will continuously evaluate your case and will discuss the merits of your case with you at every stage of the proceeding.

### **Q: How do I start a lawsuit?**

**A:** After our initial meeting, if retained, we will investigate your losses by requesting medical reports from your healthcare providers and obtaining expert opinions. In chronic pain cases, it is essential that you are examined by a well-respected rheumatologist or physiatrist. We may also arrange for you to be assessed by a vocational expert, who will comment on your future employability and ability to perform tasks on a consistent and regular basis. Assuming the expert opinions are favourable, we will prepare a Statement of Claim, which will be filed with the court and served upon the parties being sued. A Statement of Claim is a document that explains which parties are involved, the allegations of negligence, and the injuries you suffered as a result.


### **Q: What happens after I file the Statement of Claim?**

**A:** Once the Statement of Claim is issued, we will serve the Statement of Claim, obtain Statements of Defence, and conduct the Examination for Discovery. This is the first major step after

issuing the Statement of Claim and is similar to a Pre-Trial hearing. At Examination for Discovery, all parties are required to give evidence under oath about the matters in question. Due to the subjective nature of your symptoms of chronic pain, fibromyalgia and chronic fatigue, your credibility is of primary importance at Examination for Discovery. After Examinations for Discovery are completed, we will reassess your case to see whether it should go to Trial. We then discuss the estimated costs, and if appropriate, set a date for Trial.

### **Q: What are the chances that my case will go to Trial?**

**A:** Lawsuits involving chronic pain or fibromyalgia are particularly difficult and risky, and there is no guarantee that the opposing side will settle short of Trial. We make every effort to try to settle your case while continuing to prepare for Trial. Mandatory mediation is an effective tool which can assist in early resolution of cases. We will ensure that prior to mediation we have all reports and records from your treatment providers, and we will obtain medical and vocational expert reports, and accounting reports to increase your chance of a settlement. We will always discuss with you the expert opinions, and your chances of success at Trial, to ensure you make an informed decision about whether to continue with your lawsuit.



## THE CHRONIC PAIN AND FIBROMYALGIA CASES WE HANDLE

Your symptoms of chronic pain or fibromyalgia may have resulted from a variety of causes. Our experienced team of lawyers handle lawsuits involving chronic pain from any of the following traumatic events or accidents:

- **Motor vehicle accident**
- **Slip and fall incident**
- **Sudden onset of a medical condition**
- **Negligent treatment by a healthcare provider**

We also represent those who have been denied long-term disability benefits by their insurer.

## OUR COMMITMENT TO YOU

Bogoroch & Associates LLP is dedicated to providing access to justice and obtaining the compensation you deserve. We work promptly and proactively to advance your case. We will arrange for you to be assessed by highly-qualified experts with experience and expertise in fibromyalgia, chronic pain and chronic fatigue cases. We will obtain all of your medical records to ensure our experts have all relevant information so that the report is complete and accurate. We believe that respect is critical to the lawyer-client relationship. We treat all of our clients as we expect to be treated – with respect and compassion. Every case is prepared diligently with persistence and determination in order to obtain the best possible settlement.

## WHO WE ARE

### Lawyers with Over 30 Years Experience

At Bogoroch & Associates LLP, we represent victims of chronic pain and fibromyalgia in Ontario. Our law firm has been named by *Canadian Lawyer Magazine* as one of the Top 10 Personal Injury Law Firms in Canada.

- Consultations are always free
- We take cases on a Contingency Fee basis - we only get paid if we recover money for you

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