Welcome to the information podcast series brought to you by the Lerners Injury Law Group.
This podcast has been designed to help answer some questions you may have as you make a decision to hire a lawyer.

Now, here's Bill Simpson and Nigel Gilby.

Bill: Nigel, this is a first. We're going to have a panel interview today. We have three exciting guests. They are all very competent occupational therapists representing different backgrounds. One is a sole proprietor who runs his own business, the second is working for a large rehabilitation company with offices in several cities in Ontario, and the third works for what I would call a mid-size company who does a lot of work through mid-western and southwestern Ontario. They are of different ages, different levels of experience and very unique backgrounds. We wanted to bring them on because trying to understand what occupational therapists do is a pretty common question when we meet with somebody for the very first time.

Nigel: Yes it is. I have gone up to the hospital and met people that have fairly significant orthopedic injuries. They're in bed, they're in a lot of pain and I tell them, you're going to be out of here in a day or two, and they look at me like I'm crazy and then they phone me and say, 'oh my god, they're discharging me today', and it's a day or two later. Occupational therapists really play a very important and early role in a person's rehabilitation and really are the individuals that get involved in helping to get them home because when the hospital says it's time to go, it's time to go, and whether you have a place to go or whether your house is ready for you to move into or not depending on the injury, that is not that relevant to the hospital, they have got to get that bed cleared and put somebody else that needs it more than you into it.

Bill: That's right. One of the things we've been talking about in the podcast so far is that a very skilled lawyer can reduce the feeling of being overwhelmed for a new client who's just been through a bad injury. And by that I mean that all of the lawyers here at Lerners who are doing injury and disability work, are very well connected with the leading rehab therapists in each field including occupational therapists and we're able to make suggestions or recommendations to a client on who might be able to work well with them so that's one less thing that a person has to worry about as they're trying to get home.

Nigel: Yes, and as I have often tried to explain to clients, I compare myself to the orchestra conductor. I don't play the music, but I make sure that everybody is playing the same tune or playing the same song and sounding the way they are supposed to. That means making sure that the different parts of the orchestra, in this case the different parts of a person's rehabilitation team, fit together, they are the right people and they're going to work together in the best possible way to get the person back to recovery as soon as possible, and to the best extent they can.

Bill: Another reason why we're doing this interview is because a second theme that we've been talking about in our podcast so far is that a person who's hurt has the right to choose the people who help them. It isn't a situation where a person is required to take a therapist that is proposed by his or her insurance company. If you're listening to this podcast and an occupational therapist has been recommended to you, or if you are recovering from an injury and you're uncertain about the role your occupational therapist is supposed to have in your case, we hope that this interview will be helpful to you and be informative. We'll be right back.

[Music; Now back to Bill and Nigel (voiceover)]

Bill: Nigel, you and I are very excited today because this is a first for us; we're having a panel discussion. We have three very talented occupational therapists who are joining us. They are Melissa Knott from Pursuit Health Management, Agnes Agnelli from DMA Rehability, and Anthony Ruddick, we call him Tony, from Anthony Ruddick Consulting. Thank you to each of you for joining us.

Tony: Glad to be here.

Bill: One of the most common questions that Nigel and I get when we go to meet with a new client, and probably you each get this too, is people always say, 'what is an occupational therapist?' If you haven't had a reason to work with an occupational therapist before you're often totally uncertain what they are. Melissa, can I put you on the spot and ask you to try and describe to the listener what is an occupational therapist exactly.

Melissa: That is a real common question. We're not physiotherapists. Probably the biggest misconception is people think we're going to give them exercises and help their knee get better. We take a much broader view and look at how someone is doing physically; if they have any difficulties with cognitive infections, so things like memory or attention focussing on things; and how they are doing emotionally. We also take a look at their environment and the things that they need to do: looking after themselves, their house, childcare, getting back to work, golfing, as would be very important to you guys, and looking at where the barriers are and how we can help them get back to doing those things.

Nigel: Let me ask a question and I'll ask this of you, Agnes. We deal with a lot of serious injuries and claims. People are in the hospital and there are occupational therapists in the hospital so you are all involved in what I will call private enterprise. You are not associated with the hospital; you are not paid by OHIP (Ontario Health Insurance Plan), so why would someone need your services if they have occupational therapists in the hospital?

Agnes: Where an occupational therapist in any one of our environments would come in is when they are getting discharged from the hospital to go home. All of our practices are community based. We look at people in their environment and, in the situation that you spoke about Nigel, that would be their home environment. We would see what they need to get them home safely; identify assistance that they may need; assist the family in coping with having their injured person, loved one, come home. That's the kind of thing we initially do and then carry on from there. As their function gets better then we look at their other roles in life as Melissa spoke about. Their work role; their family role; but immediately upon discharge we're looking to get them home safely.

Nigel: Tony, if I can ask you this question. Because you are not OHIP (Ontario Health Insurance Plan) funded and people are always concerned about money, particularly where they have been in an accident and they're not earning an income for a period of time when they can't go back to work, how do they pay you?

Tony: Basically, all the charges for our services are put through the auto insurer so they don't pay any money out of their pocket for a service provider.

Nigel: That's if they're involved in an automobile accident.

Tony: Yes.

Nigel: And if they're not involved in an automobile accident, they're involved in some other type of accident, let's say for example a boating accident, then what?

Tony: Quite often people are left to their own means to fund services and support if they don't have the third party to pay.

Bill: One of the things we see sometimes is some confusion about the role of the CCAC, or the Community Care Access Centre, so let's talk about that for minute. Where there has been an accident involving a motor vehicle insurer, Tony, I think what you're saying is that your services are covered directly under that auto policy.

Tony: Correct.

Bill: But there may be people who have been injured who don't have access to an insurance policy so there are also CCAC OT's (occupational therapists), that's a mouth full, that there are CCAC OT's as well. Agnes, how does that work into this puzzle?

Agnes: Certainly CCAC is available to people who are involved in a motor vehicle accident and certainly people who don't have any other source of income. Given the amount of dollars that people are entitled to as part of their automobile accident, our approach is to facilitate CCAC to access what they can. That comes out of a different pot of money, not from the auto insurer. If they are eligible and if CCAC will do it, it tends to be shorter lived, it tends to be immediate need and ongoing therapy is not typically what they would provide.

Nigel: So let me ask this question and Melissa, I'll direct it to you. Do people that have disability policies through their work place have an entitlement to have occupational therapists paid for under those policies?

Melissa: Generally. If someone is on short term or long term disability and they're needing assistance to get back to work we would have funding through the party payer there. Alternately it can be through extended health benefits but occupational therapy is a little bit less frequent.

Bill: If you've got really limited access to, I guess, your other insurance policies to access occupational therapy services, it's more typical to get your massage or physio than you would ever get an occupational therapist covered by say Manulife or another party.

Tony: Yes.

Bill: When we go to the hospital one of the most common questions after we try to explain what an occupational therapist (OT) does is, 'who's going to get me in the house and where am I going to get a bed?' Ramps and beds tend to be a big concern for people who want to get out of the hospital and get home. Tony, can you talk a little about that, that occupational therapists are the front line treating professional to help a person physically get home and into their house.

Tony: The occupational therapist is the key person I think to get the person out of the hospital safely which is the goal of any therapist. Your occupational therapist, for example, in the hospital would provide recommendations; say you might need a certain piece of equipment, but the follow through to get that piece of equipment into the environment isn't something that they would do. They do rely upon the third party OT to come in and help out with that service so we would be the link to the vendor to get whatever services or equipment you need in place to manage safely at home.

Bill: Agnes, does that literally mean you get on the phone and you start calling around to see who has a hospital bed available for rent, can it be delivered in a certain period of time, and then you do that leg work for lack of a better phrase to make sure it is in position.

Agnes: Absolutely. I'm sure we all have our provider network of companies that provide assistive devices such as the hospital bed, the raised toilet seat, the bath bench, all of those kinds of things; and we have a pretty direct line to those companies who will provide the equipment within 24 hours. Often they will meet us there at the client's home and we'll make sure everything is in place. It is a very integral part. Contact with an insurer to make sure that they are fine with providing this, and typically at that front line service they do give the okay to provide that equipment, is part of what we would do as the hospital discharges. It's very much huge leg work. It is probably an hour in the hospital with the client speaking with the professionals in the hospital and five hours of phone calls and co-ordinating after that.

Tony: A key component of what the occupational therapist does is take the burden off the individual who is hurt to get the funding sorted out. They don't have to worry about getting the bill, they don't worry about how do we get it in the house, how do we manage, we take care of that. I think that's a huge service that we provide.

Nigel: When I go into the hospital and speak to people they're always surprised when I tell them you're going to be out of here in a day or two and often when they are discharged their home isn't ready for them to go into or they're not able to go into their home. In that scenario I've had people end up in seniors homes. Does the occupational therapist play any role in getting them into the facility to start with or getting them out of the facility and home as soon as possible?

Melissa: Oh absolutely. We can take a look when they're in the hospital as to what type of support they have at home: do they have someone who is able to help them, what is their home environment like, is it at all safe or could we adapt it. If it's not, then that's when we look at the respite services. That might be some place where they would stay for a week or two weeks, or a month or more, and we would liaise with them to know what kinds of services they can provide in terms of personal care, in terms of physiotherapy, and in terms of equipment. If they need equipment provided, say it's an empty room, then we would arrange the hospital bed and all those pieces of equipment. If that's there, then we don't need to worry about that. Then when they are ready to go home we'll still be looking at that transition home. They still may need some equipment or modifications to their home by the time they're ready to leave the respite or step down facility.

Nigel: Agnes, when you're dealing with automobile insurers there's this concept of reasonable and necessary. If you have somebody, for example, that has a badly broken leg and they're not going to be able to angulate it or walk on it for, let's say, six months, to what extent can you do renovations in the home and stay within that concept of it being reasonable although maybe it is necessary?

Agnes: That's a good question Nigel, and it's one that comes up often. I think the challenge that we are faced with is timing. To look at the bigger picture, there may be very extensive renovations that need to be done but they are not going to be able to be done quickly so we look at things. People want to go home. If they can go home, that's their first choice, so we look at what we can do; temporary ramps, in some instances we will put in lifts to get them in and out of the house. If they have a multi-storey house, we will look at getting their bedroom on the main floor. We're not going to likely recommend an elevator at that point in time to get them home. My approach is get them home, get them home safe, see where they are going to be at in a few months, and then determine from there what kind of renovations are going to be necessary long term. I have had instances where we have put in fairly extensive things because of that exact scenario where they are not going to be able to reach a bathroom for six months and we know that, so we have gone, and to me this is reasonable, because having somebody, quite frankly, going to the bathroom every day in a raised toilet seat with a

commode, is not reasonable, so in that situation I would say you're going to recommend a bathroom be made on the main floor if that is six months out. It really is individual and we really do try to talk to the powers that be: the attorney, the insurer, and facilitate what is going to best meet the needs of that person.

Nigel: Tony, do you want to comment further on that?

Tony: Yes, I think it's essential these days to have a skilled occupational therapist get involved with discharge planning because we're not only dealing with the individual's injuries, we're now dealing with a change in legislation that limits the amount of funds we have access to. We have to be more select on what things we would modify in a home to get that individual back to where they want to be because often people are worried about spending all of their resources on a renovation to their house versus their care needs down the road.

Bill: I think what you mean is that when you start working with somebody you know that the policy has a capped limit on what's available and that limit has declined over what it used to be and you're trying to make the best spending decisions that you can with your client.

Tony: Absolutely because the funds are limited.

Nigel: Melissa, something that Agnes had mentioned was dealing with the insurance company dealing with the attorney. I'm going to assume there are many instances where people don't have lawyers and the question I guess is how do you deal with that situation? Who hires you and do you recommend that people should have lawyers when they're involved in an accident such that your injuries require occupational therapy intervention?

Melissa: We do have some people who come to us who do not have legal representation at the beginning of their claim. Referrals often might come from the discharge nurse at the hospital or if they're in the hospital still, or if somebody is already at home perhaps they're having physiotherapy and the physiotherapist recommends that they might need some help in home. Going through the auto insurance claim process is very complicated and many of my clients find it extremely helpful to have lawyers to guide them through that process and to look at the barriers in terms of funding and accessing benefits and all that kind of coordination. It is a conversation that is had with people if they don't, but I find many do from the hospital setting.

Nigel: Agnes, do you want to comment on that?

Agnes: Our sort of philosophy is most people should have at least a consultation with a lawyer particularly if there are serious injuries involved. I think insurers expect that. I think it is the best for an individual. We certainly also have that conversation with people and advise them to connect with a lawyer. We'll provide names if necessary or if sought out, so it's something that we always suggest, that people do consult a lawyer.

Bill: Without putting words in your mouth collectively, frankly the system works better when there's a lawyer. A lawyer, regardless of who it is, as long as he or she knows what they're doing, can have those conversations with the insurance company, can have those conversations with the hospital, can assist or support you and the work you are trying to do and, as a general statement, things run more smoothly when there is a lawyer who knows and has some skills in this area and the background.

Tony: I have to agree and I also see the opposite when I've dealt with lawyers perhaps that don't deal with personal injury. You'll go to them with a question because you know the insurer has misinterpreted the legislation and they'll come back and say, 'well I'm not really sure', which

in turn ties our hands because from a therapeutic point of view we're not able to do anything. The insurer says no, what do we do? There's nothing we can do even when we know they've interpreted things incorrectly and are actually doing disservice to the client. So obviously having not just a lawyer, but a lawyer who knows what they're talking about is what I see as being really important.

Nigel: I want to spin things around at little bit. Bill and I, when we're dealing with clients who have serious or significant injuries, we're not just looking at their immediate needs, we also have to consider the needs that they will have for the rest of their lives because in presenting a case to a court or to an insurance company, for settlement purposes we try to tell them what the future care costs are going to be to look after that person for the rest of their lives. Do occupational therapists play any role in that and what is the role that you play if you do in fact play a role? Perhaps Tony, you might want to start on that.

Tony: Sure. I think occupational therapists are well positioned to life care plans or future care costs just based on the number of services and equipment and modifications that we deal with on a daily basis. We see the person from the time they go in the hospital until the time after we discharge them when they're back to their maximum functional recovery. So I think we're well suited to do a comprehensive life care plan but obviously there is certification on top of being an occupational therapist to become a life care planner.

Bill: Let's break that down just a little bit for people who are listening. A future care plan is a report that tries to identify all of the expenses a person will need because of the accident and their injury for the rest of their statistical life expectancy. Is that fair?

Tony: That's correct, Bill, all their medical and rehabilitation needs going forward.

Bill: So quite literally, if a person needed a certain combination of medication for the rest of his or her life, one of the items included in the report would be an attempt to spell out how much that would cost based on what we know today about the price.

Tony: Correct but that would also be done in conjunction with all the treating providers that are involved with that individual.

Bill: Agnes, is every occupational therapist automatically entitled to do those kinds of reports that we've just been discussing or does that require an additional set of qualifications or training?

Agnes: It certainly requires a certification in life care planning and I think in today's environment that is the bar that is held. There are certainly occupational therapists that comprise a large group of people who are life care planners but it's not exclusive to occupational therapy. People who have worked in rehab in different roles: case managers, physiotherapists, I've even seen speech language pathologists that are certified in life care planning, vocational people in some instances. I would hazard to guess that probably occupational therapists are the single largest group represented in the life care planners but it isn't exclusive to them.

Nigel: Melissa, I want to again sort of ask something a little bit different and I'm trying not to make this too complicated. When somebody suffers, in a motor vehicle accident, what's described as a catastrophic injury, they get a case manager which is somebody that basically coordinates all of the various people that need to come in and provide help or care, somebody with a spinal cord injury as an example. There are a lot of people that still sustain very serious injuries that are not deemed to be catastrophic and therefore don't have a case manager. In

those situations does the occupational therapist play any role in coordinating services and acting in any way like a case manager although not specifically called a case manager?

Melissa: I think, just looking at the occupational therapists' view, in terms of when we look at someone's physical capacity, their emotional capacity and their cognitive capacity, and how we look at people's injuries in our scope of practice that it does lend itself well to that, shall we say, informal case management. When we look at whether someone is able to achieve goals or ready to work on certain goals, say return to work, we know that pieces need to be there physically. They need to be coping well emotionally and they need to be able to carry out the mental functions of their job. That's certainly conversations that I have with my clients as to who are you seeing for physiotherapy, do you need a speech language pathologist, do we need to have a psychologist to be helping you and your family cope, so that we know that those pieces are coming together. In my practice absolutely something that is just completely inherent to practice is making sure all those bases are covered.

[Music and voiceover: Once again here's Bill and Nigel]

Bill: We've covered quite a bit of ground here. We've talked about discharge from the hospital setting and the role that an occupational therapist plays; we've talked about the assistance an occupational therapist can bring to projecting future costs once we know what a person's condition is going to be because of a disability or injury caused by an accident; but another area Nigel and I often get asked about when we go to meet with people is that sort of in between time. You're out of the hospital, you're trying to do your therapy and your treatment to recover and all the doctors say, 'well, we don't know yet, we need more time to figure out where you're going to end up', and that gets to the sometimes complicated topic of what's called attendant care. I think, from my experience, and Nigel will say the same, that attendant care is probably the second question clients want to talk to us about after we've dealt with getting them home and out of the hospital. Very briefly, Agnes, can you walk the listeners through what is attendant care and how does it get calculated.

Agnes: Attendant care is the need that an individual who is injured requires in order to carry out their basic activities of daily living. It's a form that quantifies what assistance that person needs. The form itself, I think all of us would agree, is not particularly user friendly. It can be obscure at times in different situations but it's a tool, and it's the only tool we have in the auto industry, to quantify number of hours in a 24 hour period that somebody requires the assistance of another person. For example: to cook, to bathe themselves, to get dressed, if there are behavioural issues-if they need somebody there to assist them in modulating their behaviour, to assist them to get out of the house in the event of an emergency, medication dispensing; all of those things would be quantified and a dollar value and an hour value attributed to that to which they are entitled to that pot of money, theoretically.

Bill: Tony, is it literally a line by line item: so many minutes a day for medication; so many minutes a day to get up and get started in the morning; so many minutes a day to have assistance with a meal?

Tony: Well, every item has a frequency and the duration of the task. So, for example, you might say somebody needs 5 minutes every morning to get dressed and we would calculate that times 7, that would give you the number of minutes per week and there's a certain dollar amount that is calculated on the form.

Nigel: I've often said that I hope nobody gets seriously injured but if you are going to get seriously injured make sure that it happens when you are in a car or on a snowmobile or what's considered to be a motor vehicle, and I often have the sort of standing joke that I say: if I ever

fall down the stairs and get seriously injured my wife is to drag me out and put me in the car before calling 911. Is there a big difference between somebody let's say that falls down the stairs and breaks their neck versus somebody that does that in a motor vehicle collision or a snowmobile accident regardless of whether or not it's their own fault because of what's available?

Agnes: Absolutely, 100 percent. There is a huge difference of medical rehab attendant care services available to somebody involved in a motor vehicle accident. It essentially exists to a very, very small extent if you do not have the benefits of your auto insurance assisting you. So if you fell down the stairs or you fell off the roof fixing your roof, you rely on the services that are available to residents of Ontario who have OHIP. That would include CCAC, that would include hospital services, out-patient services, but they are much more limited than what's available to you with automobile insurance. It's quite frustrating some times when you see people that have been involved in a motor vehicle accident months later and they've had no benefit of having the services of companies like ours who are there to assist people and who know how to tap into the system. There are people that definitely fall through the cracks and, quite frankly, it's a shame because that's what we pay auto insurance for and that's part of what we are entitled to.

Bill: Melissa, does the amount of attendant care get calculated once and stay the same or can it be re-evaluated from time to time and, if so, how frequently?

Melissa: Certainly it does get evaluated over time and it can be either upon request of the insurance company that they would like updated information, or if we do see that there is a significant change in a client's status. Perhaps they've had to go back in the hospital to have surgery related to their injury so we know that their care level is going to increase substantially and that we might need to get a provider and a personal support worker to help when they get home, so you want to quantify that. And likewise, if they are coming off restrictions and are substantially more able to do things for themselves then we can reflect those changes as well.

Bill: Tony, is it kind of like a stock market grab? It goes up and down over the course of a person's recovery depending on those individual circumstances for each patient.

Tony: Everyone can be different. It could fluctuate for someone, it could stay the same. It might never change for some people based on severity of their injury. It might be the maximum level when they get discharged and it might remain at that level because, for example, their injury is not going to get better. So it could be from the behavioural issue because of a brain injury or it could be because of something like being quadriplegic.

Nigel: So let me throw this question out. It may be a little bit of a toughie in some ways but we know as lawyers that the quality of lawyers is from A to Z. There are lawyers that know what they are doing, they do this work, and there are lawyers that unfortunately are idiots and still do this work. I'm going to assume that there is a variance in the quality of occupational therapists as there are in most professions. How does an individual know whether they are getting the right occupational therapist and are there questions or things that they should be asking before they say yes, go ahead, be my occupational therapist? Tony, you want to start with that one?

Tony: Sure. That's a tricky question. I think unfortunately when people have an accident it's the first time they've had an accident so they don't have a reference point. They don't know what's good and what's bad. But I think some of the questions they could ask is: how long has the person done this for; what kind of files or kind of clients have they dealt with; what is their background; have they worked in the hospital setting; have they worked just in the community; what kind injuries have they dealt with; and sort of, what is their relationships with insurers; what

are their relationships with lawyers in the industry; what is their skillset; what are they comfortable dealing with is important to find out.

Nigel: Do occupational therapists give out references where an individual could call other clients that they may have dealt with that could speak to their abilities? Agnes?

Agnes: Certainly they can. Obviously consent would have to be there to connect the two people. I think having a look at a person's CV (curriculum vitae) and not being afraid to ask questions. If somebody asked me specifically to be involved in a brain injury case I probably would not be the best occupational therapist to do that, so I think there are areas of expertise that people can practice in and I think honesty in that is important and asking, similar to what Tony said, asking can you tell me, have you worked with people with a brain injury specifically and being able to provide. If I can't, I certainly have other people that I work with that have that expertise and have that level of practice.

Nigel: Melissa, do you want to comment on that as well?

Melissa: Yes, certainly. When we get referrals in to our company for an occupational therapist, one of the pieces that falls to us as the health professionals is to determine whether we have the competency to help that client. If in our self-evaluation we don't feel we can deal with a particularly complex, I'll say, spinal cord injury, then it is within our responsibility to say we can't take that referral so that we know that the person is maybe sent to somebody else who does have expertise in that area. Clients should have some comfort level there in terms of that. Ethical OT practice does state that we should be within our realm of competency when we practice.

Bill: One of the other things that Nigel and I have noticed over the years that is a strength for most occupational therapists is that you are all pretty terrific communicators. By that I mean that you go and see our clients in their homes, you develop your own working relationships with people who have been hurt, and they often confide in an occupational therapist or disclose things to their occupational therapist that other people involved in their rehabilitation and their case moving forward don't know about and so then there is an opportunity to do something about it. Melissa, you touched earlier on the fact that where a person doesn't have a case manager or occupational therapist they're trying to keep several balls moving it forward but if I press you to go one step beyond that, there is, it seems to me, quite often an opportunity to influence the way things are unfolding where a person is not happy. Is that fair?

Melissa: Yes, quite. Being that we are in the home environment we do have the opportunity to pick up on a lot of other factors that might be barriers to someone achieving their goals in terms of how are they able to follow through on things on their own and how they're coping but from the view point of family who might be around, that sort of thing. Certainly we do pick up on some of the more subtle things. With our ability to look at injuries from multiple perspectives adding things together and saying, is this something that we need to be investigating further, does somebody need to be made aware of this, is there more challenges or barriers going on that maybe haven't been addressed.

Bill: Tony, as an example, it's not uncommon for an occupational therapist to go with a patient to an appointment with a specialist or a family doctor to try and help improve the communication back and forth where there is a little anxiety on the part of the patient.

Tony: I think that is essential for all clients. I don't think it is always approved and sometimes difficult for us to get approval from the insurer to do, but I think it would be an extremely beneficial thing for the client to have because certainly they often have difficulty expressing their

opinions and taking in the information. When it's your life they're talking about it's much more difficult to hear versus somebody else who's more objective about things.

Nigel: Maybe let me pick up on that comment about it being sometimes difficult to get the insurer to approve. We're dealing predominately here with motor vehicle accidents which can include, as we said, automobiles, all-terrain vehicles, snowmobiles, if somebody is a pedestrian and hit by any one of those, etcetera, etcetera. There's this thing called accident benefits and that is where the person deals with their own insurance company and that's really who is going to fund all of the things that we've been talking about at least at the first instance. When we go back to the issue about the occupational therapist and choosing the right one, is it important that the occupational therapist understand and know about accident benefits, or if the person has a lawyer do you just simply rely upon the fact they have a lawyer and the lawyer should be able to figure that out?

Tony: I think it's vital that the occupational therapist knows about the auto legislation. For example, one therapist could write a treatment plan one way and a therapist can write a treatment plan a different way and approval may not come just because of the wording they use and their knowledge of the wording for a particular treatment plan. Certainly, I think it is essential that the OT is aware of the legislation so they can have informed discussions with the insurer to get approval for the necessary things for their client.

Nigel: Do you find yourself in situations, Agnes, where perhaps the lawyer that's representing the individual doesn't understand the legislation or doesn't know it that well and you find yourself having to deal with those issues and ensure things are done properly?

Agnes: Yes, unfortunately we do have those instances and at the end of the day we're rehab professionals. You have to be good rehab professionals and understand how the system works, absolutely. As you said all lawyers are not created equal and we can be faced with a situation where clients are coming to us saying, 'I'm not getting my attendant care dollars; I have the PSW (personal support worker) coming in, the company is asking us for money, we don't have money'; so to the extent that we can, we would absolutely contact an insurer and say 'we filled out the attendant care form, they have ample money to fund the PSW, what is going on; can you please assist them, this is increasing their anxiety'. It's a very stressful situation when there isn't a lawyer that advocates for their client. To me, that is part of what a good law office does, is advocate for their clients.

Bill: Tony, did you want to add something?

Tony: Sure. I just find that if the lawyer is not a good help on the file that we spend our time, which should be spent on the client, dealing with administrative issues such as trying to get funding, trying to get things paid. I think it's nice if you have a lawyer that knows what they're talking about and will advocate for the client so we're not doing that part; we're doing what our role is which is the therapy not the arguing about whether this should be funded or not.

Bill: Melissa?

Melissa: That takes away from, when we do have to step into that more administrative role, the resources that are there for that medical rehabilitation. The client isn't going to get as full of a benefit from that because of the time we have to spend on all those indirect pieces. Certainly where there are fantastic legal teams in place: the lawyers, the law clerks, para-legals; where we're able to just give them a heads up, and for them to take care of all that piece really streamlines things not only for the clients and their families who are completely overwhelmed

with a large volume of paperwork, but also it simplifies things for us so that the dollars that are approved for therapy are actually spent on the direct client care that they require.

Tony: I think lawyers become an essential part of the team. I think that's what we need to emphasize; we become a team, we're all working on different aspects to help the client move forward.

Bill: We'll let that be the last word. Tony, Agnes and Melissa, thank you very much for joining us. That was a very interesting discussion and hopefully it provides a much better context for somebody who's trying to understand what an occupational therapist is and how they may fit in to this case. Nigel and I will be right back.

[Music and voiceover – Now, back to Bill and Nigel]

Bill: Nigel we have two questions for our episode today. The first comes from Dillon in London who asks this question: Does every trial automatically get tried by a jury and if it does, how many people sit on the jury and how are they chosen? We get asked that sometimes and to try and explain how they literally roll a drum usually makes most people's eyes widen up. I'll let you start.

Nigel: Dillon, the answer to that question is no, not all cases are tried by a jury and we're talking about civil lawsuits which is different than criminal cases. Basically a person that's injured in an accident has a right to have their case tried by a jury if that's their desire and they can file something called a Jury Notice and that basically says I want a jury. The defendant, usually the insurance company, can also choose to have a jury even if the plaintiff has not and so they can put in a Jury Notice saying we want the case tried by a jury. If one or both of them put in the Jury Notice then the case is going to be tried by a jury with some exceptions that I won't get into because it would become too complicated. If neither party puts in Jury Notice then the case gets tried by a single judge sitting by him or herself. Juries are selected basically at random. People within the city and outside of the city within the County of Middlesex here in London would receive Jury Notices and they show up and there are a number of maybe 150 or so that become the jury panel. Their names are literally put into a bin, they are spun and names are pulled out and they then become the jury members. A lawyer acting for the plaintiff, being the person injured, or acting for the insurance company, each has four challenges. What that means is if somebody comes up and I'm representing a client and I don't like the way they look or I don't like the fact that, let's say, they work for an insurance company, then I can object to that person sitting. The difficulty is once you've used up your four objections, when the fifth person comes along you have no ability to object to them being a jury member. When I'm doing jury trials I try not to use all four objections because I'm concerned when I use the fourth one I may get something worse coming as the fifth. Basically, the answer is no, not every case is tried by a jury but you do have the right to a jury trial if that's what you want.

Bill: There are also some statutory limitations. For example, a person who has a claim against a municipality by law can have that case tried by a jury.

Nigel: That's right and that's why I said there are some exemptions to that but it gets complicated. Generally speaking, yes, but a lawyer that knows what they're doing will certainly not only advise you where you can't have a jury but, more importantly, will actually advise you where they think you should have a jury, and there are some cases quite frankly where I advise clients we don't want a jury.

Bill: Dillon that was a good question. Thank you for sending it. Nigel, our second question comes from Michelle in Woodstock and her question is this: I'm 32 years old and I had a recent

injury this winter involving a snowmobile to my left shoulder. When I was 24 years old I had a prior car accident and badly broke my leg. If I proceed forward with the legal case, does everything from my old accident get dredged up all over again? That's a good question.

Nigel: That is a very good question. Again, a short answer would be no but unfortunately they're not always that simple. Basically, this is how it works. Generally speaking when somebody's injured the insurance company and their lawyer is entitled to go back and examine their health history from approximately 5 years before the accident forward to the date of the accident. If within that medical documentation there is something that suggests there is a relevant issue that may have occurred before the 5 years, then they may be able to go back beyond 5 years. So if you broke your leg a number of years ago and now you have a compliant with your left shoulder, you would say 'what does my right leg have to do with my left shoulder'. Unless there is some tie in there then it may not be relevant and they may not be entitled to look at it. However, if your right leg has prevented you from working and then you have a left shoulder injury and say 'I would have gone back to work but for my left shoulder injury', then clearly the right leg injury becomes relevant because it's what had been keeping you off work and there will certainly be an issue or question as to whether you would have been able to get back to work even if you had not injured your left shoulder. So, it can be relevant and yes they are entitled to go into your history before the accident which is why it's very important to, even before you retain a lawyer, to make sure when you're filling out accident benefits forms or answering questions that you are honest about any previous injury that you suffered so that it doesn't come back to haunt you where you denied it.

Bill: I can certainly understand Michelle's discomfort with that prospect but the reality, Nigel, is that most of the clients that you and I interact with, and the same applies for all the lawyers here, there are very few people that have a truly squeaky clean medical file before an accident happens and so it's a very common phenomenon that Michelle's asking about.

Nigel: Very common and I think another reason why you really want to retain a competent lawyer as soon as possible so that they can ensure that you are providing the answers that are necessary and not giving out information that is not necessary. For example, I will be often asked to produce the client's family doctors notes and records for the 5 years before the accident. I will provide them but I will exclude anything that's of a personal nature that doesn't impact on their ability to work or directly relate to their current injury because we often have things in our medical records that may be of a confidential or private nature that you do not want disclosed to other people and I certainly do try to keep that information out of the other side's hands.

Bill: That's right. Michelle, thank you for your question. Remember that we're able to take any questions. You can email them to us at podcast@lerners.ca. They've been coming in steadily so we'll sort them and choose a couple to address in each episode. We'll be right back.

[Music]

Nigel: Bill and I would like to thank the panelists for coming in today and being part of our podcast and we hope you, the audience, found the information to be helpful and informative and we will continue to provide you with ongoing information with respect to your recovery from injuries. Thank you.

[Music and voiceover] The information podcast series is brought to you by Lerners' injury law group, with your hosts Bill Simpson and Nigel Gilby. If you would like to reach us for follow up, please click on the contact Lerners button on the podcast main page. Thank you for listening to this podcast episode.