

# WESTSIDE

## MP reaches out for input from constituents

ALBAS FROM A17

of female MP's and more members from careers other than law or medicine which was not the case in Parliaments past.

What doesn't change is that all of us must work together constructively.

Debate through dialogue and agreement into action are hallmarks of what has made this country great; we all must make sure that future generations inherit a Canada that we can all be proud of.

Dan Albas is the Conservative MP for Okanagan-

## ▼ MEDICAL MALPRACTICE

# Medical insurance lawyers put up a hard fight

**O**n March 31, 2005, a baby suffered brain damage when the placenta separated from the wall of her mother's uterus in the minutes before delivery, stopping the flow of blood to the baby's brain.

The injury was catastrophic. Among other severe impacts on her life,

she will always be fed through a tube, will never be able to walk, is not likely to be able to speak, and it is unlikely she will develop intelligence beyond that of a four-year-old.

Had she been delivered a half hour earlier, the brain damage would not have happened.

There were risk factors that should have alerted the medical people involved that extra care should have been taken.

The extra care would have prompted a more careful look at irregularities in the fetal heart rate which would have prompted an earlier delivery.

Of course, these mistakes did not lead to a prompt and fair negotiation between this baby's parents and the insurance company for the those who made the mistakes for fair compensation.

No. A very hard fought battle ensued.

The trial took 23 days resulting in a judgment in the little girl's favour rendered by Mr. Justice Pitfield on June 14, 2010.

I take my hat off to the two very excellent lawyers who prosecuted the little girl's claim, Don



ACHIEVING JUSTICE

Paul Hergott

Renaud and Ian Campbell. Medical malpractice is an extremely specialized and difficult area of legal practice.

It is difficult particularly because of the incredibly vigorous way the medical insurer defends these cases.

The story doesn't end with the hard-fought win in the trial.

The defendants appealed Mr. Justice Pitfield's decision to the top court of British Columbia, our Court of Appeal.

Renaud and Campbell had another battle on their hands.

The three judge panel of that Court rendered its decision on June 29, 2011.

The reasons for judgment can be found on the Supreme Court web site.

Go to judgments and search for Steinebach v. O'Brien.

It's a complicated read because of the medical

and legal issues involved, but sure illustrates how hard the medical insurer tried to get out of paying fair compensation to this child.

One example is the medical insurer's attack on Mr. Justice Pitfield's award of compensation for this little girl's lifetime of pain and suffering.

The argument they made to the Court of Appeal was that the plaintiff must have some mental capability to understand how badly off she is compared to other people, and that this little girl is so mentally impaired that she lacks that capability.

How does that argument sound to you? It makes my skin crawl.

You cause someone brain damage and then argue that the damage was so severe that compensation should be reduced because the person cannot fully appreciate how badly off she is?

Believe it or not, there is some basis for that argument in our law.

The trial judge had dealt with and dismissed that argument by finding from the evidence that the little girl's ability to understand and appreciate her situation was very dif-

icult to determine.

The Court of Appeal thankfully upheld Mr. Justice Pitfield's decision on that point.

Next week, I plan to write about another attack on Mr. Justice Pitfield's decision which, unfortunately, was partially successful. I expect that the attack might strike an even more controversial chord.

It has to do with his assessment of this little girl's loss of lifetime earnings.

The medical insurer didn't like the fact that Mr. Justice Pitfield assessed this loss using statistics for male earnings without a significant deduction for factors likely to lead women to earn a lower lifetime income.

Essentially, the argument was that women should get less income loss compensation than men.

*This column is intended to provide general information about injury claims. It is not a substitute for retaining a lawyer to provide legal advice specifically pertaining to your case. Paul Hergott is a lawyer at Hergott Law in West Kelowna.*

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## Summer activities for kids in Peachland

Summer is a magical time in the Okanagan, and Peachland is no exception.

Peachland is an ideal place for some summer

fun and adventure.

Returning this year, the Peachland civic recreation department is offering summer programs for kids.

Help your child develop a new life skill or make new friends this summer.

From Art in the Park, Kids Cooking, Swim Bay Adventures and Fun with Science, the public programs are designed to keep your child—or grandchild—busy and have a unique Made in Peachland experience.

Programs are offered daily mornings and afternoons throughout the summer.

Swim Bay is also in full operation offering an array of Red Cross swim

lessons for all ages and abilities.

From the first time swimmer to the aspiring lifeguard, there are programs and opportunities to help develop the basic swim strokes through to advanced lifesaving skills.

Unsure as to what level to register in?

The lifeguards are available daily to provide a swim test and help you find the appropriate swim level.

For more information check out the website www.peachland.ca or call 250-767-2133.

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