

## Court Takes Issue with Defence Medical Experts Who Derived Bulk of Their Income from Defence Work

August 24, 2016

In Ontario, a plaintiff claiming damages arising from a motor vehicle accident ("MVA") must satisfy the statutory threshold in accordance with section 267.5(5) of the Insurance Act (the "Act"). Briefly, pursuant to the Act, a plaintiff must demonstrate that he or she has sustained a "permanent and serious impairment of an important physical, mental or psychological function" in order to recover either general damages or health care expenses.

The recent decision of *Mamado v. Fridson*, decided by Justice Baltman of the Ontario Superior Court, provides insight in relation to the Court's analysis of the statutory threshold.

*Mamado v. Fridson* involved an MVA which occurred on November 1, 2010. Following the MVA, it was the plaintiff's evidence that as a result of her injuries she was unable to resume her post-secondary studies or return to any form of gainful employment. Medical experts retained by counsel for the plaintiff provided evidence that the plaintiff's impairments, which related mainly to chronic pain, sprain and strain of the spine, stress and depression, satisfied the statutory threshold.

Following the trial of the action, the defendant brought a "threshold motion", alleging the plaintiff had not demonstrated that her injuries met the criteria of the threshold. In support of this position, the defendant relied upon the evidence of two medical experts, a psychiatrist and physiatrist. The Court determined that, in their evidence, neither of the defence experts had addressed the question of whether the plaintiff's injuries met the statutory threshold and, further, both had provided evidence that was, overall, determined to be supportive of the plaintiff's claim. In the Court's decision, Baltman J. further expressed concern with the fact that the majority of annual income for both of the defendant's experts was derived from conducting medical-legal work for defendants, stating:

Even though half of [the defence medical expert's], time and two-thirds of his annual income (of approximately \$400,000) is devoted to medical-legal work for defendants, he insisted that does not influence him "in any way"; and

[The defence medical expert], appeared indignant when it was revealed that out of her income last year, which was in the range of \$450,000 - \$470,000, the majority came from assessments for defence lawyers and insurance companies. (She has never testified on behalf of a plaintiff, except on one occasion when the plaintiff also happened to be her patient). Incredibly, she is of the view that she can be seen as entirely neutral no matter to whom she owes much of her livelihood.<sup>1</sup>

In reaching the Court's decision, Baltman J. identified this evidence as one of several **factors which evidenced a “serious flaw” in the defendant's expert evidence and** ultimately found the plaintiff's injuries met the threshold. The defendant's motion was denied.

<sup>1</sup> 2016 ONSC 4080 (CanLII) at para. 28

By

[Michael J.L. White](#), [Matthew Gray](#)

Expertise

[Insurance Claim Defence](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

## BLG Offices

### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or

guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.