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CHRONIC PAIN CASES – BEWARE OF THE CIVIL JURY: A REVIEW OF MANDEL V. FAKHIM

Think hard before taking a chronic pain case to a jury trial in the current legal environment. Juries continue to be suspicious of chronic pain related injuries and are making it extremely challenging for chronic pain suffering victims. The recent case of *Mandel v Fakhim* is another prime example of this trend, to the point where the impartial judge felt he had to comment on the injustices being done by Ontario juries.

The Mandel case was centered on a low-impact rear-end accident that resulted in the plaintiff suffering from chronic debilitating pain. The plaintiff brought suit against the defendants seeking \$1.2 million in damages. Despite the fact that the plaintiff had not worked since the date of the accident in 2009; took a substantial amount of prescription pain medication every day; received numerous painful (nerve block) injections every week; underwent other invasive injections to try and control his pain; and, testified that the pain remained unrelenting – **a Jury in Toronto awarded him only \$3000 for his injuries.**

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Following this ‘award’, The Honourable Mr. Justice F.L. Myers stated:

The plaintiff claimed more than \$1.2 million in general and special damages as compensation for the [chronic pain related] injuries and losses that he says he sustained as a result of the motor vehicle accident. The trial lasted 12 days. **The usual experts for both sides gave the usual testimony. And the jury gave the usual verdict. The jury awarded the plaintiff just \$3,000 for general damages and nothing at all for past or future income loss, medical care, and housekeeping costs.**

These comments follow a series of cases relating to chronic pain (See for example *Lee v. Reza*) where the results are almost always the same: Civil juries in Ontario consistently choose *not* to award damages to individuals who suffer from chronic pain related syndromes as a result of motor vehicle crashes.

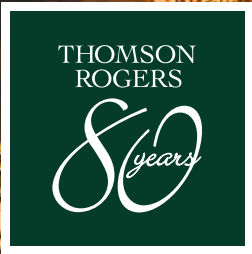
The Honourable Mr. Justice F.L. Myers goes further to comment on the current injustices of the Ontario civil jury system:

While **jury trials in civil cases seem to exist in Ontario solely to keep damages awards low in the interest of insurance companies, rather than to facilitate injured parties being judged by their peers**, the fact is that the jury system is still the law of the land. This jury has spoken and did so loud and clear.

Well, the message is certainly loud and clear “Plaintiffs Suffering from Chronic Pain Beware” – Ontario’s current jury system may not do you justice. It remains extremely important to take the correct approach when litigating these cases. For more information on the best practices for litigating chronic pain cases in Ontario see the very informative article [LITIGATING CHRONIC PAIN CASES: What Plaintiffs, Health Practitioners, and Personal Injury Lawyers Need to Know](#) written by my colleague [Deanna Gilbert](#) (Partner at Thomson, Rogers). ■ ■ ■

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Over the past several weeks we've been asking for your help to decide how to allocate an \$80,000 donation for our 80th anniversary. This donation was based on which of 5 stories of perseverance and recovery inspired you the most.

Your votes resulted in the following distribution of our donation:

- Tina for Spinal Cord Injury Ontario: **\$30,000**
- Zoe for The War Amps – CHAMPS Program: **\$15,500**
- Scott for the Brain Injury Association Peterborough Region: **\$9,000**
- Fere for West Park Healthcare Centre – Prosthetics and Orthotic Services: **\$9,000**
- Anthony for Ontario Brain Injury Association: **\$9,000**

Additionally, **\$7,500** is being given to various charities chosen by our clients. A complete list to follow in our next ABR updater.

We would like to thank you for voting and helping raise the awareness of these 5 charities. We look forward to another 80 years of helping clients.



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