



Transportation Law Mock Trial

May 16, 2012

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FACT SCENARIO



THE INCIDENT

This action has been commenced as a result of a tragic single vehicle accident which occurred at approximately 10:45 p.m. on Tuesday, August 10, 2010. At the time of the accident, the driver, Adventurous Alana, age 19, was travelling westbound on Forest Road at a speed in excess of 90 kilometres per hour. Adventurous Alana, and her cousin, Lisa Love, were on their way to the Kicking Horse Tavern, as they were celebrating Lisa Love's recent job promotion. They were coming from the Drinking Hole Tavern, where they had left approximately 15 minutes before the accident. They were at the Drinking Hole Tavern for about an hour and a half and had consumed three beers each. Adventurous Alana's blood alcohol reading at the time of the accident was .18 mg.

Adventurous Alana navigated on an uphill section of Forest Road West, where the roadway shifted horizontally about one lane width to the north in a relatively short travel distance. The abrupt crest in the hill, the horizontal shift, and the lack of pavement markings on the westbound approach to the collision location affected Adventurous Alana's opportunity to ascertain the exact lateral location of an oncoming vehicle.

As Adventurous Alana proceeded westbound, an unidentified eastbound vehicle came over the crest of the hill. Likely in response to her view that the oncoming vehicle was headed straight into the path of her vehicle, Adventurous Alana sharply veered her car to the right, causing her passenger side tires to travel onto the steep, narrow gravel shoulder of the road. Adventurous Alana lost control of her car, and it fishtailed, skidded, and struck a rock solid retaining wall in the ditch along the west side of the road.

While Adventurous Alana's were relatively minor, Lisa Love suffered significant lower back injuries, as well as injuries to her ankle and wrist.

At the time of the accident, it was dark and clear. There was no overhead lighting on the road. The pavement surface was made of asphalt and the road condition was dry. Forest Road did not have any road markings or warning signs. It had been slated for both, but the municipality did not get around to putting them in before the accident. Adventurous Alana

had travelled on Forest Road on a few occasions previously, but only in the daytime. She had been fully licensed for about a month at the time of the accident. It should be noted that this was the first known accident that ever occurred on Forest Road.

Liability and damages are both contentious issues in this action.

DAMAGES

The degree and nature of injuries and damages for Lisa Love remain highly contentious.

As a result of the motor vehicle collision of August 10, 2010, it is alleged that Lisa Love sustained a multitude of serious injuries and associated symptoms, the most serious of which were orthopedic injuries relating to Lisa Love's wrist and back.



JUDGE GORDON

The Honorable Judge

Portrayed By:

GORD KIRKE





GORD KIRKE

gord@globalresolutions.com

Gord Kirke is one of Canada's leading commercial lawyers. For over 35 years, Gord has been negotiating contracts for commercial and corporate parties. Gord understands the challenges of negotiation and the importance of preserving relationships making him an excellent choice for mediating disputes. His areas of expertise include:

- Commerical/Corporate Disputes
- Intellectual Property
- Trademark and Copyright
- Organizational Disputes
- Products Liability
- Professional Negligence
- Personal Injury
- Sexual Assault
- Disability

Mr. Kirke was retained by the Toronto Blue Jays Baseball Club for U.S. Senator George Mitchell's investigation into performance enhancing drugs in baseball. Gord assisted the Toronto Maple Leafs in their search for a President and General Manager. In 1997, he completed the Players First Report on behalf of the Canadian Hockey League in connection with sexual abuse and harassment in hockey. Both the York Region Abuse Program and the Children's Aid Foundation have honoured Mr. Kirke for his contribution in the war against child abuse.

Mr. Kirke received his LL.B., LL.M., D.JURIS (HON.) from Osgoode Hall Law School. He is an adjunct Professor at Osgoode Hall Law School, University of Toronto Faculty of Law, and teaches at several other law schools in Canada and the United States. Gord has published in several journals and authored many legal articles.

Mr. Kirke has served as President of the Sports Lawyers Association. He is a Director of the Canadian Centre for Ethics in Sports and Tennis Canada. He is a past Director of the Children's Aid Foundation of Metropolitan Toronto and the Chair of Tennis Matters Committee. He is a past Director of the Scarborough Distress Centre and serves on the boards of several other charities including the Special Olympics, the Conn Smythe Committee for Easter Seals, Prostate Cancer Canada and Scarborough Hospital.



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OUTLINE OF ANTICIPATED EVIDENCE





MS. LISA LOVE

Plaintiff Passenger

Portrayed By:

LISA CHUYOW



Lisa Love was 21 years old at the time of the accident. She will testify that her seatbelt was properly fastened. She will state that she and her cousin had made plans to celebrate her recent job promotion from a contract journalist to a junior editor. Adventurous Alana asked her to decide at which bar she wanted to celebrate. Lisa could not decide, as there was a special on a great beer at Drinking Hole Tavern, but her favourite band was playing at the Kicking Horse Tavern. Adventurous Alana suggested that they should simply attend both and bar hop – after all, this was Lisa’s first promotion, and hopefully the start of a long and promising career.

Lisa Love will testify that she recalls entering the Drinking Hole Tavern at approximately 9:15 p.m., and remembers consuming two or three beers. Adventurous Alana was picking up the tab, so she did not pay much attention to that detail. She remembers that a nicely groomed gentleman was taking their orders and appeared to be the only employee on duty that night, but he seemed preoccupied or busy and barely said two words to them the entire evening.

Lisa Love rushed out of the Drinking Hole Tavern at approximately 10:30 p.m., as they were eager to catch their favourite band at the Kicking Horse Tavern. Lisa remembers seeing the halo of oncoming headlights, but considered them to be unremarkable. She has no recollection as to whether they appeared to be approaching them head on. All she remembers is Adventurous Alana swearing and jerking the steering wheel to the right. The next thing she knew, she was throwing her hands in front of her to protect her head from the dashboard.

To this day, Lisa Love still complains of severe back and wrist pain, which greatly impacts her quality of life and activities of daily living. She will testify that she is simply unable to function as she used to, cannot perform routine housekeeping activities, and has no social life as a result of the accident. Likewise, Lisa loves (no pun intended) to ride her bicycle, no matter what season, but her injuries prohibit her from doing so. She eventually returned to her employment, but has been performing modified work duties to accommodate the constant discomfort in her back.



Lisa Chuyow

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Profile

Lisa practices civil litigation with an emphasis on insurance defence. Her areas of focus are personal injury, product liability, property damage, municipal liability, construction law and environmental law.

Lisa joined McCague Borlack LLP in 2008 as a summer student. After articling with the firm in 2009, Lisa joined the firm as an associate in 2010.

Associate Lawyer

Bar Admission: 2010

Practice Areas

- Construction Law
- Environmental Liability
- Municipal Liability
- Personal Injury
- Products Liability
- Property Insurance

Education

Lisa attended law school at the University of Toronto. She graduated summa cum laude with a Bachelor of Arts and Science (Honours) from the interdisciplinary program at McMaster University.

Publications and Speeches

- **Recent Decisions: Mediations not occurring within '60 days' deemed to have failed** by Tracy Brooks, Lisa Chuyow, MB News Alert, February 25, 2012
- **Liability of Vehicle Owners: The Ontario Superior Court of Justice's Decision in Case v. Coseco Insurance Co.** by Lisa Chuyow, MB Transportation Practice Group Seminar, November 10, 2011

Professional and Business Affiliations

Lisa was called to the bar Ontario Bar in 2010. She is a member of the Canadian Bar Association, the Ontario Bar Association, Law Society of Upper Canada, and the Advocates' Society.



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MS. ADVENTUROUS ALANA

Defendant Driver

Portrayed By:

ALANA ABELLS

Adventurous Alana was 19 years old at the time of the accident. She will testify that at the time of the accident she was driving a 2009 Pontiac Grand AM GTI, a durable and reliable vehicle, that she purchased a few months prior to the accident. She obtained her 'G' license about a month before the accident, and will admit that she had not taken any driver education courses.

Adventurous Alana recalls entering the Drinking Hole Tavern at approximately 9:30 p.m., but does not remember how many drinks she consumed. She will testify that it was at least three. She does recall that her favourite beer was on special that night. While at the bar, she mingled with a few of the patrons, and the gentleman behind the bar that appeared to be the owner. Adventurous Alana would classify her time at the bar as "mellow", "uneventful" and "relaxing".

Adventurous Alana left the Drinking Hole Tavern at 10:30 p.m. on the nose, and began driving west on Forest Road in the general direction of the Kicking Horse Tavern. She had driven on Forest Road a few times before, during the daytime, and she knew it was a country road that follows a hilly terrain. Adventurous Alana remembers that it was a clear, dry evening, and they were excited to get to the Kicking Horse Tavern before their favourite local band began playing at 11:00 p.m.

Adventurous Alana has lived in the country her entire life and has driven on numerous country roads, including gravel and tar roads that have no centre line. She will state that it was her practice to slow down when going up a hill in case she met an oncoming vehicle. Adventurous Alana does not recall passing any vehicles, and does not believe there were any vehicles ahead of her either. There was no overhead lighting, and she does not recall if her headlights were on low or high beam.

She will testify that she came down a hill just before the accident scene at a speed of 70 to 80 km/h. As she approached the top of the second hill, she saw the halo of oncoming headlights. She then saw the actual headlights coming overtop the hill. She thought the headlights to be on her side of the road, and she therefore steered sharply to her right to avoid what she thought would be a sure head-on collision. She tried to correct but her

tires “got sucked into the ditch”. She believes the oncoming vehicle was encroaching into her lane. She does not recall the distance separating the two vehicles, but stated that a collision would have occurred in a matter of seconds if she did not take evasive action. She has no recollection of applying her brakes, and cannot recall how sharply she steered to the right.

Adventurous Alana will state that she and her cousin had their seatbelts fastened.



Alana Abells

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Profile

Alana practices civil litigation, with an emphasis on subrogation and insurance defence. Her areas of focus are property damage, personal injury, municipal liability, and product liability.

Alana joined McCague Borlack LLP as an associate in 2008 after having summered and articulated with the firm.

Associate Lawyer
Bar Admission: 2008

Practice Areas

- Municipal Liability
- Personal Injury
- Products Liability
- Professional Liability
- Property Insurance
- Subrogation

Education

Alana graduated with distinction with a Bachelor of Arts in Psychology and Legal Issues. She graduated from Queen's University with her Bachelor of Laws in 2007.

Publications and Speeches

- **E-Discovery: Overview and Latest Developments in Ontario and Canada** by Howard Borlack, Laurie Murphy, Alana Abells, Harmonie & CLC Seminar, September 01, 2007

Professional and Business Affiliations

Alana was called to the Ontario Bar in 2008. She is a member of the Canadian Bar Association and the Law Society of Upper Canada.



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MR. JOE TWISTER
Owner of the Drinking Hole Tavern

Portrayed By:
MICHAEL BLINICK

Joe Twister is the owner of the Drinking Hole Tavern, and is of the belief that good common sense should prevail in recognizing the signs of impairment and deciding to cut off a patron. From his experience, it is not difficult to tell whether a person has had too much to drink.

Mr. Twister opened the Drinking Hole Tavern in 1992 and remains the sole proprietor, although he has family members working there as well. He worked alone the night of the accident.

Most of his patrons come by car. On August 10, 2010, the date of the accident in question, he opened at 11:00 a.m., and remained at the tavern until approximately 11:00 p.m. Twelve hours shifts were not uncommon for Mr. Twister, as he worked very hard to ensure that his business was operating safely and efficiently.

Mr. Twister will testify that Adventurous Alana and Lisa Love entered the bar at approximately 9:00 p.m., and remained in the bar for approximately 1½ hours. Each was served three bottles of Canadian beer. They paid cash for each one. There were only two other patrons at the time, and Mr. Twister was well aware of the amount of alcohol each was consuming. Mr. Twister will note that food was available as well, and consisted of sandwiches, hamburgers, and fish and chips. There were also munchies menus on the tables. Neither Adventurous Alana nor Lisa Love ordered any food.

Mr. Twister saw Adventurous Alana and Lisa Love get up to leave by means of the side door. They passed a table he was busy cleaning and pleasantries were exchanged. There was nothing abnormal about their appearance or behaviour. Specifically, Mr. Twister did not observe any sign of impairment.

Regarding his experience, Mr. Twister obtained his alcohol service certificate in 1992 under the Server Intervention Program, which was the predecessor to the Smart Serve Program. As a rule of thumb, he thought two beers an hour would be all right, but he must watch a patron beyond that point. He knew that a patron could become impaired with more or less consumption depending on body weight.

Mr. Twister acknowledges that the Smart Serve program recommends that a server “chat and check” a patron in order to assess his or her sobriety. He did say hello and goodbye to the girls, and also asked for their orders.

Mr. Twister did not have any written policies or procedures regarding the service of alcohol; however, it was his practice that in cases of intoxication, he or the staff would call a taxi or arrange for a staff member to drive the patron home if he or she lived locally. In terms of access to alternative transportation, the tavern had the telephone numbers for the local taxi companies listed on the public phone at the entrance to the tavern.

Mr. Twister was still cleaning the table by the bar when Adventurous Alana and Lisa Love left the tavern, and did not find out about the accident until weeks later.



Michael Blinick

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Profile

Michael joined the firm in 2010. He practices civil litigation with an emphasis on insurance defence, personal injury and corporate litigation. Michael formerly worked as a litigation associate at a Toronto firm, specializing in corporate and commercial litigation.

Prior to law school, Michael was the lead kinesiologist at a physiotherapy clinic where he was responsible for creating and implementing treatment plans for injured persons.

Education

Michael obtained his Bachelor of Kinesiology (Honours) from McMaster University in 2004. In 2008, he obtained his Doctor of Law degree from Queen's University.

Publications and Speeches

- **Case Study - Kusnierz v. Economical - Decision from the Court of Appeal** by Michael Blinick, Transportation Newsletter, January 07, 2012
- **Should Psychological Injuries Be Combined With Physical Injuries To Determine Catastrophic Impairment?** by Michael Blinick, MB Transportation Practice Group Seminar, November 10, 2011

Associate Lawyer
Bar Admission: 2009

Practice Areas

- Commercial & Business Litigation
- Personal Injury
- Products Liability
- Transportation Law



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MR. JEFFERSON HOGG

County of Hazard Representative

Portrayed By:

JOHN BIANCHI



Regarding the center line (or lack thereof), the County of Hazard representative will testify that there are literally thousands of miles of gravel road and rural paved road within Ontario where there is no centre line on hills or approaches to hills. Drivers negotiate these roads and hills daily, and are fully capable of figuring out appropriate speeds for existing road and weather conditions and staying on their own side of the road. Accordingly, the absence of a centre line does not automatically create a situation of non-repair.

The County of Hazard representative will also testify that the municipality's decision to rehabilitate, as opposed to reconstruct Forest Road to present day standards (actions which it undertook prior to the accident) constituted a reasonable exercise of the municipality's decision-making authority. Ultimately, due to budgetary restrictions, the decision to leave Forest Road as-is constituted a bona fide, non-justiciable, policy decision undertaken by the County of Hazard, resulting in a road that was reasonably safe for expected users. There have been no prior accidents on the road.

The County of Hazard representative will state that Forest Road was rehabilitated on May 10 - 13, 2010 due to the growing residential area in the municipality and the corresponding increase in traffic. The transportation department already decided before the accident that Forest Road should have added signage, road side hazards, and center line painting. Indeed, the official rehabilitation drawings included the addition of a center line. However, notwithstanding the municipality's decision to rehabilitate the road, the County maintains that Forest Road was simply one of many roads that were slated for some sort of rehabilitation based on a variety of different reasons, none of which deemed necessary to require immediate attention. The center lane was not put in prior to the subject motor vehicle accident, but records show that the line was put in within a week of the motor vehicle accident.



John Bianchi

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Profile

John practises in the area of civil litigation, primarily insurance defence and commercial litigation. He has experience in a wide variety of civil litigation matters, including contractual disputes, debt collection, and construction litigation.

Before joining the firm, John spent two years at a full-service law firm, focusing on business law and commercial litigation. In his last semester of law school, John interned in the Legal and Business Affairs Department at one of Canada's leading brewers.

Education

John graduated with a J.D., *cum laude*, from Thomas M. Cooley Law School and a B.B.A. from the Schulich School of Business.

Professional and Business Affiliations

John was called to the Bar of Ontario in 2011 and admitted to the New York State Bar in 2009. He is also a member of the Toronto Lawyers Association.

Associate Lawyer

Bar Admission: 2011

Practice Areas

- Accident Benefits
- Bankruptcy and Insolvency Litigation
- Commercial & Business Litigation
- Construction Law
- General Casualty & Special Risks
- Municipal Liability
- Not For Profit and Charity
- Personal Injury
- Products Liability
- Sports, Recreation & Resort Liability
- Subrogation
- Transportation Law



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MR. EDWARD EDGE

Engineering Expert

Portrayed By:

RUSSELL BROWNLEE

Municipalities assume responsibility for the design, operation and maintenance of the roadways in Ontario. To fulfill that responsibility, they must regularly inspect and undertake whatever actions are necessary to ensure their roadways satisfy the accepted standards of safety. When deficiencies are found – which inevitably occurs – municipalities must take reasonable and appropriate steps in a timely matter to mitigate or remove any potential hazards.

The Ontario Traffic Manual Book 11, Part A, “Pavement Hazard and Delineation Markings”, (the “Traffic Manual”), provides that low volume rural roadways – perhaps very similar to Forest Road – must be marked with these lines along their entire length, if the road is more than 6 metres wide and carries two-way peak hour volume of 200 vehicles or more. When a continuous directional dividing line is determined to be impractical or unnecessary, short segments of directional dividing lines are required at specific roadway features, such as vertical curves and horizontal curves, with sight distances of less than 150 metres. Put another way, if a motorist cannot see over a hill for 150 metres or less, then these locations should be marked with directional dividing lines along the approaches to the crest of a hill.

The Traffic Manual further provides guidelines for temporary markings, such as “Temporary Tape” and “Temporary Roadway Pavement Markers.” The Traffic Manual also provides that directional dividing lines should be installed before the roadway is open to traffic. While temporary dividing lines could (or should) have been installed by a contractor who performs construction work on the aforesaid road, the ultimate responsibility rests with the municipality to ensure the necessary dividing lines are in place. It should be pointed out that the Traffic Manual is an advisory book, and failure to follow or be in compliance with the manual does not automatically constitute non-repair.

Given the numerous geometric challenges on Forest Road approaching the collision site, centerline markings would have greatly assisted Ms. Alana in better determining the alignment of the roadway and the lateral location of oncoming vehicles.

After careful review and analysis of this incident, this expert will opine that:

- Forest Road was rehabilitated in May 2010 to a width of 6.1 metres with a 0.5 metre shoulder width, which is significantly below recommended standards for a rural roadway with a posted speed of 80 km/h;
- A slurry seal was applied to a width of 6.5 metres, which would have included some portion of the shoulder. During dark conditions, the actual roadway width would have appeared wider than it was due to a road user's inability to distinguish between the actual roadway edge and the shoulder;
- The 80 km/h statutory speed limit should have been reviewed by the road authority given the substandard design of the roadway and lack of proper clear zones for this operating speed;
- The location of the collision was on an uphill section of Forest Road, where the roadway shifted horizontally about one lane width to the north in a relatively short travel distance;
- The crest of the hill did not allow for a 150 metre sight distance, which is an indicator used to identify substandard hills and the need for centerline marking on rural 80km/h roadways. The municipality had notice of the substandard crest vertical curve at the collision location;
- The abrupt crest in the hill, the horizontal shift and the lack of pavement markings on the westbound approach to the collision location, would have significantly affected Ms. Adventurous Alana's opportunity to ascertain the exact lateral location of the opposing eastbound vehicle and to assess her options to avoid a collision;
- Ms. Alana chose to steer her vehicle to the right to avoid what she expected would be a head-on collision with the eastbound vehicle. The narrow shoulder

width reduced Adventurous Alana's ability to recover once she negotiated this emergency maneuver;

- Had the municipality reviewed the traffic control devices and roadside hazards in a timely manner, they would have identified the immediate need to consider a reduction in the posted speed, to install centerline markings and to identify other roadside hazards.
- There were a number of opportunities for the road authority to have planned and carried out the application of required centerline markings within days of the rehabilitation and slurry seal application.

Russell Brownlee, B.Sc., M.A.Sc., FITE, P.Eng.

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Russell Brownlee, B.Sc., M.A.Sc., FITE, P.Eng. is a Transportation Safety Engineer with over 17 years of public and private sector experience in the areas of road user safety, rail safety, and transportation engineering. At Giffin Koerth he provides expert opinions in the areas of transportation system design, operations and maintenance, primarily related to road and rail facilities.

Russell is a recognized expert in undertaking in-service safety reviews of transportation facilities. He was the primary author of the Region of York and City of Toronto Intersection Operational Safety Review Guidelines and has completed safety reviews for the Ministry of Transportation of Ontario, Region of York, Region of Durham, Region of Niagara, the cities of Toronto, Hamilton, Brampton, Montreal, Denver among others. The study locations represented a variety of operating conditions from constrained freeway work zones and arterial intersections, to remote locations on rural highways.

Russell has been invited to provide in-service safety review training for transportation staff for the Ministry of Transportation of Ontario, City of Toronto, Region of York and Region of Durham. He is a regular speaker at Institute of Transportation Engineers (ITE), Ontario Traffic Council (OTC) and Ontario Good Roads Association (OGRA) events.

Russell is an active member of the Institute of Transportation Engineers. He is the Canadian District Director and represents Canada on ITE's International Board of Direction. In addition, he was the Chair of the Transportation Safety Council Executive Committee (2008 through 2010), the Vice-Chair of the Expert Witness Council Executive Committee (2010 to present) and a past member of the Traffic Engineering Council Executive Committee.

DR. BRIAN

Medical Expert

Portrayed By:

DR. BRIAN MURPHY

Dr. Brian is a fully trained Orthopaedic surgeon, holding a license to practice medicine within the Province of Ontario. He is a jack of all trades, but specializes in spinal disorders. Dr. Brian undertook a defence medical assessment of Ms. Love.

The anticipated testimony of Dr. Brian will be predominantly with respect to the orthopaedic injuries:

- (a) Back
- (b) Wrist

BACK

Available records and self report indicate that Ms. Love was involved in a motor vehicle accident in August 2010 as a restrained passenger. She recalled immediately feeling “scared” and “shaken up” with pain in her lower back and left wrist. She reports that she still experienced intense pain and discomfort, and stays away from physically exerting activities and chores.

From the available records, there is a general consensus that Ms. Love experienced pain and tightness, particularly lumbar pain. She has been diagnosed by her specialists with posttraumatic fibromyalgia, myofascial pain syndrome of the cervical spine with cervicogenic headache, and myofascial pain syndrome of the thoracolumbar spine. She was also diagnosed with a chronic pain disorder.

Dr. Brian will testify that, in reality, Ms. Love sustained an uncomplicated soft tissue strain injury involving the cervical and lumbar spine as a result of her motor vehicle accident. Based on his medical assessment, and a review of the documentation, Dr. Brian is of the opinion that Ms. Love’s prognosis is good and that any minor discomfort or self-reported pain will slowly resolve itself over time.

During her assessment, she did not exhibit considerable pain behaviour, nor fatigue.

WRIST

Dr. Brian will review the relevant medical evidence, including emergency triage records indicating that the patient's left hand likely slammed into the dashboard when the vehicle careened into the ditch: "X-rays to the patient's ring finger...swollen and blue...3 rings intact – unable to remove – consent done – rings cut off – slab done – thumb and LD234 immobile."

Dr. Brian diagnosed the following:

"Lisa Love continues to have ongoing problems with her left thumb in the region of the ligamentous and volar plate injuries. Advisable additional treatments would include the usage of a soft Velcro-type of hand brace for the thumb. This may help her with some of the heavier tasks involved in activities of daily living and household maintenance. There will, however, always be some difficulties with gripping and heavy usage of the left hand.

Dr. Brian opined, and will testify as follows with respect to the wrist injury:

"In my opinion, given Ms. Lisa Love's improved symptoms, it is **unlikely** that Ms. Love will require surgical management in the form of an arthrodesis of the MP joint of her thumb...."

"[I]t is **unlikely** that Ms. Love will have ongoing problems with keyboarding and heavy lifting on a permanent basis with her left hand. In a similar fashion, there will **not** be ongoing permanent impairments in Ms. Love's abilities to participate in many of her normal sporting and leisure activities, including bike riding, as well as in many of the tasks required of her with routine normal home, household and garden maintenance."



Dr. Brian Murphy

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Associate Lawyer
Bar Admission: 2002

Practice Areas

- Accident Benefits
- General Casualty & Special Risks
- Health, Life & Disability Insurance
- Insurance Coverage
- Malpractice & Health Care Litigation
- Personal Injury
- Sports, Recreation & Resort Liability

Profile

Dr. Brian Murphy's combined degrees in medicine and law allows him to effectively represent clients in cases of complex, severe, or catastrophic personal injury in the motor vehicle, occupier liability and professional liability areas. His ability to understand the views and reports of other health practitioners enables him to apply his medical knowledge in a legal setting for the benefit of his clients either directly or through consultation.

For about 15 years, Brian practiced medicine--seeing thousands of patients over that time frame. He had a broad based exposure to medical areas including obstetrics, emergency medicine, motor vehicle injury, pediatric injury, neurotrauma, (direct and indirect) acquired brain injury, complex injury, orthopedic injury and other catastrophic injuries. Brian has a familiarity with the standard of medical care that ought to have been provided. At different times he has represented insurers, patients and professionals in professional liability matters. He has published articles in this area and appears periodically at law related speaking engagements and educational programs.

Brian is a strong advocate of civility in the legal profession. He has worked on cases which include, for example, severe injury arising from motor vehicle injury, slip and falls, medical malpractice, obstetrical malpractice, birth injury, severe pediatric/child injury, neurotrauma, direct and indirect acquired brain injury, spinal cord injury, complex injuries, motor vehicle injury, orthopedic injury and other catastrophic injuries.

Brian is also accomplished in the art of Tae Kwon Do, having obtained his black belt.

Education

- 2003 L.L.M., Master of Laws, York University, Toronto - Thesis Topic: "Cost Shifting in Health Care"
- 2000 L.L.B., Bachelor of Laws, University of New Brunswick, graduated on Dean's List
- 1981 M.D. & B.Med.Sc., Doctorate of Medicine & Bachelor of Medical Science Memorial University of Newfoundland

Publications and Speeches

From 2003 to present, Brian has written over 40 newsletter / journal publications, presentations and speaking engagements (combined) on the topics of motor vehicle accident benefits, motor vehicle tort and medical malpractice areas.

Professional and Business Affiliations

- Canadian Bar Association - 1998 to 2010
- Ontario Bar Association - 2001 to 2010
- Health Law Section, Ontario Bar Association - 2003 to 2009
- American Association for Justice (Insurance and Medical Malpractice) - 2007 to 2009
- The Advocates Society - 2007 to 2011
- Ontario Trial Lawyers Association - 2008 to 2010



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MS. MEREDITH GADGET

Investigator

Portrayed By:

MEREDITH RADY

At the request of the defence, Artificial Intelligence Inc. conducted surveillance with regard to the subject, Lisa Love. We were instructed to monitor the subject's activities of daily living, physical mobility and social interaction.

Surveillance commenced Friday, December 30, 2010 arriving in the vicinity of the subject's address at 4:01 p.m.. Notwithstanding the time of year, it was unseasonably mild, with a temperature of 15 degrees outside. There was no lighting or activity observed at the residence. However, there was a red mountain bike with winter tires located on the north side of the porch, beside the front door of the dwelling. While there was no indication as to who had recently rode the bike, "**LISA LOVE 4-EVER**" was written in thick marker on the canvass seat. There were no vehicles in the driveway.

The subject arrived with her father at approximately 3:58 p.m. They exited the vehicle and walked toward the rear yard. Lisa Love was observed walking without any noticeable limps or signs of physical discomfort. She entered the yard, but was soon seen exiting the front door dressed in thermal biking gear, and proceeded to walk her bicycle down the driveway. The subject rode to a nearby park and vigorously cycled for 35 minutes. The subject returned home at 4:55 p.m.

As no activity by the subject was observed following entrance into the rear yard, surveillance was discontinued at 10:05 p.m.

Surveillance continued on Saturday, December 31, 2010 when we arrived in the vicinity at 11:00 a.m. The subject was observed briefly at 2:08 p.m. when she looked outside the front door. No further activity was observed until 8:05 p.m. when the subject was observed leaving her residence and getting into the vehicle in the driveway bearing license plate AKKC597. She navigated through various side streets and main roads until she arrived at the Drunken Duck tavern, the apparent location of a New Year's Party. There was a private party going on and we were unable to enter and observe. The subject left the Drunken Duck at 12:45 a.m., and drove straight home to her residence. She entered her front doors at 1:06 a.m. Surveillance was discontinued at 1:15 a.m.

Surveillance continued on Monday January 2, 2012, following a very heavy overnight snowfall. At 8:10 a.m. the subject was observed exiting her residence, with no sign of a limp and no favour given to her back. She was observed carrying a garbage bag in her dominant left hand (estimated weight 15 to 20 lbs.) to the curb. She paused briefly to catch her breath, and then lifted the bag to place in the bin at the edge of the driveway. There was no indication that her wrist or back were causing her pain or discomfort. She proceeded to enter the garage, retrieve a shovel, and spent the next 37 minutes shoveling the driveway of her residence. She laboured briefly, favouring her lower back on two occasions, but finished the entire driveway, returned the shovel, and re-entered the residence. No further activity was observed, and surveillance was discontinued at 4:30 p.m.



Meredith Rady

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Profile

Meredith has built her experience working on matters including large-scale fire damage, international disputes involving conflict of laws issues, elections disputes, and professional negligence claims. She enjoys appearing before Courts and Tribunals and has experience drafting materials for all levels of Courts, including appellate Courts.

Meredith seeks to provide clients with cost-effective solutions to legal issues. She strives for excellence in both her oral and written advocacy to achieve satisfying results. Her attention to detail and timely response ensures strong relationships with her clients.

When she is not working, Meredith enjoys reading, travel, playing sports and finding new places to go hiking and cross-country skiing.

Associate Lawyer
Bar Admission: 2011

Practice Areas

- Appeals
- Commercial & Business Litigation
- Energy Law
- Environmental Liability
- Marine Law
- Products Liability
- Professional Liability
- Sports, Recreation & Resort Liability
- Subrogation
- Transportation Law

Education

Meredith graduated from the University of Western Ontario with an Honours Bachelor of Arts degree with distinction in Political Science in 2007. She obtained her Juris Doctor from Queen's University Faculty of Law in 2010.

While in law school, Meredith was selected for an international exchange at the University of Groningen in the Netherlands in 2009 where she studied international commercial arbitration, foreign contract law, and international law.

In 2008, Meredith participated in the Ontario Trial Lawyers' Association Moot Competition where she was awarded the prize for Best Opening Statement.

Publications and Speeches

Meredith has contributed to articles discussing products liability and motor/marine carrier cargo claims, including:

- **Recent Developments in Loss Transfer** by Craig Edwards, Meredith Rady, MB Transportation Practice Group Seminar, November 10, 2011
- **Motor and Marine Carrier Cargo Claims** by Stephen Barbier, Meredith Rady, MB Lunch Seminar, June 07, 2011

Professional and Business Affiliations

- Law Society of Upper Canada
- Ontario Bar Association
- The Advocates' Society



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PHOTOGRAPHIC EVIDENCE





Photograph #1



Photograph #2



Photograph #3



Photograph #4



Photograph #5



Photograph #6



Photograph #7



Photograph #8



Photograph #9



Photograph #10



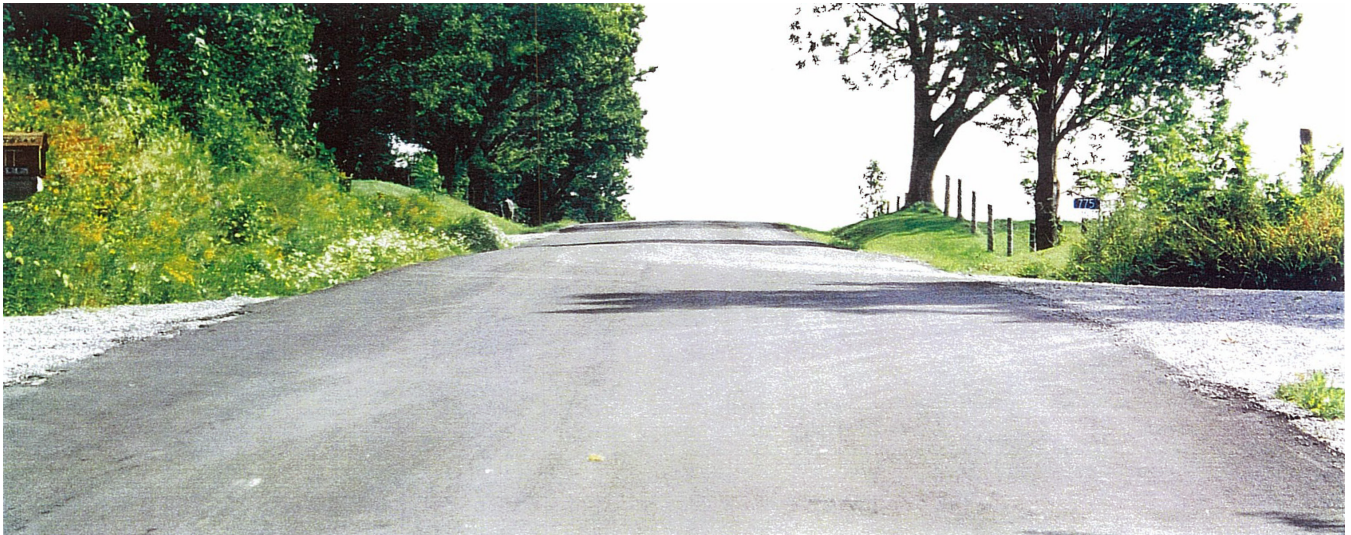
Photograph #11



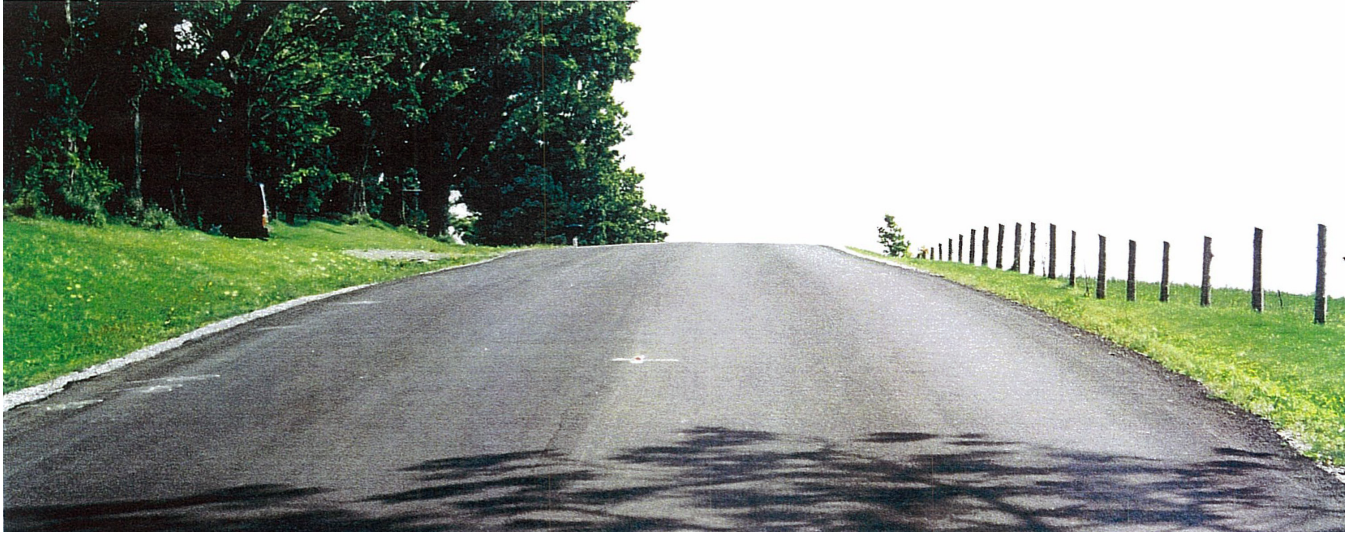
Photograph #12



Photograph #13



Photograph #14



Photograph #15



Photograph #16



Photograph #17



TRANSPORTATION LAW

Our law firm's Transportation Law Group has extensive experience with the broad range of legal issues that face the transportation sector in today's litigation-happy world. Our goal is to provide cost effective, results-oriented defence of motor vehicle tort claims and accident benefits disputes. We also provide complete coverage analysis and full service risk management advice.

As a leader in its field, our Transportation Law Group plays an important role in matters of significance to the insurance industry. Senior members have assisted the government to draft legislation regarding the "no fault" automobile insurance regime and the "threshold" requirement in motor vehicle claims. We have also acted for the insurance industry in a number of high-profile class actions, including the "salvage litigation" case and the "after-market parts" case.

Services

Litigation

We regularly assist clients in the following transportation areas:

- Motor Vehicle
 - long-haul trucking
 - automobiles and recreational vehicles
 - corporate/commercial/agricultural fleets
 - rental and leasing companies
 - dealerships and couriers
 - personal lines
- Rail (Primary and Excess Insurance)
- Inland/Dry Marine

Our lawyers frequently act for municipalities in connection with their duty to maintain roads, and their use of vehicles and equipment such as graders, sanders, stone slingers, and snow ploughs. We also act for road repair professionals, including engineers and contractors retained by municipalities or the Province.

Many of our files involve catastrophic personal injury claims, fatalities, and significant property damage claims. The Transportation Law Group understands the importance of quick action in a catastrophic loss. To this end, we maintain a 24-hour emergency response team to attend at the scene of any catastrophic loss to secure witness statements and photographs, marshal the evidence, and arrange for immediate accident reconstruction by one of our experts.

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TRANSPORTATION LAW_{cont'd...}

We also assist our clients in the following matters that can arise in a transportation context:

- Environmental claims
- Warehouse claims
- Cargo claims
- Subrogation
- Coverage issues
- Excess, umbrella, and reinsurance disputes
- Breach of contract disputes

Risk Management

Our Transportation Law Group also provides risk management services to industry clients, including:

- drafting and interpreting insurance policies
- drafting and interpreting bills of lading, lease agreements, and other transportation contracts
- assisting and advising on claims that are in excess of insurance limits
- coordinating claims between insurer and insured where there is a significant deductible or self-insured retention

Recent Publications

- FSCO Counsel Meeting Summary: How to address the mediation backlog by Jocelyn Tatebe, Part of MB Transportation Newsletter, April 10, 2012
- “Bad faith” is not a claim governed by the insurance contract by Michael Kennedy, MB Transportation Newsletter, March 26, 2012
- Accessibility for Ontarians with Disabilities Act: How to Comply with the Customer Services Standard by Lia Preyde, Harmonie Group, March 01, 2012
- Case Study - Kusnierz v. Economical - Decision from the Court of Appeal by Michael Blinick, Transportation Newsletter, January 07, 2012
- Insurance coverage for injuries caused by at-fault uninsured, inadequately insured and unidentified motorists by Jason Rabin, MB Transportation Law Seminar, November 10, 2011
- Recent commentaries on the deductibility of collateral benefits in income loss claims by Ashley Reid, MB Transportation Practice Group Seminar, November 10, 2011
- Videotaping Defence Medical Examinations: An Overview of the Case Law by Alan Drimer, Yu Mai, MB Transportation Practice Group Seminar, November 10, 2011
- A year, if a day: What insurers are talking about one year after the introduction of the “New Regs” by Tracy Brooks, MB Transportation Practice Group Seminar, November 10, 2011
- The use of no-fault reports by a tort defendant: Beasley revisited, one year later by James Tomlinson, Adrian Nicolini, MB Transportation Practice Group Seminar, November 10, 2011
- Recent Developments in Loss Transfer by Craig Edwards, Meredith Rady, MB Transportation Practice Group Seminar, November 10, 2011
- Should Psychological Injuries Be Combined With Physical Injuries To Determine Catastrophic Impairment? by Michael Blinick, MB Transportation Practice Group Seminar, November 10, 2011
- Liability of Vehicle Owners: The Ontario Superior Court of Justice’s Decision in Case v. Coseco Insurance Co. by Lisa Chuyow, MB Transportation Practice Group Seminar, November 10, 2011
- Attempted car-jacking qualifies as an accident pursuant to the Statutory Accident Benefits Schedule (SABS) by Michael Kennedy, McCague Borlack Transportation Newsletter, October 23, 2011

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ACCIDENT BENEFITS

As part of Ontario's no-fault automobile insurance regime, "accident benefits" are a complicated creation of statute that require a person's own automobile insurance provider to compensate him or her for injuries suffered in a car accident.

Motor vehicle accidents continue to be the largest single source of claims filed in our courts today, and accident benefits claims regularly accompany them.

Services

Members of our Accident Benefits Group defend a large volume of accident benefits claims, and frequently act on mediations, arbitrations, trials, and appeals, on such issues as:

- Loss transfer;
- Priority disputes between insurers; and
- Work-related injuries.

Our Accident Benefits Group also regularly attends the following:

- Counsel Forum at the Financial Services Commission; and
- Hearings before the Workplace Safety and Insurance Appeals Tribunal.

We advise clients on a regular basis on all matters relating to accident benefits, and our trial experience is rich and varied. Our Accident Benefits Group strives to maximize the results for our clients, while minimizing the legal expense.

Recent Publications

- *Recent Decisions: Mediations not occurring within '60 days' deemed to have failed* by Tracy Brooks, Lisa Chuyow, MB News Alert, February 25, 2012
- *Recent commentaries on the deductibility of collateral benefits in income loss claims* by Ashley Reid, MB Transportation Practice Group Seminar, November 10, 2011
- *A year, if a day: What insurers are talking about one year after the introduction of the "New Regs"* by Tracy Brooks, MB Transportation Practice Group Seminar, November 10, 2011
- *The use of no-fault reports by a tort defendant: Beasley revisited, one year later* by James Tomlinson, Adrian Nicolini, MB Transportation Practice Group Seminar, November 10, 2011
- *Recent Developments in Loss Transfer* by Craig Edwards, Meredith Rady, MB Transportation Practice Group Seminar, November 10, 2011
- *Should Psychological Injuries Be Combined With Physical Injuries To Determine Catastrophic Impairment?* by Michael Blinick, MB Transportation Practice Group Seminar, November 10, 2011
- *Attempted car-jacking qualifies as an accident pursuant to the Statutory Accident Benefits Schedule (SABS)* by Michael Kennedy, McCague Borlack Transportation Newsletter, October 23, 2011

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