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INSURANCE LAW BULLETIN

May 2019 – Patrick W. Brennan

Case Comment: *Lavallee v Purdy*, 2019 ONSC 2545

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Introduction

On May 6, 2019, Madam Justice Louise Gauthier dismissed the plaintiff's claim against Kristopher Purdy ("Purdy"), a paramedic and ambulance driver, as well as his employer, the Corporation of the City of Greater Sudbury ("Sudbury").

Facts

The within action arose from a motorcycle accident that occurred on September 13, 2014. The plaintiff alleged that unidentified vehicles impeded his ability to pull over safely resulting in his "laying down" of his motorcycle. The allegations against Sudbury and Purdy included improper use of the ambulance siren (intermittent as opposed to constant), the speed of the ambulance, and its effect in "startling" the surrounding drivers. The plaintiff had given evidence previously that he was not startled by the ambulance, contrary to the allegations in his statement of claim.

Evidence at Motion

In support of the allegations against Sudbury and Purdy, the plaintiff tendered an expert opinion prepared by Walters Forensic Engineering ("Walters"). Walters' conclusions were that the ambulance "startled" the surrounding drivers, that Purdy had violated ambulance operational procedure, and that the ambulance had approached traffic at an excessive speed (without reference to the ambulance's Code 4 life threatening situation status at the material time).

Reasons for Judgment

The assumptions contained in the Walters report were rejected by the court as based entirely on inadmissible evidence (that an unidentified driver was startled by the sound of the ambulance siren, that the unidentified driver in question suffered panic or stress, and

slamming his or her brakes as a result). Her Honour quoted *R. v. Lavallee*, a 1990 Supreme Court decision, in which expert opinions based upon assumptions were reviewed in detail, leaving her Honour to conclude that "...the more the expert has relied on facts not proven in evidence, the less weight the trier of fact will attribute to them". The opinion was based on inadmissible hearsay and assumptions not supported by the evidence, leaving her Honour to conclude that the plaintiff had failed to lead sufficient admissible evidence to establish any wrongdoing on the part of Purdy.

Conclusions

Summary judgment motions have long been a source of frustration for the apparent low bar plaintiffs must meet to show a triable issue for the court to consider and "kick the can" down the road to a trial. In this case, summary judgment proved effective against an action that appeared to have little merit to begin with, had contradictions between the pleadings and the plaintiff's own evidence, and an inadequate supporting expert opinion based nearly entirely upon assumptions and inadmissible hearsay evidence.

As this decision demonstrates, strategic use of summary judgment motions remains an option to defendants when faced with a claim that would appear to be one of convenience (such as bringing a municipal authority or alternate auto policy into an action to fund a settlement) rather than based upon any legitimate liability arguments.