

Mild Traumatic Brain Injuries And The Recognition Of Symptoms

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When people suffer from mild traumatic brain injuries (MTBI), it sometimes takes time for people to recognize the extent of the injury and the impact that the consequences of MTBI have on everyday life. Changes can be subtle but the impact could be dramatic. Reasons for judgement were released this week by the BC Supreme Court, Vancouver Registry, considering such a case.

In this week's case ([Burdett v. Eidse](#)) the Plaintiff was involved in 2 serious motor vehicle accidents. The first in Kelowna, the second in North Vancouver. Fault was not admitted for the first but after trial the Court found the Defendant 100% liable for the first crash. Fault was admitted by the Defendant for the second crash. Madam Justice Loo was asked to determine the extent of the Plaintiff's accident related injuries.

The Plaintiff suffered from an MTBI in the first crash. As is sometimes seen with these types of injuries the Plaintiff did not appreciate the significant impact his MTBI had on his level of functioning. The Plaintiff, who had a "bulldog" attitude took very little time off work and complained very little about the consequences of the car crash.

To those around the Plaintiff, however, the changes were noticeable. Evidence was called that there were significant changes in the Plaintiff's functioning after the car crash by those close to him. Ultimately Madam Justice Loo of the BC Supreme Court accepted that the Plaintiff did suffer an MTBI in the collision and that he was competitively unemployable as a result. The Court went on to award just over \$1.1 Million in total damages including an award of \$200,000 for non-pecuniary damages (money for pain and suffering and loss of enjoyment of life).

In reaching her conclusions Madam Justice Loo highlighted the difficulty the Plaintiff had in realizing the consequences of the car crash. Some of the key findings were as follows:

[106] When asked when he became aware that he had a problem, Mr. Burdett said that when he first saw his counsel Mr. Burns, he mentioned he had an accident, and "kind of left it" at that. No one in his crew told him he was not doing what he was supposed to be doing on the job. Then "weird things" started "creeping into my life". Friends started telling him he was forgetting things, he was having a hard time remembering numbers, he could no longer estimate the cost of a plan, and he was forgetting things at work. His crew told him to get joist hangers and he returned with something else.

They started writing things down for him so that he would remember. He finally realized “there’s something really wrong here; I need help”. He returned to see Mr. Burns again.

[107] There is no evidence of when Mr. Burdett saw his counsel the first or second time, but this action was commenced and a statement of claim filed on April 4, 2007. The statement of defence was filed July 30, 2007.

[108] Despite what his family, friends, and co-workers saw and observed of Mr. Burdett, it was not until he saw Dr. Cameron that he recognized the extent of his injuries from the motor vehicle accident of June 26, 2005.

[109] At the time Mr. Burdett worked on the Losch and Summerland Motel projects, he thought he was doing fine. In retrospect, he was not. In retrospect he realized that he was cut out of the loop, did not stay on top of matters, and let work get out of control.

[110] Several times during the construction of the Losch projects, the architect voiced to him that the project was not running satisfactorily. Not only has an architect never said that to him, but Mr. Burdett also did not realize that the project was not running smoothly at the time.

[111] Mr. Burdett’s company is still owed \$80,000 on the Losch project, but Mr. Burdett is unable to determine what the deficiencies are or what work has been left undone because he left everything to the job superintendent with whom he no longer has a relationship.

[112] The Summerland Motel project became an even bigger disaster because Mr. Burdett failed to properly manage the project. He did not write up a change order or extra work order and did everything with a wave of his hand. He never made sure that the owner had financing in place, with the result that Mr. Burdett financed much of the work with his own personal funds. He did not deal with the trades as he should have, with the result that trades walked off the job or never showed up. The job occurred at a time when carpenters and other trades were hard to get. Mr. Burdett misquoted parts of the work by leaving out necessary work, and did not know at the time that he was having difficulty estimating and working with numbers.

[188] There is no doubt that Mr. Burdett initially did not recognize the extent of his injuries: Dr. John Pullyblank testified that it is not uncommon when a person suffers neurocognitive injuries. It takes that person some time to realize that his brain does not work the way it used to.

[189] I find that Mr. Burdett is neither a complainer nor a malingerer. At first, he was not aware of the extent of his cognitive difficulties and worked without even telling those with whom he worked closely that he had been in an accident. Common sense tells me that those who worked with him would not and did not tell him that something was wrong with him or his brain. This is supported by the evidence. Instead, those who worked with him avoided dealing with him and basically cut him out of the loop.

[190] Dr. Kates, Mr. Nemeth, Dr. Cameron, and Dr. Kaushansky all spoke about Mr. Burdett’s bullish or bulldog attitude. Dr. Kaushansky put it best when he said that Mr. Burdett probably did not recognize he was injured in the accident (I pause to note that Mr. Burdett seemed genuinely surprised when the police officer’s report indicated that he had been injured). It is part of his bull dog approach: “This is a nothing accident. I’m out of here and on my way”. It explains why he took no time off work, why he told very few about the accident, and why he complained little, if at all...

[194] While Mr. Burdett clearly did not appreciate the extent of his injuries or that something was wrong with him, clearly those who were close to him—his family, friends, and workers—knew he was a different man long before Dr. Cameron’s diagnosis...

[198] I conclude on a consideration of all of the evidence that Mr. Burdett suffered soft tissue injuries and a concussion or an MTBI from the June 2005 accident. He had a pre-existing brain injury that made him more susceptible to more significant and prolonged symptoms, and he fell within that small percentage of individuals who do not recover. His soft

tissue injuries were aggravated by the January 2006 accident. The overwhelming evidence is that Mr. Burdett suffered cognitive impairment immediately after the first accident, his condition will likely not improve, and he will suffer the same problems for the rest of his life. His anxiety and depression are related to the accident and the realization that not only is he no longer the same high functioning successful businessman that he once was, but also that his condition is permanent and he is not likely to recover.

[199] I conclude on all of the evidence that Mr. Burdett is no longer capable of working as a contractor and is competitively unemployable, or put at its best, is minimally employable.

It is difficult to extract sound bites from a case like this and I suggest that anyone interested in Brain Injury litigation in British Columbia review this judgement in full to see some of the types of issues that can arise in MTBI cases.

This judgement reveals 2 issues that are worth taking note of. First that lay witnesses (friends, family co-workers) play a vital role in brain injury litigation as their evidence can be key towards establishing not just the diagnosis of injury but the severity of its impact. Second this case shows that being stoic in the face of injury does nothing to reduce the value of an injury claim. Here the Plaintiff 'bulldog' attitude did not reduce the value of his claim and in all likelihood assisted the Court in making positive credibility findings.