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DATE: 2026-06-19

SUPERIOR COURT OF JUSTICE – ONTARIO

491 Steeles Avenue East, Milton ON L9T 1Y7

RE: Aldin Devin Minott, Plaintiff

AND:

Ethan Alexander Melvin, Defendant

BEFORE: Justice Yamashita

COUNSEL: Nicole Corriero, for the Plaintiff
Jodie Therrien, for the Defendant

HEARD: April 1, 2, 7, 8 and 9, 2026, in person

ENDORSEMENT

[1] This action arises out of a motor vehicle accident that occurred on or about July 26, 2021, at or near the intersection of Highway 401 and its interchange with Mavis Road, in the City of Mississauga (the "Accident").

[2] The plaintiff, Mr. Aldin Devin Minott ("Mr. Minott"), alleges that his accident-related injuries are permanent and serious as a result of the Accident. He alleges that as a result of his injuries, he is no longer able to participate in household and personal activities to the extent that he participated in these activities prior to the Accident. He also alleges that as a result of his injuries, he has become impaired and will continue to be impaired from the ability to carry on his employment, and that he has suffered a loss of earning capacity and a loss of competitive advantage, and reduction of future earnings. Further, Mr. Minott alleges that he has received therapy and other forms of medical treatment, and that he has incurred and will continue to incur healthcare expenses.

[3] The defendant, Mr. Ethan Alexander Melvin (“Mr. Melvin”), denies that Mr. Minott has suffered the alleged injuries and that the alleged injuries in any event do not constitute a permanent serious impairment of an important physical, mental and/or psychological function.

[4] At the completion of the trial, the defendant brought a threshold motion.

[5] The key question on this threshold motion is as follows: Has Mr. Minott suffered a permanent and serious impairment of an important physical, mental or psychological function?

The Statutory Threshold:

[6] The applicable “statutory threshold” in an action for damages arising from the use or operation of an automobile is found in sections 267.4 – 267.12 of the *Insurance Act*, R.S.O. 1990, c. I.8 (the “Act”). The provisions stipulate, *inter alia*, that no one in Ontario, including a defendant owner or occupant of an automobile, is liable for damages for non-pecuniary losses or for health care expenses arising from the use or operation of an automobile, unless a plaintiff has sustained either a serious disfigurement, or a permanent and serious impairment of an important physical, mental or psychological function.

[7] Sections 4.1 - 4.3 of O. Reg. 461/96, as amended by Bill 198 (the “Regulation”), outline statutory definitions of “serious”, “permanent”, “impairment”, and “important bodily function”, and set out the necessary evidence required by Mr. Minott to prove that his impairments reach the threshold. Sections 4.1 and 4.2 of O. Reg. 461/96 provides as follows:

> **4.1** For the purposes of section 267.5 of the Act,
>
> “permanent serious impairment of an important physical, mental or psychological function” means impairment of a person that meets the criteria set out in section 4.2
>
> **4.2(1)** A person suffers from permanent serious impairment of an important physical, mental or psychological function if all of the

following criteria are met:

1. The impairment must,
    - i. Substantially interfere with the person's ability to continue his or her regular or usual employment despite reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue employment,
    - ii. Substantially interfere with the person's ability to continue training for a career in a field in which the person was being trained before the incident, despite reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue his or her career training, or
    - iii. Substantially interfere with most of the usual activities of daily living, considering the person's age.
2. For the function that is impaired to be an important function of the impaired person, the function must,
    - i. Be necessary to perform the activities that are essential tasks of the person's regular or usual employment, taking into account reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue employment,
    - ii. Be necessary to perform the activities that are essential tasks of the person's training for a career in a field in which the person was being trained before the incident, taking into account reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue his or her career training,
    - iii. Be necessary for the person to provide for his or her own care or well-being, or
    - iv. Be important to the usual activities of daily living, considering the person's age.
3. For the Impairment to be permanent, the impairment must,
    - i. Have been continuous since the accident and must, be based on medical evidence and subject to the person reasonably participating in the recommended

treatment of the impairment, be expected not to substantially improve,

ii. Continue to meet the criteria in paragraph 1, and

iii. Be of nature that is expected to continue without substantial improvement when sustained by persons in similar circumstances.

[8] With respect to the previous injuries or conditions a plaintiff has suffered, the question is whether the accident at issue caused permanent, serious impairments of an important function, when compared to this condition immediately before the accident: see *Shipley v. Virk*, 2017 ONSC 4941, at paras. 20 and 22.

[9] An assessment of the seriousness of any impairment must focus on the plaintiff's impairment and not the nature of the injury. A "serious" impairment is one which causes substantial interference with the ability of the injured person to perform his usual daily activities or to continue his regular employment. This involves an analysis of the plaintiff immediately before and after the accident: see *Austin-Cooke v. Read*, 2005 CanLII 50211, at para. 18.

[10] In *Myer v. Bright,* [1993] OJ No. 2446 (CA), the Court of Appeal for Ontario outlined the three-part inquiry to be undertaken in the threshold analysis as follows:

1. Has the injured person sustained permanent impairment of a physical, mental or psychological function?

2. If yes, is the function which is permanently impaired important?

3. If yes, is the impairment of the important function serious?

[11] Section 4.3(1) of the Regulation describes the evidence that the plaintiff must adduce to prove that his alleged impairment(s) meet the statutory threshold:

> **4.3** (1) A person shall, in addition to any other evidence, adduce the evidence set out in this section to support the person's claim that he or she has sustained permanent serious impairment of an important physical, mental or psychological function for the purposes of section 267.5 of the Act.

(2)The person shall adduce evidence of one or more physicians, in accordance with this section, that explains,

(a) the nature of the impairment;

(b) the permanence of the impairment;

(c) the specific function that is impaired; and

(d) the importance of the specific function to the person.

(3) The evidence of the physician:

(a) shall be adduced by a physician who is trained for and experienced in the assessment or treatment of the type of impairment that is alleged;

(b) shall be based on medical evidence, in accordance with generally accepted guidelines or standards of the practice of medicine.

(4) The evidence of the physician shall include a conclusion that the impairment is directly or indirectly sustained as a result of the use or operation of an automobile.

(5) Moreover, the Plaintiff is required to adduce evidence from a non-physician that corroborates the change in the function that is alleged to be a permanent serious impairment of an important physical, mental or psychological function.

[12] The onus of proof rests with Mr. Minott to establish that, upon the balance of probabilities, his claims for damages and losses meet all of the elements of the statutory threshold: see *Meyer v. Bright, supra* at para. 50, and *Emmanuel et al. v. RBC General Insurance Co.*, 2022 ONSC 1718 at para. 2. If he is unable to do so, subsection 267.5(5) shields the defendant from liability.

[13] Underlying this analysis is the question of causation. Mr. Minott must also establish, on a balance of probabilities, that any alleged impairment was actually caused by the Accident: see *Dinham v. Brejkaln*, 2005 OJ No. 5409 at para. 20.

[14] The following are some principles set out in relevant case law that the Court should apply in its application of the statutory threshold test:

a. While the word permanent does not mean forever, it does indicate that an impairment must last into the indefinite future, as opposed to one predicted to have some definite end: see *Brak v. Walsh,* 2008 ONCA 221, [2008] OJ No 1173 (CA), at para. 4 and *Pupo v. Vendetti,* 2017 ONSC 1519, at para. 11.

b. The mere passage of time is insufficient to establish a substantial possibility that the impairments are permanent. Sufficient evidentiary criteria are required. Where there is evidence of improvement, no significant impairment of functional abilities, a void of treatment, and unrelated contributing psychological and physical stressors to the condition, the Court has found that the plaintiff failed to establish on a balance of probabilities that the injuries are permanent: see *Seguin v. Vandinther*, [2002] OJ No 3719 (SCJ), at para. 41 and *Jennings v. Latendresse,* 2012 ONSC 6982, aff'd 2014 ONCA 517, at paras. 69-80.

c. The importance of a bodily function is qualitative. It must be important to the plaintiff as a whole. In determining this, the court will review the domestic, social and employment activities of a litigant, before and after the collision and determine whether the impairment related to things the plaintiff rarely did, such that the plaintiff may now merely be inconvenienced or reduced in his opportunity to do them. In such a case, the statutory test may not be met: see *Osmani v. State Farm,* 2023 ONSC 5438; *Mann v. Jefferson*, 2019 ONSC 1107 at para. 151; *Dennie v. Hamilton*, 2006 CanLIl 30 5618 at paras. 33-34.

d. Serious impairment must go beyond what is tolerable. The determination is made in light of the cumulative effect on a plaintiff's life. A plaintiff must do more than simply experience pain in order to bring herself within the exception to the threshold. The onus is on the plaintiff to prove, on a balance of probabilities, that the pain experienced has substantially interfered with most of the plaintiff's activities of daily living. Where the

plaintiff is still able to work and enjoy many amenities in life, the plaintiff will have failed to establish a permanent serious impairment sufficient to recover damages for non-pecuniary loss: see *Strangis v. Patafio*, 2013 ONSC 6240, para. 20.

e. The “importance” branch of the test might not be met if the impairment relates to the things the plaintiff rarely did either before or after the accident. Mere inconvenience or a reduction in opportunity to do them may not be sufficient: see *Dennie v. Hamilton*, [2006] OJ No 4227 (SCJ), at para. 34.

f. An impairment must be more than frustrating and unpleasant in order to be “serious”: see *Valentine v. Rodriguez-Elizalde,* 2016 ONSC 3540, at para. 82 and *Bridgewater v. James*, 2004 CanLII 48701 at para. 49.

Discussion:

[15] The Accident occurred on July 26, 2021. Mr. Minott was involved in a previous motor vehicle accident that occurred on December 3, 2017.

[16] Mr. Minott testified that he was 80-90% healed from his pre-accident impairments at the time of the Accident. However, his clinical notes and records undermine this evidence. In particular, his medical records reflect the following:

a. December 3, 2017 – motor vehicle accident that left him with chronic pain in his neck, left shoulder, left arm, and left wrist;

b. December 4, 2017 – right ankle spur with pain and tenderness;

c. December 21, 2017 – lower back and neck pain, left work early, didn’t sleep well;

d. March 21, 2018 – right hip locks especially when sitting, right leg, left elbow, left shoulder pain;

e. April 24, 2018 – stiff back and shoulder, popping hip;

f. September 15, 2018 – left and right knee pain and swelling, lower back pain, left shoulder pain;

g. September 22, 2018 – physically he was much slower, was not doing much lifting, bending, and kneeling when working;

h. October 20, 2018 – talked about his constant pain and agitation irritability and lack of patience affecting his relationship with his partner;

i. October 29, 2018 – left elbow lateral epicondylitis, and was recommended to wear an elbow brace;

j. November 20, 2018 – increased stress due to another car accident on Saturday;

k. November 24, 2018 – driving anxiety;

l. November 29, 2018 – headaches, left knee and left ankle pain, lower back pain at night;

m. 2018 – diagnosis of Adjustment Disorder mixed with Anxiety and Depressed Mood by Dr. Bruce Cook, Psychologist;

n. December 4, 2018 – increased headaches, lower back pain and left knee pain;

o. December 6, 2018 – ongoing headaches and fatigue;

p. March 6, 2019 – continued intermittent numbness/tingling in his lateral 3 digits, and a renewal for the brace was printed; he had completed physiotherapy;

q. June 10, 2019 – he reported he had been in a MVA in 2017, and reported pain and twitching in his left hand, body pains, poor sleep, less patience,

sexual dysfunction, and discussed looking into possible alternate causes of his symptoms;

r. July 4, 2019 – ongoing hip pain and locking, preventing from maintaining an erection;

s. July 4, 2019 – a cervical spine radiograph for chronic pain radiating down his left arm, showed mild degree of degenerative disc disease of the cervical spine most pronounces at the C5/6 level, with mild left sided neural foraminal stenosis secondary to osteophyte formation;

t. July 6, 2019 – swelling and pain to left thumb with a history of chronic pain to his left arm and neck, decreased range of motion due to pain;

u. July 18, 2019 – left thumb and forearm pain, advised use a wrist splint with thumb support; as well as loss of erectile function during intercourse due to pain from his hip; prescribed Cialis;

v. November 7, 2019 – chronic neck pain radiating down both arms, fingers tingle and lock up; erectile dysfunction; the importance of dealing with his emotional issues to deal with the effects of the accident on his life, sexuality, relationships, emotions, finances, and work;

w. November 18, 2019 – lower back pain worse after prolonged sitting, pain in his groin, difficulty extending his hips; diagnosis of possible SI pain or hip arthritis;

x. June 9, 2020 – left side of neck pain, hip locking while sitting on the toilet, shoulder pain that prevented him from lifting his left hand to shoulder height, recurrent chronic pain since 2017 MVA, desperate, frustrated because nothing could be found on MRI to explain the pain, with a prescription for Cialis, 20mg, Naproxen 500mg 2 times per day, and cyclobenzaprine 10mg 3 times per day;

y. June 9, 2020 – left shoulder ultrasound showed supraspinatus and subscapularis tendinosis, and biceps tendinosis;

z. June 9, 2020 – prescribed Naproxen 500mg twice a day as needed;

aa. April 13, 2021 – stress higher in the last few weeks, using naproxen when had pain, prescribed Viagra 100mg daily and Cialis 20mg.

[17] In my opinion, these medical records demonstrate that Mr. Minott continued to suffer significant physical and emotional issues following his motor vehicle accident in 2017 up to the time of the Accident in 2021.

[18] I also did not find Mr. Minott's testimony on the resolution of his pre-Accident injuries to be persuasive. He was adamant that his pre-Accident injuries were for the most part resolved and that the Accident in 2021 was the cause. He refused to concede the possibility that his physical and emotional issues were in any way caused by the 2017 accident or the post-Accident workplace injuries, even when confronted with the medical records that suggested otherwise.

[19] Based on the medical records and Mr. Minott's testimony, I find it is likely that his pre-Accident injuries, including his depression and anxiety, remained unresolved at the time of the Accident.

[20] Mr. Minott's employment record following the Accident also raises significant questions that cast doubt on Mr. Minott's alleged impairments.

[21] Mr. Minott was unemployed at the time of the Accident. Shortly after the Accident, Mr. Minott accepted a job offer at Peleton on August 3, 2021, as a Field Operations Manager.

[22] The job description provided by Raquel Davis of Peleton on April 12, 2023, described Mr. Minott's employment duties as follows:

a. Responsible for operations and people management within the warehouse

with guidance from the manager;

b. Managing the warehouse inventory, including: ensuring optimal utilization of space, overseeing inventory management, managing products, and managing systemic transactions related to loading/unloading vehicles and serving as a forklift operator and trainer;

c. Physically, this was a primarily active position, involving long periods of standing, lifting items weighing 145lbs with assistance.

[23] Although Mr. Minott disagreed with the above description, there is no evidence in his employment file or any independent corroborative evidence that indicates that any accommodation was made by Peleton with respect to the physical duties of his employment. There is also no evidence that Mr. Minott was unable to fulfil the terms of his employment with Peleton.

[24] The Plaintiff was laid off from Peloton in a company wide lay off on February 22, 2022. He thereafter applied for regular EI Benefits. As the position was primarily an active position, it only makes logical sense that Mr. Minott was physically capable of fulfilling the job requirements of his position during his tenure with Peleton.

[25] Mr. Minott also continued to work following his lay-off from Peleton. Specifically:

a. on June 8, 2022, Mr. Minott obtained employment with Kinetico as a Warehouse Manager. He left Kinetico on October 3, 2022.

b. On June 19, 2023, he began working at Gertex Solutions as an Operations Supervisor. In July 2023, while at work, he moved a filing cabinet and twisted his right ankle. On October 23, 2023, he was dismissed according to his Record of Employment. He then applied for regular EI benefits.

c. From January to February 2025, he was employed with HCM Staffing from January to February 2025. He initiated a Labour Board Dispute, which settled in November 2025.

[26] Looking at Mr. Minott's employment records in their totality, it appears that his work history following the Accident and up until last year is reflective of his pre-Accident employment history. In this regard, his pre and post-Accident work history reflects a historical pattern of employment for approximately 6-8 months, following an application for regular employment benefits. His longest job prior to the Accident was for a term of 10 months.

[27] I note that there is no documentation evidencing that Mr. Minott was dismissed, or accommodated, by any employer due to Accident related injuries.

[28] There is also no record from any general practitioner opining that Mr. Minott could not work post-Accident due to Accident related injuries. On the contrary, on or about July 7, 2023, Dr. Rajabi, Mr. Minott's then general practitioner, prepared a WSIB Form, wherein she noted that Mr. Minott could resume his regular full time hours and duties on July 10, 2023. The WSIB Form also notes that Dr. Rajabi is not aware of any pre-existing or other condition that might impact Mr. Minott's recovery. Further, in respect of functional abilities, Dr. Rajabi noted on the form that Mr. Minott could walk up to 100 metres, could lift from waist to shoulder, had full ladder capabilities, could drive, could stand for 15-30 minutes and had full sitting abilities, even with the WSIB injuries.

[29] The following inconsistencies were also evident in Mr. Minott's cross-examination testimony:

a. He testified that at the time of the Accident, he was driving approximately 40km-50km per hour; however, this contradicts the evidence of the other witnesses present at the time of the Accident, the testimony and report of Mr. William Jennings, and general common sense given the location of the Accident on Highway 401.

b. I found his self reporting of the Accident and his injuries to Dr. Hines and Dr. Finkelstein to be exaggerated and inconsistent with his testimony and the contemporaneous documentation pertaining to the Accident and its immediate aftermath.

c. His Go Fund Me Page is misleading in that he appears to be wearing a hospital gown and bracelet when he was not in the hospital. The page also implies that his daughters live with him, which is not accurate. On cross-examination, he admitted that he was not in the hospital at the time of the photograph, but was on his way to a pain clinic.

d. He testified that the vehicle that he was driving at the time of the Accident was owned and used by his neighbour, Ms. Patricia Austin, but in my view, he did not sufficiently explain or respond to various questions on cross-examination relating to the obvious detailing and modifications that were made to the vehicle by Mr. Minott.

e. He testified that he did not have to stand or walk for long periods of time in his position at Peleton even though that was a key requirement of the position. I did not find his testimony on this point to be convincing.

f. He also testified that he could, at times, work remotely at Peleton even though the position was one that required managing and supervising warehouse operations. I likewise did not find his testimony on this point to be credible.

g. He testified about terms of his employment at various companies and the various reasons for his dismissal/termination that were unsupported by the employment files. For example, he testified that he stopped working at Kinetico because he could not meet the demands of the job due to his pain, but there is no documentation in the employment file (or otherwise) to support this allegation. Also, he testified that his salary at Gertex was to increase to $80,000 after his probation, but there was no evidence (other

than his testimony) to support that claim. This seemed to be a recurring pattern and was not convincing in my view.

h. His evidence is that he has anxiety with driving and being in a vehicle as a result of the Accident yet his social media posts and YouTube videos strongly rebut this. On the contrary, the evidence suggests that he continued to enjoy driving or being driven, including in videos where the vehicle he is in appears to be "drifting".

i. His banking records, YouTube videos and social media posts contradicted his testimony in respect of his lifestyle and physical limitations; and,

j. Overall, I found his testimony was significantly undermined on cross-examination.

[30] On the whole, I did not find Mr. Minott to be a credible or reliable witness.

[31] The evidence also supports the following findings:

a. Since the 2017 motor vehicle accident, Mr. Minott did not stop having neck, left shoulder, left arm and left wrist pain;

b. He suffered from depression and anxiety since the 2017 motor vehicle accident;

c. These pre-accident impairments were to a serious enough degree that he received accident benefits from Wawanesa Insurance company from a December 3, 2017 motor vehicle accident, as well as $100,000 from a tort action;

d. In the nine months following the Accident, he primarily complained to his general practitioner of left neck and shoulder pain as a result of the Accident.

e. On September 11, 2021, he reported he had left elbow pain that started the previous day, with numbness in his 3rd, 4th, and 5th digit, from his shoulder down his elbow, as he had banged his elbow on a skid at work. His ulnar neuropathy was worse. He was prescribed naproxen for pain.

f. On October 12, 2021, he had another workplace accident where he banged his right knee on a metal cart at work. He started a WSIB claim.

g. On June 19, 2023, he began working at Gertex Solutions as an Operations Supervisor. In July 2023, while at work, he moved a filing cabinet and twisted his right ankle.

h. As stated above, on or about July 7, 2023, Dr. Rajabi prepared a WSIB Form, and noted that Mr. Minott could resume his regular full time hours and duties on July 10, 2023 and noted that she is not aware of any pre-existing or other condition that might impact Mr. Minott's recovery.

[32] The above facts raise significant causation questions regarding whether Mr. Minott's alleged injuries were in fact caused by the Accident. They also raise significant questions regard the extent and seriousness of his alleged injuries and the impact on his ability to work and perform daily activities.

[33] With respect to medical evidence, Mr. Minott relies on the reports and testimony of Dr. Darrell J. Ogilvie-Harris and Dr. Judith Pilowsky. Both medical opinions relied heavily on the plaintiff's subjective recounting of his injuries, both before and after the Accident. Accordingly, such subjective recounting calls into account Mr. Minott's credibility.

[34] As set out above, I did not find Mr. Minott's evidence to be credible or reliable. As a result, I cannot confidently rely on his self-reports of the pain and limitations he currently suffers as a result of the Accident. I am simply not persuaded of the veracity of his evidence.

[35] Further, I do not give much weight to Dr. Pilowsky's evidence and prefer the evidence of Dr. Robert Hines. Firstly, Dr. Pilowsky did not conduct the psychological assessment on Mr. Minott. Rather, her associate, Katherine Hollerer, authored the Psychological Report, dated April 28, 2022. Ms. Hollerer did not testify at trial. Dr. Pilowsky was also not qualified or accepted by this Court as an expert. She did not sign a Form 53 Acknowedgement.

[36] Dr. Pilowsky instead provided eight clinical notes which indicate that she treated the plaintiff via telephone. Dr. Pilowsky also provided a Diagnosis Letter, dated April 18, 2024, advising that the plaintiff could not presently seek or obtain employment. She admitted on cross-examination, however, that she provided the letter to assist Mr. Minott with an impending eviction, that it was based on information the plaintiff had told her, and that she did not review any of the plaintiff's general practitioner or employment records.

[37] Additionally, Dr. Pilowsky did not conduct any validity testing and, as pointed out above, her conclusions are solely based on Mr. Minott's subjective reports.

[38] Dr. Pilowsky also admitted that she was sanctioned by the College of Psychologists in 2019 for misconduct for a mutual client of hers and the law firm acting for the plaintiff.

[39] In contrast, Dr. Robert Hines was qualified and accepted by this Court as an expert in psychiatry. Dr. Hines has had his own general practice for 40 years. He performed a physical assessment of Mr. Minott, in person, on February 11, 2025. He testified on how important physical observation was for an assessment.

[40] In his report, dated February 28, 2025, he opined that Mr. Minott did not meet the diagnostic criteria for a psychiatric diagnosis. He also opined that the plaintiff did not have a serious or permanent impairment and advised that he could return to regular employment and to his regular everyday life activities.

[41] While Dr. Hines did not agree that the plaintiff had an Adjustment Disorder as Section 44 Assessor Dr. Hasan had diagnosed, he testified that even if the plaintiff did have Adjustment Disorder, he could recover to the point that his symptoms did not meet diagnostic criteria. He also outlined significant validity concerns in his report.

[42] Overall, I prefer Dr. Hines' evidence as I found it to be more reliable, objective and persuasive.

[43] I likewise do not assign a significant amount of weight on Dr. Ogilvie-Harris's assessment of Mr. Minott's alleged physical impairments and prefer the assessment of Dr. Finklestein because I found his report more reliable, objective and persuasive.

[44] Dr. Ogilvie-Harris was also not qualified as an expert or accepted as one by this Court.

[45] He diagnosed Mr. Minott with soft tissue injuries and Chronic Pain Syndrome in a telephone assessment on May 27, 2022, for the Accident Benefits Insurer.

[46] In his subsequent Medico-Legal Report of November 18, 2024, Dr. Ogilvie-Harris maintained his original diagnosis that Mr. Minott suffers from Chronic Pain Syndrome. Dr. Ogilvie-Harris noted that Mr. Minott had withdrawal, guarding, and widespread tenderness. He was able to walk into his office without particular difficulty, yet during the assessment had multiple pain behaviours. This made the examination difficult to perform and the results difficult to interpret. He also noted that Mr. Minott had multiple atypical movements with guarding and jerky movements. All five Waddell signs were positive. His left shoulder had multiple abnormal movements. He was tender over the ulnar nerve, but it did not specifically reproduce his symptoms.

[47] Although Dr. Ogilvie-Harris diagnosed Mr. Minott with Chronic Pain Syndrome, he did not appear to find any objective medical impairment during his assessment. He stated in his report that "accurate measurements were not possible because of his pain related limitations". Further, the conclusions in the report that Mr. Minott developed

chronic pain and features of Chronic Pain Syndrome appear to rely mostly on the applicant's self-reporting and the truthfulness of what Mr. Minott reported to them.

[48] On cross-examination, Dr. Ogilvie-Harris acknowledged that he primarily performs plaintiff assessments. Further, I accept the defendant's submission that Dr. Ogilvie-Harris opined outside his practice area when he opined on the reaggravation of Mr. Minott's psychological problems. Dr. Ogilvie-Harris also opined that Mr. Minott did not have the ability to return to work in his first report, however, at that point, he had already returned to work for over six months at Peleton. I find these issues to be concerning.

[49] Dr. Finkelstein was qualified and accepted as an expert in Orthopedic Surgery. He is an orthopedic surgeon, who operates and runs a fracture clinic where he assesses non-operative cases and pain. He testified that Mr. Minett attended for a physical assessment at his office on February 27, 2025, sat comfortably while he gave a history, recalled specific details. He testified that a physical examination was nearly impossible as Mr. Minott made inorganic, jerky movements that were bizarre. He also testified that he used a holistic approach to assess the plaintiff, and found that he sustained soft tissue injuries that would have resolved by now.

[50] Dr. Finkelstein highlighted in his testimony that there were several inconsistencies with the plaintiff that troubled him. In this regard, Dr. Finklestein testified that Mr. Minott demonstrated excessive pain behaviour and non-organic findings and that his subjective complaints and self-reported accident related injuries were inconsistent with the medical records.

[51] Overall, Dr. Finklestein opined that Mr. Minott did not sustain a serious and permanent impairment, and could return to his regular employment and activities. He advised that pain did not equal impairment, and that you can have pain without impairment. He explained that everyone's functional range of motion was different. That pain was subjective but impairment was objective. Most importantly, he explained that you cannot have Chronic Pain Syndrome without validity, and he had several validity

concerns. Specifically, he had concerns with respect to Mr. Minott's "somatic over reporting and malingering."

[52] Dr. Finklestein also noted that every one of Mr. Minott's complaints were documented as being present prior to the accident or as developing from an accident after July 26, 2021.

[53] With respect to Dr. Ogilve-Harris' opinion, Dr. Finklestein disagreed that Mr. Minott has Chronic Pain Syndrome and highlighted that it is unclear from Dr. Ogilvie-Harris's report as to why the chronic pain Mr. Minott experienced before the accident did not constitute Chronic Pain Syndrome. This question continues to remain unanswered in my view.

[54] As stated above, I preferred and accepted the evidence of Dr. Finklestein on the basis that I found his testimony and report to be more objective, consistent with the evidence and persuasive.

[55] On the whole, and based on a balance of probabilities, I find that the temporary impairments Mr. Minott suffered as a result of the Accident, have long since resolved.

[56] Upon review of the submissions and evidence, I also find no compelling evidence with respect to the impact of the Accident on Mr. Minott's functional abilities. It is simply not clear to me from the evidence whether, and to what extent, the plaintiff's functional abilities have been impacted by Accident. No functional evaluation or vocational assessment has been undertaken, and there are significant inconsistencies in the plaintiff's statements about his activities of daily living, and his need for modified work. The objective evidence demonstrates that the Accident did not cause a substantial interference with the plaintiff's daily activities or ability to continue his regular employment.

[57] Social media videos and photographs, combined with contemporaneous bank statements show that in the year after the Accident, and beyond, Mr. Minott attended nightclubs, the Exhibition in Toronto, the Scotiabank Centre, Niagara Falls, shopped for

clothes at designer stores, shopped for groceries, attended numerous automotive shops and made automotive purchases, attended multiple restaurants, drove his vehicle, visited his daughter in Tottenham, attended car shows, travelled to Jamaica, spent time with his friends, spent time with his daughters, attended Caribana, created content for his automotive website, and continued on with his daily life after the Accident.

[58] Although Mr. Minott proffered several witnesses regarding his limitations following the Accident, I did not find them to be persuasive. All of the witnesses admitted that they had no real knowledge of Mr. Minott's health concerns other than what he had told them. Ms. Gopaul and Ms. Austin admitted that they were not impartial and would not give evidence to hurt the plaintiff's case. Mr. Minott also owes Ms. Gopaul money that she loaned to him and she testified that she would expect him to repay her if he was successful in this lawsuit. Mr. Gray admitted that he lives three and a half hours away and had come to help his friend with the lawsuit. Mr. Dean Minott, the plaintiff's brother, has always resided in Jamaica and testified that he and his family received money from him prior to the Accident. He also testified that he did not know what the plaintiff did in his spare time in Canada.

[59] I also do not find that the medical practitioners relied upon by the plaintiff were persuasive in their opinions that the injuries from which Mr. Minott was suffering were attributable to the Accident.

[60] Overall, I am not satisfied, on a balance of probabilities, that Mr. Minott has sustained a permanent serious impairment of an important physical, mental or psychological function. He has failed to discharge the burden of proof upon him and accordingly, the defendant's motion is granted.

Decision:

[61] The defendant's threshold motion is granted and the plaintiff's action is therefore dismissed.

[62] I encourage the parties to attempt to settle the issue of costs. If the parties are unable to do so, the parties may make written submissions as follows:

a. The defendant may deliver costs submissions of not exceed five pages, attaching a Bill of Costs and any relevant documents, within 45 days;

b. The plaintiff may deliver any responding costs submissions, not exceeding five pages, also attaching a Bill of Costs and any relevant documents, within 30 days receipt of the defendant's costs submissions;

c. The defendant may reply with no more than three pages, within 15 days of receipt of the plaintiff's costs submission;

d. If the submissions are not received by the Milton Administration Office in accordance with this schedule, each party shall bear their own costs.

Yamashita J.

Released: June 19, 2026