

**Personal Injury**

## The ongoing scrutiny of experts as advocates: Thompson v. Helgeson

By **Yianni Pappas-Acreman**



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(July 18, 2017, 8:01 AM EDT) -- *Thompson v. Helgeson* 2017 BCSC 927, a recent case of the British Columbia Supreme Court, provides a candid reminder about the duties of experts in personal injury litigation.

The plaintiff, a 44-year-old woman, suffered injuries in a rear-end motor vehicle accident that occurred in 2012. The defendant admitted liability for the accident, but disputed the nature and extent of Pia Thompson's injuries.

The court found that Thompson suffered a mild concussion (which resolved shortly after the accident), moderate soft tissue injuries to her back and neck (which had largely resolved by the time of trial), severe headaches (ongoing), and psychiatric issues (ongoing). The court accepted that any significant improvement in her ongoing symptoms was unlikely.

Thompson's injuries, particularly her debilitating headaches, were found to have caused a significant loss of past and future income earning capacity. Prior to the accident she had worked as a courier and delivered mail and packages by truck. She derived a significant amount of her self-worth from her work. Her injuries also led to the breakdown of her marriage with her husband.

The issue involving expert evidence arose in the assessment of the nature and extent of Thompson's psychiatric injuries. The court was particularly critical of the evidence from two psychiatric experts, one called by the plaintiff and one called by the defendant.

The psychiatrist called by the plaintiff diagnosed Thompson with post-concussion syndrome with a mild traumatic brain injury, mild neurocognitive disorder arising from a traumatic brain injury, adjustment disorder with chronic anxiety, chronic moderate-to-severe major depressive disorder and somatic symptom disorder.

In contrast, the psychiatrist called by the defence opined that the plaintiff did not suffer from any recognized psychiatric illness.

The court referred to both experts as "somewhat partisan in their opinions" and ultimately gave no weight to the evidence of either. The court summarized its view by stating, "[i]t seemed to me that Dr. Ancill was going out of his way to identify every possible mental illness suggested by Ms. Thompson's reported symptoms, while Dr. Levin seemed anxious to convey the impression that Ms. Thompson was in no distress whatsoever."

The following passages of the decision highlight some of the additional issues with the expert evidence:

"79 As with Dr. Ancill, I considered the tone and content of Dr. Levin's report to be very adversarial. In his report, he repeatedly referred to what he described as inconsistencies in Ms. Thompson's statements to him during her interview. However, on cross-examination, he was forced to agree that these inconsistencies were clarified by Ms. Thompson later in her interview. In addition, he provided no explanation as to why Ms. Thompson has developed the headaches that are her chief complaint

and in fact, paid scant attention to their existence.

"80 I also found Dr. Levin to be argumentative and at times non-responsive in the answers he gave on cross-examination.

"82 Finally, Dr. Levin was the only witness of the many expert and lay witnesses who opined that 'Ms. Thompson appeared as an optimistic, future-oriented, and at times cheerful woman who reported her unimpaired ability to enjoy herself and make other people laugh.' Based on Ms. Thompson's evidence at trial, my own observations of her and the evidence of every other witness who commented on her post-Accident condition, I simply cannot accept that she presented herself to Dr. Levin in that manner.

"83 I therefore conclude that Dr. Levin lacked the required impartiality and objectivity to provide reliable evidence about Ms. Thompson's post-Accident condition."

The court went on to rely on the opinion of another expert, a neuropsychologist, who described Thompson's psychiatric issues as a "chronic loop" of "physical, emotional/psychological, and cognitive problems" that continued to compound each other.

In the end, Thompson was awarded damages in the amount of \$1,004,000, including \$125,000 for non-pecuniary damages, \$136,000 for loss of past income-earning capacity and \$525,000 for loss of future income earning capacity.

This case continues the trend of the scrutiny of expert evidence by the courts. It serves as a reminder that the duty of experts is to assist the court and not to be an advocate for any party.

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