

THRESHOLD CASES 2004-2007

(REVISED JANUARY 23, 2008)

Tab	Case Name	Cite	Threshold	Jury	Injuries/Complaints	Medical	Findings	Other
1.	Jones v. Mazolla Toronto	[2004] O.J. No. 366 (S.C.J.); aff'd December 23, 2005 (C.A.).	Yes	No	physical - neck, back shoulders, migraine headaches, sleeplessness	pl - neuro& psychIE - ortho; def - rheumatologist	permanent, serious, important; can work but problems with social, childcare, housework; time since MVA relevant to impairment permanent	intersection MVA Nov 1996; \$50,000 for generals; pl worked at a lighting store
2.	Rothman v. Matus Toronto	[2004] O.J. No. 220 (S.C.J.)	Yes	No	left knee, neck, ha, limp	GP (only physician mentioned in decision)	surgery could lead to wheelchair; problems with ADLs; has serious permanent impairment	MVA Mar 2001, T- bone; 60 year old pl; couldn't do Internet Co with son; \$55,000 generals
3.	East v. Waheed Newmarket	[2004] O.J. No. 1175 (S.C.J.)	Yes	Yes	chronic pain, adjustment disorder, psychological, no physical evidence of chronic pain;	10 medical specialists including orthos, psychs	plaintiff inconsistencies innocuous, result of stress; considered jury verdict to determine met threshold; injuries permanent, not improve	MVA Aug 2000; pre- existing psych; pl entertainment director; \$65,000 generals
4.	Kapour v. Patterson* Brampton (JBD case)	[2004] O.J. No. 1211 (S.C.J.)	No	No	physical - hip and leg pain	by way of medical reports filed; physiatrist	plaintiff credible; causation not proved on balance; permanent but not serious	liability admitted; MVA Aug 1998; assessed \$20,000 generals
5.	Murphy v. Gauvreau London	[2004] O.J. No. 1997 (S.C.J.)	Yes	Yes	low back, knee	GP, psychiatrist, ortho	balance of probabilities permanence established, important function given particular pre-MVA ADLs and serious impairment	MVA Nov 1999; aggravation of pre- existing asymptomatic osteoarthritis of spine and knees
6.	Brunetta v. Brampton (City) Toronto	[2004] O.J. No. 2239 (S.C.J.)	Yes	No	physical - left foot	Orthos	plaintiff credible; some restricted activities work and leisure; permanent impairment but issue of whether serious, yes	MVA Oct 1998; net \$5,000 generals; pl worked as an electrician
7.	Richardson v. Apostalagos Hamilton	[2004] O.J. No. 5837 (S.C.J.)	Yes	Yes	neck, low back, mild head injury, PTSD, adjustment disorder, sleep disorder, chronic pain; can not work as hard	GP, physio, various med legals	issue of mitigation for jury to decide; ddd in neck and back given her age; pre chiro; off work one week only	MVA May 22, 1999; pedestrian; sales consultant of office furniture company

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8.	Hartwick v. Simser Ottawa	[2004] O.J. No. 4315 (S.C.J.)	Yes 1st pl.	No	chronic pain and PTSD; ongoing head, chest, shoulder, low back, buttocks, coccyx, leg	physio, chiro massage, chronic pain program, physiatrists, GP, psychologistdef - psychiatry, physiatrist	affecting work, housework, recreation; permanent since over 5 years since the accident; plaintiff credible, surveillance helped pl; crumbling skull less 25%	liability admitted; MVA 1999; \$85,000 generals net; pl worked as nurses aide
	Hartwick v. Simser Ottawa	[2004] O.J. No. 4315 (S.C.J.)	Yes2nd pl.	No	chronic pain, anxiety, depression; head, neck, forehead, headaches, foot lower back, shoulders	physio, chiro, massage, GP psychologist, psychiatrist; def- psychiatrist, physiatrist	affecting school, work, relationships; permanent since over 5 years since the accident; plaintiff credible; surveillance helped pl; wouldn't have gone to university regardless of MVA: 15% crumbling skull	liability admitted; MVA 1999; preexisting so 15% reduction; \$85,000 generals net; pl was a HS student and worked PT at Tim Hortons
9.	Mestyan v. Kangrow Newmarket (JBD case)	October 18, 2004 (unreported)	Yes	Yes	neck and back	orthos for pl and def	problems working and with activities; permanent does not mean forever	MVA July 1999; pl worked at LCBO
10.	Perger (Litigation Guardian of) v. Olsen Thunder Bay	[2004] O.J. No. 4604; 73 O.R. (3d) 102 (S.C.J.)	Yes	No	physical, soft tissue with psychological overlay; attitude towards injuries; depression (compounded by alcohol abuse)	chiro; psychiatristno referral to ortho or pain clinic	altered life, work, family, physical and psych both were serious, permanent impairment (time from DOL); cumulative effect	liability admitted; MVA May 2001; some preexisting; pl was phys ed teacher
11.	Alcamo v. Valente Barrie	[2004] O.J. No. 5734 (S.C.J.)	Yes	No	brain injury, shoulder	Psychs	mild but permanent; pre-existing learning impairment, poor life choices made worse	MVA before Jun 2001; application to dismiss; 16 yr old pl
12.	Daurio v. Cameron Milton	[2004] O.J. No. 4538 (S.C.J.)	Yes	Yes	fractured scapula, depressed, chronic pain with psych factors	ortho, psychiatrist, chiro and others whose specialty is not mentioned	downward spiral re ADLs, sex and job; some inconsistent exaggerated evidence, surveillance but still some permanent serious impairment	judge didn't buy some of the plaintiff's injuries including herniated disc, PTSD or seriousness of concussion; pl mitigated damages
13.	Frankfurter v. Gibbons Toronto	[2004] O.J. No. 4969 (Ont. Div. Ct.)	No	No	soft tissue to neck	not specified since is an appeal	impairment was not serious as to interference with her life	minor MVA Mar 1999; symptom magnification

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14.	Bridgewater v. Jones Toronto	[2004] O.J. No. 5282 (S.C.J.)	No	Yes	migraine headaches; neck; shoulders; low back	physiatrist, GP, ortho; no def expert	plaintiff credible; not proved permanent for all injuries or directly/indirectly from MVA; not serious	rear end MVA 1998; subsequent MVA; pl worked at restaurant
15.	Pinchera v. Langille Toronto	[2005] O.J. No. 521 (S.C.J.) [2006] O.J. No 3948 (O.C.A.)	No	No	left leg, lower back, surgery	two orthos, two neurosurgeons	found not permanent, serious, discomfort tolerable an able to work; even though medical evidence said serious	liability admitted; MVA Jan 1997; pl drove an industrial catering truck
16.	Fasfous v. Provigo Distribution Inc. Toronto	[2005] O.J. No. 882 (S.C.J.)	Yes	Yes	fibromyalgia, chronic pain, depression, anxiety	numerous doctors including, family, neuropsych, psychologist	permanent, serious impairment; can not work, ADLs; material contribution despite some preexisting	MVA Oct 1997
17.	Hornick v. Kochinsky Chatham	[2005] O.J. No. 1629 (S.C.J.)	Yes	No	legs, knee, heel, back, headaches, head, neck, shoulder, blurred vision, memory, mild brain injury, memory, depression, adjustment disorder, limp	GP, physio, ortho physiatrist, neuropsych, SPECT scan; def- psych	some objective medical re neck, back permanent as persisted 5 years, knee results in limping; can not work; disabled cognitive, emotional, psych	liability admitted; MVA Dec 1997; generals \$125,000; pl highway maintenance some preexisting; marriage broke up
18.	Branco v. Allianz Toronto	[2005] O.J. No. 3056 (S.C.J.) * appealed [2006] O.J. No. 2391 (Ont. Div. Ct.) and new trial ordered on other issues than the threshold which was not appealed	Yes	Yes	back of head, neck, numb right hand, low back, right leg; all resolved except right shoulder	physio, chiro, orthos, physiatrist; def - ortho	met test in Meyer v. Bright since could not work or do ADLs; flare ups prevent working, impairment serious	MVA Apr 1999; dental asst; generals \$16,500 gross; 50% liability on pl; low damages, exercised discretion on costs
19.	Scime v. Philippe Toronto	[2005] O.J. No. 1567 (S.C.J.); supp. [2005] O.J. No. 2444 (Ont. Div. Ct.); aff'g [2003] O.J. No. 5177(S.C.J.)	No	Yes	moderate whiplash (back, neck, headaches)	no medical testimony presented by plaintiff just reports of physio, GP, ortho, physiatrist but def had expert	rtw in 2 weeks; no evidence that failure to find permanent job related to MVA	MVA August 15, 2001; graphic designer; not a very good witness, didn't disclose some pre existing problems
20.	Gomez v. CDC Contracting* Toronto(JBD case)	April 13, 2005 (unreported)	Yes	Yes	physical - soft tissue with pain, driving anxiety, fatigue forgetfulness,	physio, GP; def - ortho	plaintiff credible; even though plaintiff could work ability to get ahead impaired, therefore serious	MVA Feb 2002; liability admitted: \$45,000 net generals; pl cashier at Loblaws

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21.	Hutchinson v. DeVroom Newmarket	April 18, 2005	No	Yes	Migraine headaches; depression; elbow	Some but not clear what	Pre-existing depression claimed fully disabled versus pre partially disabled; Pl. not credible re work issue	MVA Dec. 23. 2002
22.	Lahay v. Henderson Barrie	[2005] O.J. No. 1705 (S.C.J.)	Yes	No	headache, neck and low back, chronic pain, depressive episodes	physio, GP, ortho, pain management specialist, psych, psychiatrist, neurologist, phys med	difficulty working heavy job overtime; restricted ADLs; effects are serious; no failure to mitigate	liability admitted; MVA Oct 1998; generals \$90,000; pl quarry worker and electronics tech; preexisting
23.	Skead v. Van Halteren Lindsay	[2005] O.J. No. 2013 (S.C.J.)	No	No.	upper back, lower spine (later left hip)	GP, psychologist; def ortho and psych	horrible upbringing, assaults, abusive relationships, inconsistencies, pre medical problems; surveillance	liability admitted; June 23, 1999 MVA; pedestrian; \$25,000 generals assessed provisionally
24.	Smith v. Sabzali Newmarket	[2005] O.J. No. 2014 (S.C.J.)	No	Yes	neck, shoulder, back, ankles, headaches, fatigue, problems sleeping, dizziness, lightheadedness, mood swings, anxiety	ortho both pl and def, physiatrist, neuro, physio massage	although some pain and restricted leisure activities no serious permanent impairment; academic and career prep corporate systems and business analysis continued ok	MVA Aug 2000; pl was HS student
25.	Morgan v. Ritchie Brampton (CIRM case)	June 6, 2005 (unreported)	No	No	fractured nose, chipped tooth, neck, back, contusions, small scar on face, shoulder, left arm, depression, concentration, sleeplessness, anxiety	ENT, GP, ortho, psychologist	although physical and psychological functions affected important, focus on lack of treatment and mitigation; aggravation re housework, recreation but back to work FT	severe rear end MVA Mar 2001; pl worked for Bell Canada sales support

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26.	Peloso v. 778561 Ontario Inc. Ottawa	[2005] O.J. No. 2489 (S.C.J.)	Yes	No	chronic pain physical and psychological (low back, leg, left arm, neck, numbness in both legs, ha, psychological)	numerous medical witnesses physical and psychological: GP, neurologist, physio, dental surgeon, physical medicine, ortho, psychiatric, massage, physiatrist, psychologist)	extensive pre; no malingering; impact hk ADLs, work, cognitive, care for child, social; even if no evidence of objective findings can be serious impairment; susceptible bc of pre and worse bc of subseq abuse	MVA Mar 1, 1999; pl was a hairdresser;
27.	Austin-Cooke v. Reid Brockville	[2005] O.J. No. 5763 (S.C.J.)	Yes	No	neck, shoulders, ha	chiro, rehabilitation specialist	pre neck and back etc and prior MVAs; pre chiro; not working at MVA; crafts, cottage, hk; had to quit post MVA job	MVA Jan 7, 2002; \$25,000 for generals plus \$15,000 for pecuniary
28.	Page v. Primeau Ottawa	[2005] O.J. No. 4693 (S.C.J.)	No	No	soft tissue, TMJ, headaches, sleep disturbance, depression	physical medicine (2), GP, physio	can do many everyday activities as well as work full time; was permanent, important but not serious	MVA Nov 20, 2000 (2nd Jan 15, 2001); liability admitted; bookkeeper, admin; provisionally net generals \$40,000
29.	Sasso v. Copeland Toronto (JD case)	[2005] O.J. No. 5226 (S.C.J.)	Yes	Yes	left shoulder, headaches, insomnia, anxious, irritable and moody; chronic pain, PTSD	GP, psychiatrist, neuropsych; orthos for both sides	test is Meyers v. Bright; can be serious impairment even if continues to work as tribute to work ethic; big effect on daily activities; could manage more before MVA; did not believe she would have been a teacher with her grades	MVA July 17, 2001; credible; 26 year old plaintiff continued to work; \$25,000 generals, \$3,120 housekeeping
30.	Dinham v. Brejkaln Toronto	[2005] O.J. No. 5409 (S.C.J.)	No	Yes	chronic headaches, stress, anxiety, depression re ability to work and about his health	GP, chiro, neurologist,	pre back injuries at work and MVAs (also shoulder and neck); subsequent MVA; no objective findings; not proved proximate cause	MVA June 30, 1998; welder

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31.	Moore v. Wienecke Toronto	[2006] O.J. No. 202 (S.C.J.)	Yes	No	1992 - neck, back, psych1998 - head injury, left foot left knee	vocational psychologist; neurologist; GP; orthos; neuropsychs	thin, crumbling skull; did not rtw; falls between two accidents as well as another MVA then falls after as well; straw broke the camels back; permanent & serious bc can not work & ADLs	MVA 2002; pre 1998 MVA (pl liable alcohol) & 1991 brain injury motorcycle; 1998 MVA Vollick \$40,000 gross, 2nd \$60,000 gross generals; future income, care, FLAs
32.	Brak v. Walsh London	[2006] O.J. No. 688 (S.C.J.)	Yes	Yes	Left side of body; neck, shoulder rib, abdominal pain, two fractured ribs, lacerated spleen, collapsed lung.	GP; physiatrists	pre chiro shoulder; problems post MVA with employment, no OT: post WSIB injuries; avoid heavy labour; no permanent impairment or serious b/c resumed nearly all h/k and work	MVA Jan 8, 2000; painter's helper & restaurant worker
33.	Gizzarelli v. Lammie Hamilton	April 12, 2006 (unreported)	Yes	Yes	Psychological: driving anxiety	Unknown	driving anxiety meets test of psychological impairment which is permanent, important, serious	MVA July 27, 1998
34.	Spittal v. Thomas et al. Whitby	April 18, 2006 (unreported)	No to both	Yes	Whiplash two plaintiffs; neck & back; PI #1 also carpel tunnel, 4 previous MVAs; PI #2 went to hospital; also headaches	PI #1: hand expert, ortho PI #2: ortho	Video surveillance showed more ability than claimed for both	Rear-ended MVA March 28, 2003
35.	Dipietro v. Busby Brantford	April 24, 2006 (unreported)	No	Yes	Left hand, neck, shoulders, left are, fear of driving; anxiety, sleep problems	GP, orthos, neuropsych, OT	Court preferred Def. ortho over PI; some mild pre-existing; was permanent impairment, was important but <u>not</u> serious; PI. exaggerated; considered lack of mitigation in its finding of no threshold	MVA Aug. 9, 2000 Managed family grocery store; worked 2 years post- accident

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36.	Firth v. Resenders Brampton	[2006] O.J. No 1148 (S.C.J.).	No	Yes	Soft tissue	Two orthos; GP	Surveillance supportive of defence position; PI recovered and working at 100% pre-MVA capacity; able to do recreational, exercise and renovations	MVA April 25, 1999 \$10,000 general less deductible
37.	Rizzo v. Johnson Thunder Bay	[2006] O.J. No. 4143 (S.C.J.)	Yes	Yes	Chronic pain; sleep problems	Orthos; GP; physio	Had hoped to have own daycare; had some pre-existing; can't work b/c lack of sleep; will have problems with emt; didn't accept ortho; accept and liked PI who tried her best	MVA July 3, 2002
38.	Bisier v. Thorimbert Welland	[2006] O.J. No. 4026 (S.C.J.)	No	Yes	WAD II; headaches; neck; back	Chiro; massage; physio; GP; once to neurologist	Pre-existing unrelated post-MVA problems; cont. to work FT; decided on causation issue	MVA May 3, 2000 PI worked at computer screen; generals assessed at \$0
39.	Dennie v. Hamilton Sault Ste. Marie	[2006] O.J. No. 4227 (S.C.J.)	No	Yes	Neck; right shoulder; back; right arm; headaches	Physio; massage; chiro; psychologist; GP; physiatrist; two orthos; pain/sleep specialist	Post-MVA factors in PI life: surveillance favourable to defence & judge relied re threshold to find not serious	MVA Nov 30, 1999 Pricing clerk at grocery store; jury assessed \$20,000 less deduct generals & \$20,000 h/k
40.	Ksiazek v. Newport Leasing Ltd. Hamilton	[2006] O.J. No. 4366 (S.C.J.).	Yes	No	PTSD, mild TBI, fractured sternum, fingers, low back, shoulders, depression	GP, psychologist, physiatrist, physio, psychiatrist	Surveillance favourable to defence: evidence of malingering; pl. failed to mitigate damages reduced by 25%	MVA Sept 25, 1998 19 yr old pl. quit school waitressing, factory work: \$60,000 generals, \$72,000 past wage
41.	Hensworth v. Mismar Toronto	[2006] O.J. No. 4540 (S.C.J.)	Yes	Yes	Neck; upper back & depression	Chiro; GP; psychiatrist; physiatrist; psychologist	Wanted to be a truck/coach technician but after MVA can not; PI credible; no physicians indicated anything about validity of her complaints re neck & back	MVA June 20, 2002 33 year old PI.; various jobs mainly in maintenance; 3 prior MVAs with no claim; returned to work but had problems

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42.	Gorman v. Powell Barrie	[2006] O.J. No. 4618 (S.C.J.).	Yes	Yes	Soft tissue back and neck	Ortho and others whose specialty not stated	Def. only questioned whether "serious"; was some conflicting evidence from family members and plaintiff as to her abilities: work, housekeeping and social activities affected	MVA dated not specified: appears she was working in a secretarial or clerk type position
43.	Li v. Rizvi & Rafiq Toronto	November 20, 2006 (unreported)	Yes	Yes	One crushed backbone (partial fracture)	Orthos	Degenerative changes; Pl. continued to work; surveillance considered Pl. didn't beat their OTS	MVA April 9, 2002 Pl. dishwasher \$5,000 net generals; \$10,189 past income loss after IRB deducted
44.	Sakr v. Sharma and 1097935 Ontario Inc. Toronto (JD case)	December 6, 2006 (unreported)	Yes	Yes	Soft tissue	Def ortho; GP; physiatrist	Pl. "just crossed the threshold": dramatic reduction in Pl. capacity to work and in ADLs found possible to meet threshold with no objective findings	MVA Feb. 20, 1999 Awarded \$25,000 net generals & \$32,000 future LOI
45.	Tulloch v. Akogi Milton	[2007] O.J. No. 3232 (S.C.J.).	Yes	Yes	Low back pain and spasms which caused falls	Not indicated in decision	Extensive prior and subsequent history including alcoholism. Inability to socialize found "serious"	MVA Jan 20, 1998 Awarded \$125,000 generals & \$24,500 past income loss; Note: teacher on jury
46.	Bowman v. Lovett Toronto	[2007] O.J. No. 462 (S.C.J.).	Yes	Yes	Back, neck, ha, sleep problems, depression	Psychologists/ Psychiatrists as well as defence psych	Impaired functioning at work physically and psychologically; was permanent, important and serious; pre-mva active in sports and heavy chores	MVA Mar 31, 2002 Awarded \$70,000 generals, \$5,000 for loss of comp adv, \$6,000 future hk, FLAs didn't exceed deductible
47.	Golab v. Schmidt Hamilton	[2007] O.J. No. 1412 (S.C.J.).	Yes	Yes	Shoulder, back, neck, depression, driving phobia	Physical medicine and rehabilitation specialist, ortho, GP, neurologist	Limitations at work and in constant pain, not the same person, help with housekeeping; pl credible and did not exaggerate; lack of objective findings	MVA Jan 20, 2003 Awarded \$70,000 generals, \$190,000 future LOE; pl vehicle write off

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48.	Place v. Ali Milton	[2007] O.J. No. 2526 (S.C.J.).	Yes	No had to be disch	Chronic pain neck, upper back, shoulder, low back and hip soft tissue, depression, hearing loss	Only hearing specialists for both sides mentioned	Loss of hearing affected ability to be a correctional officer	MVA Dec 3, 1999 Awarded to 23 yr old generals \$125,000, past lost of income \$119,471 and \$250,000 future loss
49.	Kourtesis v. Joris London	[2007] O.J. No. 2677 (S.C.J.).	No	Yes	Neck, left arm, left shoulder, sleep, cognitive, ha, depression/anxiety, low back	Psychologist, GP, physiatrist, physiotherapy, expert in functional performance	Took time off and did some PT ; use of internet photographs allowed & inconsistent with evidence about her social life; permanent and important but not serious	MVA Dec 17, 2000 Assessed 18 yr old generals \$45,000, awarded future loss \$25,000 interior design student/ waitress
50.	Messina v. Peirce Lindsay	October 24, 2007 (unreported).	Yes	Yes	Low back soft tissue chronic pain	Ortho, physiatrist	Ongoing function restrictions which were permanent, important and serious	MVA Nov 22, 2000 Awarded \$50,000 generals, past loss \$40,000 and future loss \$175,000; waitress, low impact, little pd
51.	Goodridge v. King Kenora	[2007] O.J. No. 4611 (S.C.J.).	No	No	Wrist, scarring, loss of smell and taste, memory	Medical evidence filed, GP, ENT, neuro, ortho, physio, FAE	Causation re smell and taste; wrist important, scars permanent but neither were serious or interfere with daily life; had worked steadily summers, active social	MVA July 30, 2000 Assessed generals \$55,000 and FLA \$7,500 for mother; no seatbelt, university student
52.	Podleszanski v. Medley Newmarket	[2007] O.J. No. 4279 (S.C.J.).	Yes	Yes	Soft tissue neck and back, shoulder, buttock into leg and hand, psychological	Medical evidence filed, GP, ortho, psychologists, psychiatrist	Could not work, failed real estate exams, worked min wage at gas station; surveillance not relied on, pl didn't present well; no objective	MVA Dec 6, 2002 labourer awarded generals \$25,000, past income \$95,000, FLA \$5,000
53.	Parks v. Peter Kitchener	[2007] O.J. No. 4904 (S.C.J.).	No	Yes	Aggravated pre-MVA fibromyalgia, psychological	Physiotherapist, physiatrist, psych	Significant pre accident history; video surveillance	MVA dated not indicated; Assessed generals \$16,500 and nominal FLAs; motivational speaker

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54.	Landreau v. Tremblay Timmins (CM case)	November 6, 2007 (unreported)	Yes	No	Teeth, face, finger/toe, scar on lip, shins, anxiety	Psychiatrist/neuro,	Contrib. 35% (in box of truck); claims for income losses and hk failed; mitigation issue	MVA June 30, 2002 Assessed generals \$60,000

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