

## PUBLICATION

### Jones v. Stepanenko

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Jones v. Stepanenko - Personal Injury Case Sets the Tone for Valuing Chronic Pain Injuries

Simon Muller and Austin Paladeau, in the Personal Injury Group of McLeod Law, represented the injured Plaintiff in the Jones v. Stepanenko, 2016 ABQB295 case. The decision affirms that severe, chronic injuries that continue to impact a plaintiff's ability to work are not "minor injuries" as per the Minor Injury Regulation. It also provides that, when the medical opinions support it, fibromyalgia can be caused by trauma at law.

This case is an important one in regards to its dealing with the law relating to the Minor Injury Regulations and also in regards to valuing a Plaintiff's damages when chronic pain arises from injuries sustained in a motor vehicle accident.

Full Article

We are pleased to share a decision of the Court of Queen's Bench of Alberta on May 27, 2016, that was argued by two lawyers in the Personal Injury Group of McLeod Law LLP, namely Simon Muller and Austin Paladeau. This case is an important one in regards to its dealing with the law relating to the Minor Injury Regulations and also in regards to valuing a Plaintiff's damages when chronic pain arises from injuries sustained in a motor vehicle accident.

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Ms. Jones was injured in a severe rear-end collision on August 18, 2009. She was pushed into the vehicle stopped in front of her after the initial impact. The damage to the vehicles was substantial; Ms. Jones' vehicle was written off while the Defendant's vehicle suffered almost \$12,000 in damage.

Ms. Jones' injuries revealed themselves over the following days. She began having painful headaches, and her neck, back, left shoulder, right hip, left jaw, and right wrist were all very sore. On the advice of her family physician she began treatment with a physiotherapist. After a couple months of treatment she began a strengthening routine prepared by her physiotherapist. When her injuries did not resolve, she returned again to physiotherapy. She hoped that her commitment to treatment and home strengthening exercises would return her to her preaccident physical condition. Unfortunately, this was not the case for Ms. Jones. She continued to suffer from pain at the time of trial, nearly seven years postaccident.

At trial, Ms. Jones sought compensation for her pain and suffering, her past loss of income, the impairment to her earning ability in the future, her loss of housekeeping capacity, her future care needs, and her out-of-pocket expenses. Based on the evidence heard from the expert witnesses, the Court held:

In my view, Ms. Jones suffered from a significant impact that caused her debilitating soft tissue injuries to her neck, back, shoulder, jaw and hip, contusions and lacerations to her face and both knees, and severe headaches.

The Court accepted the opinion of the Plaintiff's independent physiatrist, who stated that Ms. Jones' diffuse body pain and fatigue fit within the diagnostic parameters of fibromyalgia. Further, the Court accepted the Plaintiff's independent physiatrist's opinion that fibromyalgia can be caused, at law, by trauma. In arriving at this conclusion, the Court took note of the Defendant's independent physiatrist's concession that, but for the accident, Ms. Jones would not have otherwise been symptomatic with fibromyalgia.

The Court awarded compensation for all the different types of losses Ms. Jones suffered. Notably, the Court awarded a loss of earning capacity as a result of Ms. Jones' difficulty with managing her symptoms at work and after work.

At the time of the accident Ms. Jones was a 19 year old nursing student, set to enter her second year of university study. She successfully completed her degree and earned her registered nurse designation upon graduation. Although she was able to complete her studies, Ms. Jones found it was difficult to do the more physical aspects of nursing. She changed units and reduced the amount of hours she worked, in an attempt to control her symptoms. In so doing, she lost the ability to advance her career at the same rate that she would have without the accident. Further, by modifying her work schedule she lost out on earning bargained shift premiums. The Court made a significant award, though conservative based on the facts, to compensate Ms. Jones for the future impairment to her earning potential.

Ms. Jones' case affirms that severe, chronic injuries which continue to impact a plaintiff's ability to work are not "minor injuries" as contemplated by the Minor Injury Regulation. It also provides that, when the medical opinions support it, fibromyalgia can be caused by trauma at law.

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Ms. Jones was represented by Simon Muller and Austin Paladeau who exclusively practice personal injury law.

Simon is a Partner in the Personal Injury group of McLeod Law. He brings a unique insight to his practice, having worked as a lawyer for insurance companies before deciding to represent plaintiffs who have suffered injuries as a result of other peoples' negligence.

Austin is an associate in the Personal Injury Group of McLeod Law and represents plaintiffs involved in motor vehicle accidents, and slip and falls.

If you are ever in a situation where you have been injured as a result of another person's negligence or would like further information about this case, please contact Simon Muller at 403.254.3688 or Austin Paladeau at 403.873.3738, or any member of our Personal Injury Group.