

**Issue:**

The added burden and costs to the Auto Insurance system when a physician is required in addition to a psychologist to adduce evidence regarding the Tort threshold even when a psychologist alone is most appropriate.

**Background:**

Prior to 2003 Psychologists' expertise was routinely accepted in courts at all levels without the need for additional physician evidence with respect to mental and psychological disorders. In 2003, the Liberal government altered the tort verbal threshold under the Insurance Act definition for serious and permanent impairment due to motor vehicle accidents. This resulted in accident victims no longer being able to rely solely on expert opinion from psychologists under the Insurance Act, as distinct from all other tort contexts. (see section 4.1 from The Ontario Regulation 381/03 made under the Insurance Act). Thus, a physician is now required to give evidence even when it is redundant and/or a psychologist is the more appropriate sole expert to do so.

The change to the tort threshold caused accident victims to suffer delays in order to obtain access to a physician in addition to a psychologist. Many physicians are reluctant to become involved as they do not want to take time away from their patient care for many reasons: the risk having to tie up their time in court; lacking sufficient familiarity with the patient, lacking appropriate expertise to diagnose and describe their impairment; and/or lacking knowledge of the auto insurance system tort requirements.

A superior court decision addressed and appeared to have resolved this issue. However, a more recent court decision was contrary. There is now precedent in the common law for requiring a physician in addition to a psychologist to adduce evidence regarding the tort verbal threshold.

**Relevant Facts:**

All other legal contexts accept the role of psychologists in determining mental and behavioural impairments and rating disability, without the additional need for a physician to adduce evidence. Therefore, the auto insurance system is an anomaly among all legal contexts by removing psychologists as the sole expert witness with respect to issues of mental and psychological disorders.

Removing the ability of psychologists to act as sole expert witnesses with respect to mental and psychological disorders undermines the integrity of the overall system. Given the most recent court decision, injured Ontarians find themselves in a flawed, costly, and illogical system. Costs to the system are increased and delays are created as accident victims with mental and psychological disorders must seek out additional examinations conducted by physicians in order to comply with the regulations even when evidence based on a sole psychological assessment is most appropriate. Physician resources are also diverted from patient care.

**Recommendation:**

Modify the current tort threshold language so a psychologist can be relied upon as a sole expert to adduce evidence with respect to mental and psychological disorders, without requiring additional evidence to be adduced by physicians.

**Benefits:**

- Reduces costs
- Saves time and avoids delays for patients to access physicians
- Reduces burden and legal costs of unnecessary assessments and expert involvement
- Reduces confusion and simplifies processes for patients
- The health professional with most appropriate expertise adduces evidence