Jovanovski, Diana, Psychologist, Clinical Neuropsychology

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Sanson v. Paterson, 2022 ONSC 2972 (CanLII), <https://canlii.ca/t/js3c6

[165] In 2018, based on a review of the assessments by Dr. Zakzanis and Dr. Jovanovski in addition to his own earlier assessment, Dr. Cancelliere opined that Ms. Sanson has a serious permanent impairment of important mental and psychological functions. He testified that, given the consistency of the test scores obtained by Dr. Jovanovski with Dr. Cancelliere's results some years earlier, the results supported a stable etiology for the impairments. As a result, the etiology was likely a persisting mTBI, rather than an unstable/variable etiology from symptoms, including headaches, fatigue and nausea (as Dr. Jovanovski had suggested). (Dr. Zakzanis used a different array of tests such that a direct comparison to his results was not available.)

[166] In simple terms, Dr. Cancelliere explained, if Ms. Sanson's impairments were due to symptoms, which are by nature variable, one would expect her test results to change over time, especially over the time that had elapsed between Dr. Cancelliere's tests in June of 2014 and Dr. Jovanovski's tests in November of 2017. Dr. Cancelliere testified that not only did the results not change appreciably between these two assessments, they were virtually identical.

[247] However, Dr. Jovanovski's conclusions about the meaning of those test results and Ms. Sanson's neurocognitive impairments do vary from those of Dr. Cancelliere.

[248] With respect to the test results, while agreeing that in various categories Ms. Sanson's results were "borderline" — in other words, between low average and impaired — and while acknowledging the possibility that Ms. Sanson's average results in some categories may reflect a diminishment as compared to pre-Collision when Ms. Sanson was by all accounts high-functioning, Dr. Jovanovski's view was that it is likely that Ms. Sanson's post-Collision test results are the same as what they would have been pre-Collision, and that any deficits reflected by "borderline" results were likely pre-existing.

[249] On the critical issue of the cause of Ms. Sanson's ongoing neurocognitive deficits, Dr. Jovanovski's view was that "at worst" Ms. Sanson sustained "an uncomplicated mild traumatic brain injury". She, like Dr. Angel and Dr. Zakzanis, said that studies in the literature have "demonstrated that cognitive impairments may persist for up to three months, but the norm is full recovery with no long-term residual deficits".

[250] Thus, Dr. Jovanovski continued, "it is most probable that Ms. Sanson has achieved a full recovery from any uncomplicated mTBI she may have sustained in terms of neurologically-based sequelae, given that over five years have elapsed since the date of the injury". In terms of lower test scores in certain areas and Ms. Sanson's self-reported cognitive impairments, Dr. Jovanovski said, "I would opine that the reduced scores obtained on some measures of verbal memory and executive functioning involving perseverative tendencies would be attributable to secondary, accident-related factors such as distraction from constant headaches, physical pain, nausea and vomiting associated with 'migraine-like' headaches, reduced energy/fatigue and mildly reduced mood".

[251] Since in Dr. Jovanovski's formulation Ms. Sanson's "cognitive difficulties are not due to neurotraumatic sequalae but rather to secondary issues", Dr. Jovanovski opined that "from a strictly neuropsychological perspective, Ms. Sanson has not suffered a permanent serious impairment of an important mental or psychological function". Dr. Jovanovski again acknowledged, however, that she believed Ms. Sanson "experiences some cognitive inefficiency as a result of these secondary accident-related issues and is thus unable to return to her previous levels of occupational, social and functional status at this time."

[252] Dr. Jovanovski recommended a return to activities at reduced levels, and a return to practice as a lawyer in a setting that "does not involve strict deadlines/fast turnaround times". She also recommended that Ms. Sanson "avoid committing to work that requires her presence on particular dates/times". Dr. Jovanovski was fair to acknowledge, in describing these perhaps utopian job requirements, that she was "unfamiliar with all of the work-related options available".

[253] Distilling Dr. Jovanovski's opinion, although she believes that Ms. Sanson no longer suffers from neurotraumatic injuries from the Collision (i.e. does not have a persisting mTBI), she accepts that Ms. Sanson has suffered and continues to suffer from "secondary, accident-related" problems which in turn adversely impact her function.

[254] Like Dr. Angel, Dr. Jovanovski suggested that "treatment efforts should be focused on better management of her headaches, as this appears to be the most debilitating accident-related issue for Ms. Sanson", and that Ms. Sanson's prognosis for "full recovery" was largely dependent on "recovery in the physical domain, particularly with regard to her ongoing headaches[.]"

[255] It seems clear that Dr. Jovanovski concedes, appropriately in my view, that Ms. Sanson's headaches are caused by the Collision. She also acknowledges that return to full function depends on more effective treatment of those headaches, but that in the meantime, Ms. Sanson should be able to function in a legal job without deadlines or fast turnaround times and without being required to show up on any particular dates or times.

[256] Like Dr. Angel, Dr. Jovanovski was prepared to defer, albeit somewhat more grudgingly, to Dr. Lay with respect to the ongoing assessment, care and treatment of Ms. Sanson, including but not limited to care and treatment of headaches. Dr. Jovanovski was also prepared to concede, as Dr. Angel did, that it is fair to assume that in Dr. Lay's hands Ms. Sanson is receiving first-rate care for those headaches.
[270] Dr. Zakzanis believes Ms. Sanson likely suffered an mTBI, and Dr. Jovanovski believes she may have suffered an mTBI. Both Dr. Zakzanis and Dr. Jovanovski opined that while the mTBI, if suffered, has likely resolved, secondary consequences of the Collision, in particular headaches, explain Ms. Sanson's ongoing cognitive deficits.

[271] In my view, absent some other intervening cause, which is not alleged let alone evident, "but for" causation is established where the expert evidence confirms that the injuries in issue arose as a consequence of the Collision, whether directly (as opined by Dr. Cancilliere) or indirectly (as opined by Dr. Zakzanis and Dr. Jovanovski). There is no suggestion in the medical evidence that Ms. Sanson's symptoms and limitations are not genuine; to the contrary, the neuropsychological testing objectively confirms their validity. Although there is debate about the extent to which such symptoms genuinely persist — discussed below, and largely based on non-medical evidence — there is no debate about whether Ms. Sanson suffered injuries as a result of the Collision, which have been verified on neuropsychological tests administered by each side over the course of a number of years.

[365] Dealing with these two issues in turn, in my view the medical evidence, on balance, confirms that it was not realistic to assume any capacity for Ms. Sanson to earn any income as a human rights lawyer after June of 2015. A substantial majority of the physicians and psychologists involved in this case agreed that it was not realistic, by 2015, for Ms. Sanson to return to any form of her legal practice, even on a part-time basis.

[366] The one outlier in this regard was Dr. Jovanovski, who opined that Ms. Sanson might have been able to return to some form of part-time legal work, so long as there were no strict deadlines, no fast turnaround times, and no requirements to commit to being available at any particular times. In cross-examination, Dr. Jovanovski acknowledged that she could not identify any such work available to someone with Ms. Sanson's skills, qualifications and experience, and also readily acknowledged that this topic was outside of her area of expertise.

[367] As such, there is no substantive evidence to support the existence of a realistic position for Ms. Sanson after June of 2015, and I find she did not have the capacity to earn income after that date.

[397] (e) **Cognitive Communication Therapy** – Ms. Sanson claims $19,638.91 in this category. At the recommendation of Dr. Ouchterlony, Ms. Sanson saw Ms. Shumway on a very regular basis for cognitive communication therapy. The defendant argues that Ms. Sanson has no obvious cognitive communication deficits or related difficulties, relying on the evidence of Dr. Jovanovski who, in her one encounter with Ms. Sanson, noted no particular difficulties. The defendant thus alleges that the treatment provided by Ms. Shumway is not medically necessary nor relevant. I disagree. Ms. Shumway clearly worked hard with Ms. Sanson to address her various cognitive and related problems and helped Ms. Sanson develop strategies to cope with her deficits. Moreover, Ms. Shumway's involvement was recommended and then relied on by Dr. Ouchterlony. In my view, Ms. Shumway provided valuable treatment, and I allow Ms. Sanson's claim for her services in full.

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Ifraimov v Wawanesa Insurance, 2022 CanLII 38858 (ON LAT), <https://canlii.ca/t/jp6h0

[46] Dr. Jovanovski assigned no WPI rating in relation to the applicant's mental status impairment. She explained:
The current neuropsychological test results were not considered a valid representation of the applicant's actual cognitive abilities….
In any case, the presence, nature, and/or extent of the applicant's reported neuropsychological difficulties could not be determined as objective testing was considered to be of mixed/questionable validity and the neuropsychological test results were uninterpretable.
Therefore, with respect to impairment rating, I have no valid data to offer any rating for whole person impairment (WPI).

[47] The respondent submits that given the thoroughness of the testing performed by Dr. Jovanovski, the numerous validity concerns present, the fact that Dr. Westmacott was not present during the applicant's testing, and that no reason was given for the chosen rating of 14% (as opposed to any other rating within the prescribed range), that no rating should be provided for mental status impairments of the applicant.

[48] During the hearing, the respondent repeatedly alleged that the applicant's failure on Dr. Jovanovski's neuropsychological validity testing impugns his overall credibility. I disagree with the respondent on this point: Dr. Jovanovski's evidence does not support this. Furthermore, the applicant's credibility has not been questioned by any other assessor over the course of his claim.

[49] I am not persuaded by the respondent's position and accept the 14% WPI rating proposed by Dr. Westmacott for the following reasons:

I. Findings on validity measures were within normal limits;

II. Neither the applicant's total score nor his scores on the individual scales were suggestive of malingered psychopathology. Review of validity scales indicates that the applicant responded in a consistent, reliable and forthright manner;

III. There was no evidence of pain magnification and symptom embellishment;

IV. There was no evidence of discrepancies or inconsistencies; and

V. The applicant consistently addressed the assessors in a friendly, yet deferential manner, and provided information in a straightforward, forthright, and candid manner. He presented as entirely genuine.

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Martin v Jovanovski, 2021 CanLII 148941 (ON HPARB), <https://canlii.ca/t/jp58t

Failure to provide access to information

3. The Respondent, a psychologist, was hired by the Applicant's accident benefit insurer to conduct a third-party Insurer Examination. The purpose of the assessment was to determine, from a neuropsychological perspective, whether the Applicant suffered a catastrophic impairment as a result of a motor vehicle accident.

10. Regarding the concern that the Respondent refused to respond to the request for information, the Committee noted that the Applicant stated that the Respondent intentionally refused to respond to the August 14, 2019 letter, while the Respondent stated that the letter had not been forwarded to her due to a "clerical error". The Committee further noted that the Respondent had responded to previous requests for information. The Committee found there was no information to suggest that the Respondent's failure to respond to the August 14, 2019 letter was inappropriate or contrary to the standards of the profession.

11. Regarding a concern that the Respondent has continued to withhold a response to the requests in the letter, the Committee found that the Respondent appeared to have exercised due diligence by promptly retaining legal counsel to consider the validity of the request for information.

12. The Committee noted that the Applicant's Counsel stated that the contents of the Respondent's report are not accurate or complete. The Committee observed that Counsel did not appear to specify any inaccuracies in the substantive content of the report. The Committee therefore found there was no information for the Committee to render a decision on that concern.

13. The Committee noted that the Applicant's Counsel stated that the Respondent must be held accountable for AssessMed's failure to provide her with the letter of August 2019 and that the Respondent stated she sought assurances from AssessMed that this kind of error would not be repeated. The Committee further noted that AssessMed prepared a letter acknowledging the error and updated their staff on proper protocol.

14. The Committee concluded that based on the Respondent's remedial effort, the risk of recurrence was low. However, the Committee reiterated the importance of Members reminding any third-party referral source that all communications related to the file must be directed to the clinician directly and that this should be done at the inception of a new file and again upon closure of a file.

Limited investigation

35. The Applicant submitted that the investigation was inadequate because the Committee limited its investigation to the two issues identified by the Applicant and failed to meet its obligation to govern the Respondent's practice and services of her insurer examination under the Statutory Accidents Benefits Schedule and address the Respondent's further non-compliance and misconduct.

36. The Board has examined the information in the correspondence from the Applicant's Counsel to the Committee and finds that the Committee adequately defined the scope of the complaint. The Board notes that the Applicant's correspondence with the Committee did not raise any concerns regarding the Respondent's practices and services regarding insurer examinations or any other non-compliance or misconduct.

Additional steps

37. The Applicant submitted that the Committee did not take any steps to collect or validate the relevant information identified by the Applicant or by the Respondent in that the Committee did not collect the Respondent's records or consult with the Financial Services Regulatory Authority of Ontario (FSRAO), the insurance company that engaged the Respondent, or AssessMed to reconcile the inconsistent information received.

38. The Board finds that it was not necessary for the Committee to collect further information from FSRAO, the insurance company or AssessMed. There is no indication that any of these organizations would have provided information that might have reasonably affected the Committee's decision.

Bias

39. The Applicant submitted that the Committee conducted a biased investigation. The Board notes that the Applicant did not identify any factors that would give rise to her having a reasonable apprehension of bias on the part of the Committee in its investigation. Having read the Committee's decision and the Record, the Board finds there to be no indication that the Committee conducted a biased investigation, or demonstrated a basis for there to be a reasonable apprehension of bias.

Disclosure of August 14, 2019 letter

49. The Applicant submitted that the Committee decided to take no further action on the concern that it was improper for the Respondent to disclose the contents of counsel's August 14, 2019 letter because the Committee failed to identify evidence or authority to support a finding that the letter was not privileged. The Applicant submitted that the letter was privileged because it was created for the purposes of the Applicant's settlement discussions in her tort litigation.

50. The Board finds that it was reasonable for the Committee to find that the Respondent appeared to have obtained the Applicant's consent to provide AssessMed with any personal information

relating to the assessment. As the Committee noted, there was a copy of a signed consent form in the Applicant's file wherein she acknowledged that her information may be accessed by AssessMed.

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17-001627 v Certas Direct Insurance Company, 2017 CanLII 99139 (ON LAT), <https://canlii.ca/t/hr1d4

[43] Certas based its position that the applicant's psychological symptoms and subjective experience of pain were not genuine or credible largely on the assessment and report of Dr. D. Jovanovski, neuropsychologist, who conducted
an insurer's examination of the applicant in December 2016. Dr. Jovanovski administered thirteen tests. Eleven were designed to assess neurocognitive impairment due to the mild traumatic brain injury sustained in the accident; two tests were to evaluate psychological symptomatology.

[44] Regarding the neurocognitive tests, Dr. Jovanovski reported that the applicant failed three stand-alone cognitive symptom validity measures, with scores well beyond the generally accepted cut-off scores for valid performance, indicative of a "very high degree of symptom exaggeration," and rendering invalid the results of cognitive testing. Citing a 2003 research article entitled "*Detection of malingering using atypical performance patterns on standard neuropsychological tests,*" Dr. Jovanovski further stated that according to the research literature, the us e of a criterion of failure on two symptom validity
indicators best discriminates between credible and non-credible individuals.

[45] Despite citing the above article, Dr. Jovanovski stopped short of stating the applicant was malingering; instead, she concluded only that, due to
invalid test results, she was unable to determine if the applicant's symptoms of cognitive impairment were due to brain injury. Furthermore, she conceded that "Secondary factors such as reported physical pain and headaches/migraines, dizziness/nausea, emotional/psychological issues (including reported low mood, anxiety/panic attack symptoms, post-traumatic stress symptoms, and somatic preoccupation), and reported sleep disruption and fatigue **may be negatively impacting upon her cognition** [emphasis added] . .
."[22]Regardless, Dr. Jovanovski stated that the presence and/or extent of the applicant's reported cognitive and psychological problems could not be determined ". . .as the current neuropsychological test results are uninterpretable given the noted validity issues."

[46] Regarding the applicant's psychological symptoms, Dr. Jovanovski reported that the applicant failed two self-report measures of symptom validity, the Personality Assessment Inventory (PAI), a 344-item self-report questionnaire, and the Structured Inventory of Malingered Symptomatology (SIMS), a 75-item true or false screening instrument used to detect probable malingering. The applicant's scores on the SIMS test showed "a very significant degree of symptom exaggeration with elevations across three subscales of atypical symptoms (i.e. Neurologic Impairment, Affective Disorders,
and Amnesiac Disorders.) I note that only one subscale, Affective Disorders, refers to emotional as opposed to cognitive factors.

[47] Regarding the PAI, Dr. Jovanovski concluded the profile was invalid. She explained that this meant that, "with respect to negative impression management, the pattern of results obtained is often associated with a deliberate distortion of the clinical picture, or possibly a "cry for help" or extreme or exaggerated negative evaluation of oneself and one's life. Regardless

of the cause the test results are unlikely to be an accurate reflection of [the applicant's] objective clinical status and reflect her self-description."

[48] Dr. Jovanovski then went on to describe the applicant's self-description, which involved ". . . significant elevations across several scales, including depressive symptomatology, preoccupation with physical functioning and health matters and severe impairment arising from somatic symptoms, anxiety symptoms and worry that compromise her ability to concentrate and attend, specific fears or anxiety surrounding some situations and maladaptive behaviour patterns aimed at controlling anxiety, suspiciousness and mistrust in her relations with others, with a pattern often associated with prominent hostility and paranoia. She reports being socially isolated with few interpersonal relationships that could be described as close and warm and is very uncomfortable in social situations. She further reports being emotionally labile, with fairly rapid and extreme mood swings. Her self-concept was described as generally harsh and negative."

[49] These are exactly the factors reported by Dr. Pilowsky and others. Unlike Dr. Pilowsky, however, Dr. Jovanovski concluded there was no valid objective evidence of psychological impairment due to the invalid test results obtained, and so she could not verify the presence or extent of the applicant's reported cognitive or psychological complaints, nor could she provide a diagnosis.[23]

[50] In this particular case, I prefer the evidence of Dr. Pilowsky over that of Dr. Jovanovski. Dr. Jovanovski concluded that the applicant did not meet the NEB test because the applicant did not have a cognitive or psychological impairment, no diagnosis could be formed, and the applicant was not credible. However, I find Dr. Jovanovski arrived at her conclusions without taking into account anything the applicant actually said to her, or any of the many reports noting her complaints of pain and psychological distress which, at the time she examined the applicant, had been consistent for the two years since the accident. I am not satisfied that simply relying on the results of a battery of tests tells the whole story in cases where persistent pain is an issue. Dr. Pilowsky saw the applicant for over a year on a regular basis, listening to what she had to say about her life; as such, I find she was in a better position to understand the larger context of the applicant's life than was Dr. Jovanovski. As a practising psychologist, I find it was well within Dr. Pilowsky's professional competency and clinical judgment, as well as reasonable in this case, for her to provide particular diagnoses for the applicant's psychological condition and to understand its impact on her life without necessarily relying on the same number of tests as Dr. Jovanov ski.

[51] I note that Dr. Michelle Keightley, a psychologist who assessed the applicant as part of a multidisciplinary assessment to determine catastrophic impairment in June, 2017 also administered the PAI and found that the test results indicated the applicant responded appropriately and consistently. Although there was evidence the applicant attempted to portray herself in an especially negative manner, Dr. Keig htley opined that this can reflect a "cry for help" or desire for the extent of her suffering to be sufficientl y communicated to the assessor."[24]I find this interpretation is reasonable in the applicant's circumstances. Dr. Keightley also administered tests that showed that the applicant reported "kinesiophobia, or fear of movement related to feeling vulnerable to sustaining a painful injury or further harm," and maladaptive pain coping.[25]These results are consistent with the findings of Dr. Pilowsky.

[52] Although Dr. Jovanovski conceded that the test results showed the applicant had an exaggerated negative and harsh self-concept and that one way to interpret the test results was that they could indicate a “cry for help,” she appears to have rejected that particular interpretation. However, I find that interpretation accords with the applicant’s self-report to most assessors, and is the most accurate. The applicant has gone from a slim, 125 pound active, outgoing teenager with a well-rounded life despite real obstacles, to, as a result of the accident, an anxious, depressed, isolated, overweight 165 pound young woman with a very poor self-image who avoids most activity, including social activity, because it is painful. She is unmotivated to care for her appearance, has tried and failed to retur n to school, is at odds with her family due to a changed disposition, and is cut off from her friends by overprotective parents. I agree with Dr. Pilowsky, that the applicant is simply unable to cope emotionally with the drastic changes pain has made to her life. I find it reasonable in these circumstances that her test responses would be more likely to indicate a “cry for help” than outright malingering.

[70] Ms. Robbins based her opinion that the applicant no longer required attendant care as of December 2016 on her assessment of the applicant’s functional capabilities and the opinions of Certas’ IE assessors, Drs. Gharsaa, Muhlstock and Jovanovski, that there were no restrictions to light activity. I find that the applicant’s worsening depression and lack of motivation impacted her ability for self-care to a certain extent, and Ms. Robbins did not take this into account. Another factor is that, as remarked by Ms. Robbins and Ms. Elma, the applicant had not had the benefit of OT intervention to educate her about practical strategies for managing painful activities. For these reasons, I prefer the opinion of Ms. Kang, the OT who completed the July 2017 Form 1, that some attendant care was still necessary and reasonable as of December 2016.