BEYOND THE DIAGNOSIS:
LEGAL PERSPECTIVES ON INTIMATE PARTNER VIOLENCE, ADDICTION AND CATASTROPHIC IMPAIRMENT

PIA LAW
THE PERSONAL INJURY ALLIANCE

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October 29, 2026



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SESSION OVERVIEW

Thursday, October 29
10:45–11:30 a.m.

3 × 10-minute talks
15-minute audience Q&A

The clinician's role in demonstrating brain injury and its impact on social functioning.

Three legal issues where clinical observations and documentation shape the outcome: intimate partner violence, substance use and addiction, and catastrophic impairment.



01
Intimate partner violence



02
Substance use and addiction



03
Catastrophic impairment

AGENDA

01 **Intimate partner violence**

Charles Jung · Oatley Vigmond LLP

Behavioural change after brain injury and the intimate partner violence tort

02 **Substance use and addiction**

Michael Bennett · Thomson Rogers LLP

How addiction factors into accident benefits claims, and the shift after Belair

03 **Catastrophic impairment**

William Harding · McLeish Orlando Lawyers LLP

Causation, Criterion 8 and documenting functional impairment

04 **Audience Q&A**

15 minutes

Connecting these legal issues to everyday rehabilitation practice

INTIMATE PARTNER VIOLENCE

Charles Jung · Oatley Vigmond LLP

The World Health Organization (WHO) identifies IPV as a major global public health concern. It affects millions of people and can result in immediate and long-term health, social and economic consequences.

After a brain injury, changes in impulse control and emotional regulation can reshape a person's closest relationships.

01

INTIMATE PARTNER VIOLENCE

Behavioural change after brain injury and the intimate partner violence tort

INTIMATE PARTNER VIOLENCE

The signs: recognizing impaired social functioning

Disinhibition

Says or does things without the usual filter; socially inappropriate

Irritability & short fuse

Low frustration tolerance; quick to anger over small things

Reduced empathy

Struggles to read — or respond to — others' feelings

Impulsivity

Acts on the moment without weighing consequences

Egocentrism & rigidity

Self-focused and inflexible; poor perspective-taking

Misreading cues

Misinterprets tone, intent, and social signals

WHY IPV AND WHY NOW?

Canadian Criminal Code Reform (Bill C-16 – Protecting Victims Act)

- Bill C-16 received Royal Assent on June 18, 2026
- New offence of "coercion or control of intimate partner"
    - Will come into force no later than 2 years after Royal Assent

Ahluwalia v. Ahluwalia, 2026 SCC 16

- New tort of IPV
- Elements of the tort of IPV:
    1. Abusive conduct arose in an intimate partnership or its aftermath
    2. Defendant intentionally engaged in that conduct
    3. The conduct, on an objective measure, constitutes coercive control

INTIMATE PARTNER VIOLENCE



How IPV has been assessed at the LAT

- *Simmons v. BelairDirect Insurance Company*, 2023 ONLAT
- *Tenuta v. BelairDirect Insurance Company*, 2024 ONLAT
- *Lapointe v. Intact Insurance Company*, 2026 ONLAT



SUBSTANCE USE AND ADDICTION

Michael Bennett · Thomson Rogers LLP

Substance use that begins or escalates after an accident can become part of the claim itself.

Since *McMichael v. Belair*, the focus is on what the clinical record shows about how substance use began or worsened after the accident.



02

SUBSTANCE USE AND ADDICTION

How addiction factors into accident benefits claims, and the shift after Belair

ADDICTION

McMichael v. Belair – Court of Appeal



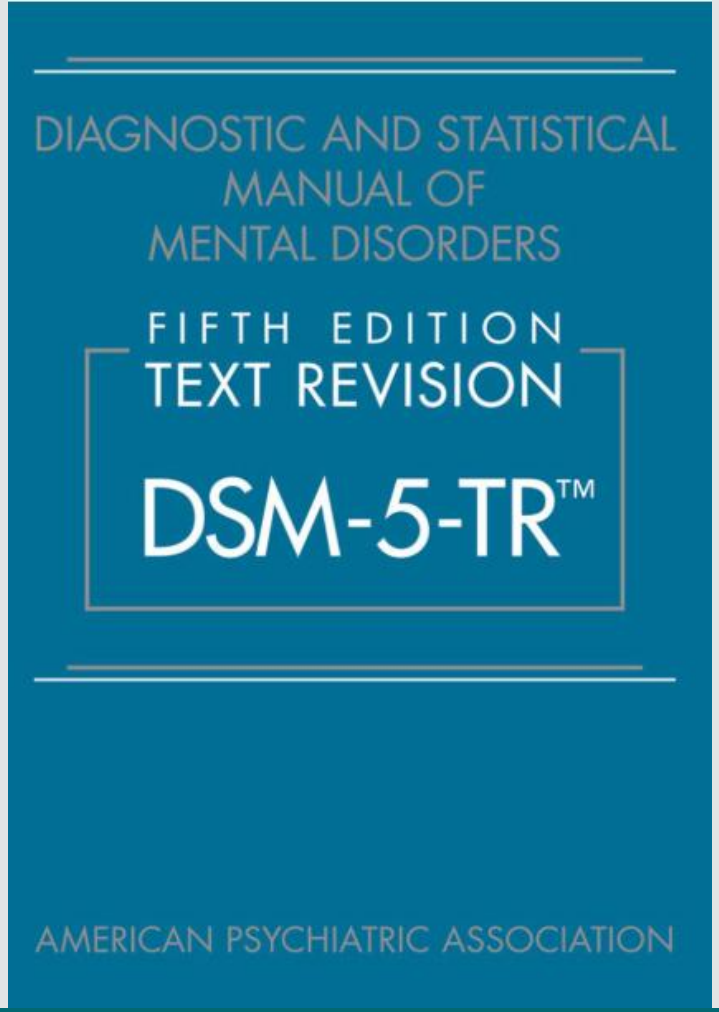
The decision

"Used to use drugs occasionally … now since the accident, I'm addicted …"



The shift in approach

McMichael v. Belair confirms that a Substance Use Disorder may be considered an accident-related injury



SUBSTANCE USE DISORDER

DSM-5-TR formulation of addiction

Substance Use Disorder

A diagnosis requires at least **2 of 11** criteria within a 12-month period, resulting in clinically significant impairment or distress

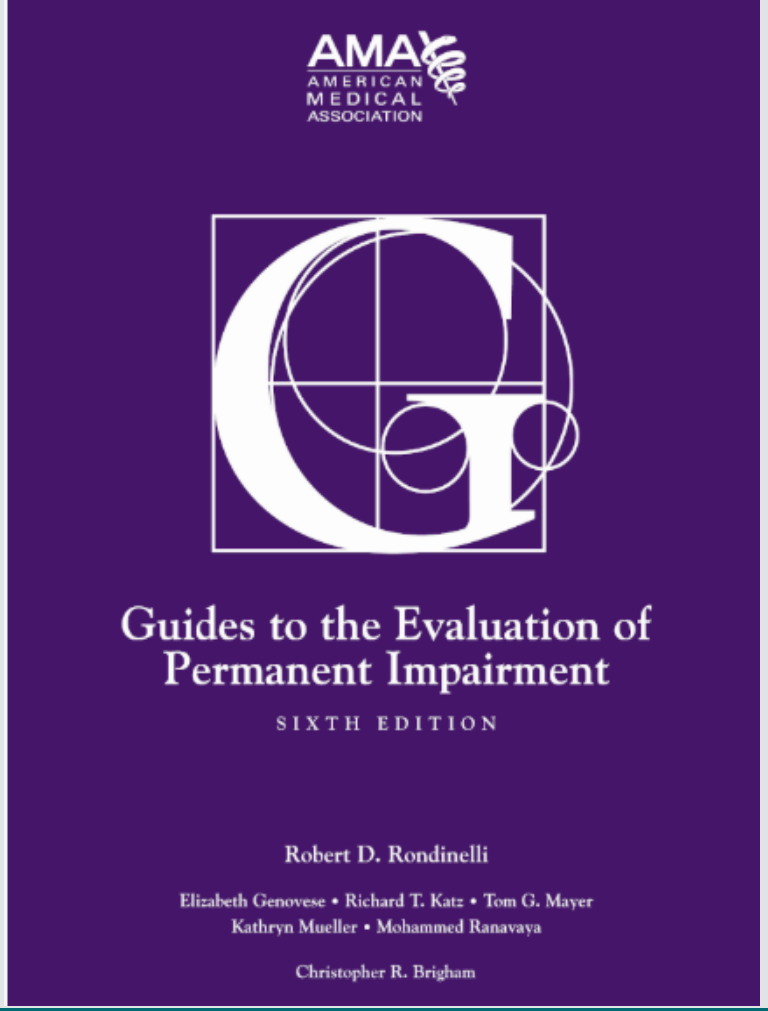
"A cluster of physiological, behavioural and cognitive symptoms associated with the continued use of substances despite substance-related problems, distress and/or impairment, such as impaired control and risky use."

American Psychiatric Association

SUBSTANCE USE DISORDER

Chapter 14 (Mental and Behavioural Disorders), AMA Guides at the LAT

- Must introduce evidence of a diagnosable impairment, which includes Substance Use Disorder
- Must be markedly impaired in at least 3 spheres or domains of functioning:
  1. Activities of daily living
  2. Social functioning
  3. Concentration, persistence and pace
  4. Adaptation to work or work-like settings



SUBSTANCE USE DISORDER

Causation

“All over the place at the LAT”

- “Very difficult clients”
- “Very difficult defences”



THE CAUSATION QUESTION

Was the substance use disorder caused by the accident?

CATASTROPHIC IMPAIRMENT

William Harding · McLeish Orlando Lawyers LLP

A catastrophic impairment designation opens access to the highest level of accident benefits for people with the most serious injuries.

When a brain injury overlaps with other injuries, adjudicators look to clinical notes to decide what the brain injury caused.



03

CATASTROPHIC IMPAIRMENT

Causation, Criterion 8 and documenting functional impairment

CATASTROPHIC IMPAIRMENT

Criterion 4: Traumatic brain injury in adults

01

OBJECTIVE EVIDENCE

Positive brain imaging

Intracranial findings on CT, MRI or other medically recognized imaging

02

CAUSATION

Caused by the accident

The brain injury shown must result from the accident at issue

03

FUNCTIONAL OUTCOME

GOS-E threshold

6+ months: vegetative or severe disability

12+ months: lower moderate disability

CAT assessment must be done by a physician or neuropsychologist (SABS s. 45(2))

CATASTROPHIC IMPAIRMENT

Criteria 7 and 8: Impairment ratings

CRITERION 7 · WHOLE PERSON IMPAIRMENT

55%+

Physical and mental/behavioural ratings combined under the AMA Guides

Won or lost on each component rating and whether the Guides' method was followed

CRITERION 8 · MENTAL & BEHAVIOURAL

3 marked or 1 extreme

Class 4 or 5 across four spheres: daily living; social functioning; concentration, persistence and pace; adaptation

A functional test, where OT evidence carries real weight

Often pleaded in the alternative when a GOS-E claim faces a causation challenge

CATASTROPHIC IMPAIRMENT

The LAT causation test: which impairments count in the GOS-E?

INCLUDED
Caused by or related to the brain injury

EXCLUDED
Independent physical or psychological injuries

INCLUDED
Effects that cannot be separated from the brain injury

The method (Abdi)

Go item by item through the GOS-E: could the person do this absent the non-brain injuries? Upheld on appeal as consistent with "but for."

Who decides (Chevalier-Wara)

Attribution must come from a physician or neuropsychologist, and the Tribunal must explain which expert it prefers and why.

Abdi v. TD General, 2022 ONLAT 19-008845/AABS-R, aff'd 2023 ONSC 3536 · Chevalier-Wara v. Economical, 2026 ONSC 2982

CATASTROPHIC IMPAIRMENT

Clinical notes and the attribution debate

Acute markers

GCS, loss of consciousness, amnesia and imaging, recorded at the time

Symptom timeline

When cognitive, mood and pain symptoms began and how they changed

Attribution with reasons

Link each limitation to its likely cause and explain why

Function, not labels

Concrete examples of work, travel, home and social activity

Pre-accident baseline

Prior function and history, even when a formal baseline isn't required

Consistency

Notes that match observed function hold up against surveillance

Conclusory opinions get little weight; reasoned, contemporaneous notes are what adjudicators rely on

QUESTIONS & DISCUSSION

THANK YOU FOR LISTENING