

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)**

BETWEEN:

JOSEPH DOUGLAS BELLEROSE

Applicant
(Appellant)

- and -

BRADLEY GERALD BOB

Respondent
(Respondent)

RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL
(Bradley Gerald Bob, Respondent)
(Pursuant to Rule 30 of the *Rules of the Supreme Court of Canada*)

Mervin L. Sadden
Counsel for the Respondent

FULTON & CO.
248 – 2nd Avenue
Kamloops BC V2C 2C9

Tel: (250) 372-5542
Fax: (250) 851-2300
Email: msadden@fultonco.com

Patrick G. Foy, Q.C.
Angus M. Gunn, Jr.
Counsel for the Applicant

BORDEN LADNER GERVAIS LLP
1200 – 200 Burrard Street
Vancouver BC V7X 1T2

Tel: (604) 687-5744
Fax: (604) 687 1415
Email: pfoy@blgcanada.com
agunn@blgcanada.com

Eugene Meehan, Q.C.
Ottawa Agent for Counsel for the Respondent

LANG MICHENER
Suite 300 – 50 O'Connor Street
Ottawa ON K1P 6L2

Tel: (613) 232-7171
Fax: (613) 231-3191
Email: emeehan@langmichener.ca

Carole J. Brown
Ottawa Agent for Counsel for the Applicant

BORDEN LADNER GERVAIS LLP
1100 – 100 Queen Street
Ottawa ON K1P 1J9

Tel: (613) 237 5160
Fax : (613) 230-8842
Email: cbrown@blgcanada.com

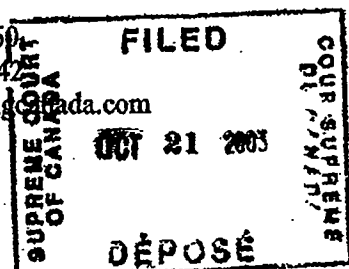


TABLE OF CONTENTS

<u>TAB</u>		<u>PAGE</u>
1	MEMORANDUM OF ARGUMENT	
	PART I – STATEMENT OF FACTS.....	1
	PART II – STATEMENT OF ISSUE.....	5
	PART III – STATEMENT OF ARGUMENT.....	5
	PART IV – SUBMISSIONS ON COSTS.....	5
	PART V – ORDER SOUGHT.....	6
	PART VI – TABLE OF AUTHORITIES.....	6
	PART VII – STATUTORY PROVISIONS.....	6
2	DOCUMENTS RELIED UPON	
	A. Transcript, pp. 514-515	
	B. RCMP on-scene photographs, p. 151 of Court of Appeal Joint Appeal Book.	
	C. Transcript, pp. 67-69	

RESPONSE TO APPLICATION FOR LEAVE TO APPEAL

Part I – Statement of Facts

1. The Respondent was the victim of a deliberate car-jacking. He was seriously injured. The jury awarded him \$500,000.00 for pain and suffering, which was reduced by the trial judge down to the trilogy cap of \$281,000.00. The Court of Appeal reduced that award further down to \$200,000.00. But it is not the Respondent who wants to appeal this – it is the other side who wants to reduce even more the money coming to the Respondent.

2. The Respondent Brad Bob was born on the Fountain Indian Reserve near Lillooet where he still lives, and was working full-time in a sawmill. Brad, while trying to boost his daughter's car, is car-jacked, and as his daughter watches, the car-jacker runs him over. Brad becomes tangled up and is grinded through the left front wheel well. As a direct result, Brad was extremely seriously injured and now cannot work, at least not in his previous job as a debarker in the sawmill.

Ref.: RCMP on-scene photographs, p. 151 of Court of Appeal Joint
Appeal Book [Tab 2B]
Transcript, pp. 67-69 [Tab 2C]

3. The facts - because this is an entirely fact-based case – are plainly and succinctly set out by the Court of Appeal below:

Brad Bob car-jacked; Applicant admits civil liability, and pleads guilty (criminal negligence causing bodily injury): sentenced to 16.5 months

- “Early in the morning of 18 April 1999, the appellant “car jacker” leaped into the front seat of the respondent’s Chevy van while the respondent was standing near the front of it with a view to giving a boost to his daughter’s car parked beside it, pushed the respondent’s son, Bradley Bob, Jr. out of the driver’s seat, and drove the van forward. The respondent was so seriously injured when the left front wheel of the van struck him and pushed him about a city block before the appellant stopped it, that he is not expected to work again. The appellant pleaded guilty to criminal negligence causing bodily injury and was sentenced to 16.5 months in prison.”

Ref.: Court of Appeal below, paragraph 4 [Leave Book p. 25]

Serious damage; medical treatment

- “The respondent’s massive life threatening injuries required immediate transport to Royal Inland Hospital in Kamloops, and then an airlift to Royal Jubilee Hospital in Victoria. On his admission to the Intensive Care Unit (ICU) at the Royal Jubilee, Dr. Meakes put him on life support systems, including mechanical ventilation, breathing, feeding and chest tubes. He was sedated, given pain medication, cardiac medication, fluid resuscitation, antibiotics and blood transfusions. For about two weeks, he was in a coma-induced state. After eight days, he was sufficiently stabilized to undergo split thickness skin grafts to repair deep abrasion wounds (the equivalent of third degree burns) that covered 16% of his total body. After another 11 days in the ICU, he was transferred to the burn unit. About three weeks later, he was transferred to the Royal Inland Hospital where he underwent further skin grafts of the deep abrasion wound on his buttock where the first graft had not been successful. After his discharge on 2 June 1999, a home nurse continued his treatment in conjunction with daily attendances at the Lillooet Hospital.”

Ref.: Court of Appeal below, paragraph 5 [Leave Book pp. 25-26]

Chest cavity so badly damaged surgical correction ruled out

- “In addition to the abrasion wounds, Mr. Bob suffered a complex chest injury. As a result of the forces applied to his chest as he was pushed along the road, the fourth through ninth ribs on his right side were fractured in multiple places. In turn, the fractured ribs punctured his right lung, perforated his diaphragm, and tore his liver. A portion of his chest wall lost its shape and was able to move freely in and out as Mr. Bob attempted to breathe. This “flail segment” caused Mr. Bob’s chest cavity to fill with blood and air. Surgical correction was ruled out as it was thought it could worsen his condition. The muscles and tissues between his ribs and chest wall were torn and those attaching shoulder to chest wall were damaged.”

Ref.: Court of Appeal below, paragraph 6 [Leave Book pp. 26-27]

Chronic pain; skin grafts; scarring; nerve damage

- “In sum, the normal architecture of his chest has been disrupted permanently. When he tries to use his right shoulder and chest muscles, his chest caves in and his shoulder drops so that he cannot develop leverage. The only treatment is analgesics and physiotherapy. However, such treatment will never offer Mr. Bob complete relief. He will have chronic pain in his chest that will never improve. In addition, his grafted skin is not normal skin. It is sensitive to temperature extremes and cannot be exposed to the sun. Buried hair follicles, sweat glands and oil glands result in chronic irritation and infection. Consequently, his grafted skin is always itchy. He wears Jobst compression garments and thick clothing to protect it and lives in fear of being accidentally struck or touched. He has some thick scarring for which he is taking steroid injections. And, of course, the scarring is visible, not only where he has new skin, but on the left thigh from where it was harvested. He also experiences pins and needles sensation in his ring and little fingers on both hands. This bilateral ulnar nerve palsy, thought to be the

result of prolonged immobility on his back, carries with it a 50% possibility of requiring corrective surgery.”

Ref.: Court of Appeal below, paragraph 7 [Leave Book pp. 27-28]

Post-traumatic stress disorder; clinical depression

- “Upon discharge from hospital, Mr. Bob was diagnosed with post traumatic stress disorder and clinical depression, for which he is receiving continuing treatment. His biggest psychological struggle was with what he saw as the loss of his role as provider, husband, and father.”

Ref.: Court of Appeal below, paragraph 8 [Leave Book p. 28]

Full time worker, providing for spouse and six children (five biological, one foster child); now cannot work

- “Mr. Bob was 50 years old at the time of his injuries. He was born on the Fountain Indian Reserve near Lillooet where he still lives. He grew up without the benefit of money or toys. His primary enjoyment as a child was riding a horse, an activity no longer possible for him. For almost 27 years before the morning of his injuries in April 1999, he had enjoyed full-time employment at the Ainsworth Sawmill in Lillooet. At the time of his injury, he was operating the 30 inch debarker, for which work he received a tax-free annual income of about \$52,000.00. He took great pride and satisfaction in his ability to provide financially for his large family. He enjoyed his work and considered his colleagues his friends. His identity was inexorably tied to his employment and his ability to provide for his family. So, when the appellant struck Mr. Bob with his own van early in the morning of 18 April 1999, he ruined Mr. Bob’s life by taking away much of what gave it value in Mr. Bob’s eyes.”

Ref.: Court of Appeal below, paragraph 9 [Leave Book pp. 28-29]

Married 29 years to Charlotte; 6 children, 8 grandchildren

- “At the time of the incident, Mr. Bob had been married for 29 years to Charlotte Bob. They have five biological children, one foster son, and eight grandchildren.”

Ref.: Court of Appeal below, paragraph 10 [Leave Book p. 29]

“He lives in fear of being bumped...”; “... he can no longer hold a rifle or hunt.” “It hurts him to lift a fish.”

4. While the Applicant finds the time within his (post-release-from-prison) schedule to instruct counsel to appeal to this Honourable Court, Brad Bob is permanently damaged, and his family permanent affected. To quote from the Court of Appeal below:

“There is no dispute that the respondent is permanently and gravely limited in what he can do. He can complete basic household duties, but is not able to resume his previous career as a debarker, or engage

in any work or recreational activities that require heavy lifting, twisting or bending. He lives in fear of being bumped or slapped in the back. His son testified he can no longer hold a rifle or hunt. It hurts him to lift a fish.”

Ref.: Court of Appeal below, paragraph 11 [Leave Book p. 29]

Respondent gets less than a year and a half in prison: now free

5. Civil liability was admitted, and the Applicant pleaded guilty to criminal negligence. He was sentenced to less than a year and a half in prison. The Applicant is now free and out of prison, and getting on with his life – except he still finds the time to appeal this judgment.

Ref.: Court of Appeal below, paragraph 11 [Leave Book p. 29]

Trial: Brad Bob Wins

6. After a one-day trial, the jury awarded \$500,000.00 in pain and suffering, and \$75,000.00 in aggravated damages. The trial judge reduced the pain and suffering to the trilogy cap of \$281,000.00.

Trial Judge Says What He's Going to Say in Charge to Jury About Aggravated Damages; Applicant: "Fine With Me."

7. Before giving the jury charge, the trial judge advised both lawyers what wording he intended to use on the issue of aggravated damages, and the lawyer for the Applicant said: "Fine with me".

Ref.: Transcript, pp. 514-515 [Tab 1]

Court of Appeal: Upheld the Trial Judgment but Reduced the Money

8. The Applicant did not appeal the issue of aggravated damages, only the quantum, i.e. the money.
9. The Court of Appeal further reduced the pain and suffering award down to \$200,000.00 (the jury had originally awarded \$500,000.00) but left the aggravated damages award as is.
10. The Applicant wants to reduce the damages further.

Part II- Statement of Issue

11. The only issues here are factual, whether the Court of Appeal should have further reduced damages to a deserving individual. However, Brad is content to leave the Court of Appeal decision as is and do what he can to get on with his life.

Part III-Statement of Argument

12. The only passing possible issue of public importance is whether insurance companies in Canada can generally keep appealing damage awards all the way up to the Supreme Court of Canada just to drive down damage awards.
13. Here, in this particular case, the Applicant wants to appeal aggravated damages, when they did not do so in the Court of Appeal – they only appealed quantum (and the Court of Appeal left that quantum exactly as is).

Part IV- Submissions on Costs

14. Brad Bob's life is forever changed. So is the life of his spouse Charlotte and their 5 children and 1 foster child, as well as their 8 grandchildren. This is a man who cannot even have the menial – but important – manly pride of being able to take out the garbage. Who cannot shovel the driveway. Never lift a grandchild on his shoulder. He was forced to go to trial, accepted a \$500,000.00 award reduced to \$281,000.00 (reduction #1), then forced by the Court of Appeal below to take \$200,000.00 (reduction #2). And what does the Applicant do? Put him through the wringer again, for a 3rd time, and make a go for reduction #3. There is no issue of national importance here. There is only unfairness. For these reasons, Brad Bob humbly requests that this be ended now, and his real costs, his solicitor-client costs, be reimbursed throughout.

Part V-Order Sought

15. That Leave to Appeal be dismissed with solicitor-client costs below throughout.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON THIS 17th DAY OF
OCTOBER 2003.

Mervin L. Sadden
per Eugene Meekham Q.C.

Mervin L. Sadden
Counsel for the Respondent

Part VI- Table of Authorities

NONE.

Part VII-Statutory Provisions

NONE.

514
Pre-charge Discussion

1 -- at first I thought did I swear or something or
2 did I say -- call his wife a dirty name, I didn't
3 know what was going on.

4 THE COURT: Oh, well, no grudges.

5 MR. SADDEN: I just apologize that way.

6 THE COURT: Okay, let's take a brief break then.

7

8 (PROCEEDINGS ADJOURNED)

9 (PROCEEDINGS RECONVENED)

10

11 MR. SADDEN: My Lord, I requested this opportunity to
12 address you one more time.

13 THE COURT: No, that's fine.

14 MR. SADDEN: When -- I tried to let go of things, but
15 there is another. Aggravated damages. When my
16 friend told the jury -- he did say in fairness to
17 my friend, "Subject to what His Lordship says," but
18 then proceeded to say there is no intentional act.
19 There needs to be a focus --

20 THE COURT: Yes, I don't -- okay. Let's talk about that
21 after when we talk about -- because I won't be
22 getting into that aspect of things, okay? I'm not
23 saying we shouldn't discuss it because I think it's
24 a matter that we should discuss. I'm not so sure
25 that intentional act matters although usually you
26 see aggravated damages in wrongful dismissals and
27 sexual assaults, but I don't think it's confined to
28 that and I'll probably tell the jury that, but we
29 can talk about that.

30 MR. SADDEN: I appreciate that. Is the jury going to be
31 left though today with my friend, in my respectful
32 submission, misstating the law on diminished
33 capacity and misstating the law on aggravated
34 damages? I think that those are errors which I
35 would ask this court to address that Mr. Horne
36 misstated the law in his submissions because there
37 may be damage between now and then.

38 THE COURT: One moment, one moment. Well, I think what
39 I will do and let's talk about this.

40 MR. SADDEN: Because it's an error and I just truly
41 believe --

42 THE COURT: Okay, one moment.

43 MR. SADDEN: -- it should be corrected right away.

44

45 (PORTION OF PROCEEDINGS NOT RECORDED)

46

47 THE COURT: How would it be if I tell the jury that

515
Pre-charge Discussion

1 aggravated damages generally flow from something
2 like a sexual assault or a wrongful dismissal where
3 people are humiliated, but aggravated damages are
4 not confined to that and I will be explaining that
5 further on in my charge.
6 MR. HORNE: Fine with me.
7 MR. SADDEN: There doesn't have to be the intent.
8 THE COURT: And I'll go -- oh, no, it's not confined to
9 that and the defendant's intent is not --
10 MR. SADDEN: Intent to injure the plaintiff is
11 irrelevant.
12 THE COURT: Yes, is irrelevant. Well, the pleader's
13 intent is irrelevant whatever it is,
14 MR. SADDEN: The defendant's intent.
15 THE COURT: Yes.
16 MR. SADDEN: Yes.
17 THE COURT: And I'll explain further. Now, on the
18 question of future losses, and I'll call them that,
19 I will say that Mr. Horne stressed that it was an
20 assessment, that is true, but you can look at the
21 calculations. They are evidence before you that
22 you must take into account, but must be considered
23 in the light of the contingencies of life. That is
24 a matter of assessment so the calculations are a
25 guide but do not provide the final answer.
26 MR. SADDEN: Or the only answer, isn't it?
27 MR. HORNE: Well, it's the final answer because they're
28 going to give a final answer.
29 MR. SADDEN: Because it's a method though, right? My
30 point, My Lord, not to be difficult, but it's just
31 that there is Court of Appeal cases that say it's a
32 final measurement if that's the best evidence
33 before the court.
34 THE COURT: Okay, well, it's not the only answer then,
35 okay. All right, so does that cover it and I'll
36 tell them that right at the outset and then we'll
37 go from there.
38 MR. SADDEN: And the pension issue, My Lord?
39 THE COURT: The pension issue? Oh, well --
40 MR. SADDEN: That it's not a full pension.
41 THE COURT: Okay, I thought maybe I'll be reviewing --
42 okay, maybe I should say exactly what I'm going to
43 say. When I review Mr. Morrissette's evidence of
44 pension, my understanding of that evidence . . .
45
46 (PORTION OF PROCEEDINGS NOT RECORDED)
47



RCMP on-scene photographs.

Both photographs p. 151 of Court of Appeal Joint Appeal Book.

67

PANKEWICH, K.C. (for the Plaintiff)
Exam in chief by Mr. Sadden

- 1 A I believe --
2 Q -- Steensel?
3 A -- I believe so. No other member indicated that
4 they had taken photographs to me on the -- or in
5 the -- the morning at that time.
6 Q I'd like to ask you to just go through the
7 photographs one by one and just explain to us what
8 they're depicting and what you saw that night in
9 relation to these photographs.
10 A All right. The first photograph, at the top of the
11 middle of the photograph is the grey Chev van,
12 which I described earlier which is registered to
13 Mr. Bob. Again, I'm looking at the middle of
14 the -- of the photograph. From the bottom leading
15 up towards the van are the -- are two black marks,
16 which I described earlier.
17 Q Where did those black marks end?
18 A They ended -- my under- -- from what I recall,
19 right near the -- the back of that van.
20 Q Okay.
21 A The -- the second photograph. Again, the black
22 marks that I'm seeing are next to a -- or, pardon
23 me, dividing the parallel parking stall with a -- a
24 white, what I will call a fog line. In front of
25 this ninety degree part of this white line I'm
26 looking at the -- there's some red splatter which
27 I -- I believe was blood. Where that exactly was
28 found in relation to the vehicle, I -- I don't
29 specifically recall. I know it was --
30 Q Was that --
31 A -- it was within the vicinity of the van.
32 Q It was in a location between where the white car
33 was and where the van was located when you arrived?
34 A I believe so. Yes.
35 Q So somewhere between the mid 400 to mid 500 block
36 of Seymour Street?
37 A Yes.
38 Q Okay. Constable Pankewich, were you able to
39 determine what the black marks were?
40 A With one hundred per cent certainty, no. I have my
41 opinion on it, but whether anyone wants my opinion
42 is another story.
43 Q Well, you weren't able to determine what made them?
44 A Again, with one hundred per cent certainty -- I
45 believe it was from the victim's clothing. I
46 didn't analyse that black mark. I haven't sent
47 into a lab for one hundred per cent confirmation.

68

PANKEWICH, K.C. (for the Plaintiff)
Exam in chief by Mr. Sadden

- 1 Q And what was the victim wearing?
- 2 A My understanding is that he was wearing a black
3 leather vest, that he had a black -- I believe
4 there was a black shirt, a blue shirt, and I
5 believe black underwear, from what I recall.
- 6 Q Where did those black marks start? Did they start
7 by the white car?
- 8 A They started approximately -- I believe it was
9 6.9 metres, or approximately 7 metres, in the left
10 through lane from the white Chrysler vehicle.
- 11 Q So about 7 metres in front of the white Chrysler.
- 12 A To the east of it. Yes.
- 13 Q Okay. If you want to continue with the
14 photographs?
- 15 A I'm sorry. Photograph 3, and this is the next
16 page. Again, that is showing the -- the van, the
17 '79 grey Chev van. There are black marks much the
18 same as photograph 1. A little bit closer.
19 There is -- oh. Photograph number 4 displays
20 the licence plate GMX 756; which, again, is
21 registered to Mr. Bob. It also shows the van, the
22 black marks, and in this photograph I'm seeing what
23 I referred to earlier as -- as what I thought was
24 blood on this white parallel parking mark, which I
25 think this photograph shows more clearly where --
26 where that blood mark is in re- -- in relation to
27 the van.
- 28 The fifth photograph shows the -- or is taken
29 from -- to show the driver's side of the van.
30 Again, I guess the relevance there -- I can see
31 that the black marks -- that there's some black
32 marks that are still continuing eastbound leading
33 up to the -- the front -- left front tire of that
34 vehicle.
- 35 The --
- 36 Q Are there red marks also showing up in that
37 photograph?
- 38 A Yes. I'm seeing some red marks on the -- again, on
39 this white -- white painted line near the back of
40 the vehicle near the left rear tire. I believe
41 that I'm seeing some red marks on the left rear
42 wheel just off of that and I think just in front of
43 it. Just in front of that left rear wheel as well.
44 There are -- the left side of that photograph near
45 the top you're seeing some white cloth, or
46 something like that, and I believe that was from
47 treatment by ambulance personnel of the -- of the

69

PANKEWICH, K.C. (for the Plaintiff)
Exam in chief by Mr. Sadden

1 victim, Mr. Bob.

2 Photograph number 6 is -- is, again, just
3 showing the front of the -- or, showing the
4 driver's side of the -- of the van. I am also
5 seeing in photograph 6 that there are still a
6 couple of small black marks directly in front of
7 that left front tire. My understanding is that the
8 vehicle was moved at some point, driven backwards a
9 few feet. I don't know who I recall hearing that
10 from, but it's -- that was what my understanding
11 was.

12 Photograph number 7 is showing the -- it's
13 looking in a westerly direction on Seymour Street
14 showing the van. The front of the van is also
15 showing the -- the black marks, which would be
16 located in front of the left front tire and going
17 in towards the van. And again, as I described,
18 there are some medical white clothing, or white --
19 white material, pardon me, for -- for treatment of
20 the -- of the victim. And there is also a -- what
21 I would call a -- a -- a pool of -- of blood, which
22 is located at the end of these black marks right by
23 the white painted line.

24 Q Did you determine through your investigation if
25 this was the location where the van came to a stop?

26 A I did at one point. I -- I know that someone had
27 indicated to me that the vehicle was -- was backed
28 up, and I believe it was for the -- for the
29 purposes of the ambulance personnel to treat the --
30 the victim.

31 Q Constable Pankewich, did you measure the distance
32 from where the white Chrysler car is to the
33 location that we see in photograph number 7 where
34 it came to a stop?

35 A Yes, I did. What the normal course is on the -- on
36 serious accidents such as this is you will set down
37 a base line, and in this particular case what it
38 would involve is 100 metre tape, actually two 100
39 metre tapes, which are -- start from the curb
40 edging on the -- I'm looking eastbound right in --
41 in front of the Value Village, in the left curb
42 edging, and then I proceed in an easterly fashion
43 with the start of the first tape measure being the
44 zero and then proceeding approximately 200 metres
45 down going through the intersection of 5th Avenue
46 and continuing in that easterly fashion.

47 We normally establish a reference point. In

TO GET
HIM
OUT
FROM
UNDER
PROBABLY.

200
METER
UNDER
THE VAN