

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Farrell v. Casavant, 2009 NSSC 233

**Date:** 20090731  
**Docket:** Hfx No. 244203  
**Registry:** Halifax

**Between:**

Bernard Farrell

Plaintiff

v.

Richard Casavant and Mary Casavant

Defendants

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**LIBRARY HEADING**

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**Judge:** The Honourable Associate Chief Justice Deborah K. Smith

**Heard:** January 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup>, 2009 & February 18<sup>th</sup>, 2009 in Halifax, Nova Scotia

**Written Decision:** July 31<sup>st</sup>, 2009

**Subject:** Civil action.

**Summary:** A motor vehicle accident occurred when the Defendants' vehicle slid on an unexpected patch of ice on an overpass/bridge. The Plaintiff suffered multiple injuries as a result of the collision.

**Issues:** Liability and quantum. Under consideration were the amendments to the *Insurance Act* that "capped" general damages for pain and suffering to \$2,500.00 for minor injuries.

**Result:** The Court found that the Defendant driver had breached his statutory and common law duty to allow the Plaintiff one-half of the road free and clear. This gave rise to a *prima facie* case of negligence casting upon the Defendant driver the "onus of explanation".

The weather on the day of the accident was clear. Visibility was good. The Defendant was driving a vehicle that was mechanically sound and was equipped with all terrain radial tires that had good tread. The

Defendant was driving 15-20 kilometres below the posted speed limit. The Court found that the Defendant had no forewarning of the slippery condition. The Court concluded that the Defendant was driving with the degree of care and caution that a reasonably competent driver would exercise under similar circumstances and had therefore met the standard of care required of him. The Court held that this was an unfortunate accident for which no one was legally liable.

Damages were assessed on a provisional basis. The Court reviewed s.113B of the *Insurance Act* and held that in order to determine whether the Plaintiff suffered a “minor injury” the following questions had to be answered:

- (1) Did the Plaintiff suffer a “personal injury”?
- (2) If so, did the personal injury result in a permanent serious disfigurement?
- (3) Did the personal injury result in a permanent serious impairment of an important bodily function caused by a continuing injury which is physical in nature?
- (4) Did the personal injury resolve within twelve months following the accident?

The Court found that the Plaintiff had suffered a personal injury as a result of this accident. The Court went on to state that while the Plaintiff had suffered a permanent disfigurement as a result of the accident, he did not suffer a permanent serious disfigurement. The Court also concluded that while the Plaintiff had suffered a permanent impairment of important bodily functions caused by continuing injuries that were physical in nature - these impairments were not serious as defined by the legislation. Finally, the Court concluded that the Plaintiff’s injuries had resolved (as defined by the *Regulations*) within twelve months following the accident. Accordingly, general damages would have been limited to \$2,500.00.

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