



## Facebook No Friend of Yet Another MVA Plaintiff

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Another Ontario Superior Court judge has ordered an MVA plaintiff to preserve, print, and produce to the defendant her Facebook photographs.

The plaintiff was involved in a motor vehicle accident on August 6, 2007. In her statement of claim, she alleged “threshold” impairments. She also alleged that the injuries permanently impaired her enjoyment of life among, other things.

On discoveries, the plaintiff confirmed using Facebook and posting pictures of herself to it. She answered she did not know what the pictures would show other than trips. She stated she did not know “off hand” if the pictures would show her engaged in any activities subsequent to the accident. The plaintiff further testified on her discoveries that her activities were affected by her injuries. She gave examples that she no longer plays golf or stays on the computer as long as she used to, She also said she has difficulty opening jars, door knobs and lifting.

After reviewing existing “Facebook” case law, the judge held that where the plaintiff puts her social enjoyment of life in issue and alleges various activities that she is unable to do, photographs of her social life and activities, before and after the alleged trauma, which she concedes are on her Facebook account, are producible. The judge found that having these documents would have some semblance of relevance and should be part of her Affidavit of Documents. Whether they are ultimately producible at trial would be a determination made by the trial judge.

The judge ordered the plaintiff to preserve and print, at the expense of the defendant, photographs of her involved in activities and social events from August 1, 2004 to date, with dates where possible. She was also ordered to provide those documents by way of a supplementary Affidavit of Documents within 45 days of the date of release of this decision.

The case is called [McDonnell v. Levie, 2011 ONSC 7151 \(CanLII\)](#)

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