

## More On BC Supreme Court 'Costs' And ICBC Claims

December 2nd, 2008

Except in certain circumstances (such as where formal settlement offers are filed and bested at trial under Rule 37B) a Plaintiff who succeeds in an ICBC injury claim in the BC Supreme Court is entitled to 'costs' (money paid under a Tariff system to compensate the successful litigant for the fact that they had to engage the BC Supreme Court process to achieve justice). However, if a Plaintiff receives a sum of money within the jurisdiction of the Provincial Court (currently set at \$25,000) then they typically not entitled to costs. Specifically, BC Supreme Court Rule 57(10) reads as follows:

*A plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the Small Claims Act is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.*

Today, reasons for judgement were released awarding a Plaintiff Costs even though the judgement received was below \$25,000.

The Plaintiff claimed injuries as a result of a BC motor vehicle accident. After trial the claim succeeded and damages just below \$25,000 were awarded. In finding that the Plaintiff had 'sufficient reason for bringing the proceeding in the Supreme Court' and thus entitled to costs Madam Justice Dardi held as follows:

[10] *Accordingly, the plaintiff must establish that as at May 31, 2007 when she commenced her action, she had sufficient reason for bringing the claim in the Supreme Court. When these proceedings were issued, the plaintiff was working full-time but continued to attend at physiotherapy treatments prescribed by her doctor. She attended 13 treatments from May 4, 2007 to September 5, 2007. On May 7, 2007, Dr. McGregor continued to note a decrease in neck flexion and tenderness to palpitation of the left shoulder muscles. The medical-legal report tendered by plaintiff's counsel is dated September 15, 2007. In that report, the prognosis was that the plaintiff's condition would gradually settle over the next 12 to 24 months and her injury was not likely to cause any permanent disability.*

[11] *Given that the plaintiff did not have a medical-legal report at the time of the initiation of the action, nor had the defendant tendered any expert medical opinion, her counsel was not in a position to assess the quantum of general damages that may be awarded: **Tucker v. Brown**, 2008 BCSC 734. As at May 31, 2007, in all the circumstances, there was a real and reasonable prospect that the plaintiff's recoverable damages would exceed the Provincial Court jurisdiction. Furthermore, unlike **Walia**, at the time of filing the proceedings, liability was not admitted; rather, the plaintiff had been informed that her claim was denied pursuant to the Insurance Corporation of British Columbia Low Velocity Impact Guidelines.*

[12] *I have also considered the following comments of Mr. Justice Chiasson in **Reimann** at para. 35:*

*In my view, the approach generally taken by the Supreme Court is too limited. It overemphasizes the policy of encouraging parties to proceed in the Provincial Court, but fails to consider the equally compelling policy consideration that parties are entitled to have respected their legitimate choice of forum.*

[13] *In **Bhanji v. Quezada**, 2003 BCCA 445, 185 B.C.A.C. 301 at para. 9, the Court provided some guidance as to what would justify a plaintiff's decision to proceed in the Supreme Court:*

*The purpose of R. 57(10) is to encourage actions to be brought and continued in Provincial Court when there is no sufficient reason to expect that the claim might give rise to damages in excess of \$10,000. That is sometimes a difficult decision for a plaintiff or his solicitor to make. If the plaintiff decides to proceed in Supreme Court he must be prepared to justify that decision in the event he recovers less than \$10,000. In many cases, where there is*

*sufficient medical or other evidence capable of supporting the larger claim, it will not be too difficult to justify the decision, especially if the damage award approaches the Provincial Court limit. [emphasis added]*

[14]       The award in this case is \$24,263.47 prior to pre-judgment interest.

[15]       In summary, I have concluded that at the time the proceedings were commenced, there was a real and reasonable prospect that the plaintiff's recoverable damages would exceed the Provincial Court jurisdiction. The fact that the actual amount of the damages awarded to the plaintiff is very close to the Provincial Court limit supports this conclusion. I am satisfied that the plaintiff has demonstrated sufficient reason for bringing her action in the Supreme Court. I order that the plaintiff is entitled to costs under Appendix B at Scale B.