

## How Much Is The Pain And Suffering Worth In My ICBC Injury Claim?

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One of the most frequent questions I get asked as a BC Personal Injury Lawyer is ‘how much is my pain and suffering worth?’.

This is an important question for anyone injured through the fault of another in a BC motor vehicle collision.

When negotiating with ICBC the playing field is typically imbalanced in that the ICBC claims adjuster has lots of experience in valuing personal injury claims. Unless you are an injury claims lawyer you understandably would have little experience in valuing pain and suffering and may need help valuing this loss.

It is important to empower yourself for the negotiation because in tort claims ICBC is negotiating on behalf of the person that injured you (the tort claim is, after all, made against the other persons policy of insurance). Practically speaking, this means that this imbalance in experience can work as a huge disadvantage, particularly if you think the ICBC adjuster is ‘your’ adjuster.

With this in mind, here is some basic information on pain and suffering and ICBC tort claims. Pain and Suffering is awarded under the legal head of damages called ‘non-pecuniary loss’. One of the best ways to value pain and suffering in an ICBC tort claim is to find cases with similar circumstances and injuries to see what damages were awarded. When you find several similar cases a range of damages starts to become apparent and this range can serve as a useful guide in helping you understand the potential value of your ICBC personal injury tort claim.

Reasons for judgement were released today (Hoang v. Smith Industries Ltd.) dealing with the issue of pain and suffering in a BC motor vehicle collision tort claim. In awarding the Plaintiff \$19,000 for his non-pecuniary loss as a result of soft tissue injuries Madam Justice Russell summarized the law of non-pecuniary damages as follows:

[32] *The purpose of non-pecuniary damage awards is to compensate the plaintiff for “pain, suffering, loss of enjoyment of life and loss of amenities”:* **Jackson v. Lai**, 2007 BCSC 1023, B.C.J. No. 1535 at para. 134; see also **Andrews v. Grand & Toy Alberta Ltd.**, [1978] 2 S.C.R. 229; **Kuskis v. Tin**, 2008 BCSC 862, B.C.J. No. 1248. *While each award must be made with reference to the particular circumstances and facts of the case, other cases may serve as a guide to assist the court in arriving at an award that is just and fair to both parties:* **Kuskis** at para. 136.

[33] *There are a number of factors that courts must take into account when assessing this type of claim. Justice Kirkpatrick, writing for the majority, in **Stapley v. Hejslet**, 2006 BCCA 34, 263 D.L.R. (4th) 19, outlines the factors to consider, at para. 46:*

*The inexhaustive list of common factors cited in **Boyd [Boyd v. Harris, 2004 BCCA 146]** that influence an award of non-pecuniary damages includes:*

- (a) *age of the plaintiff;*
- (b) *nature of the injury;*
- (c) *severity and duration of pain;*
- (d) *disability;*

(e) emotional suffering; and

(f) loss or impairment of life;

*I would add the following factors, although they may arguably be subsumed in the above list:*

(g) impairment of family, marital and social relationships;

(h) impairment of physical and mental abilities;

(i) loss of lifestyle; and

(j) *the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: **Giang v. Clayton**, [2005] B.C.J. No. 163, 2005 BCCA 54 (B.C. C.A.)).*