

## ICBC Injury Claims, Lawyers And Settlement

February 27th, 2009

As an ICBC Injury Claims Lawyer I have developed a particular habit when it comes to settlement of my clients claims. I typically never bind my clients to a settlement until they sign a full and final release (the settlement contract ICBC uses in concluding injury claims). This is my usual practice even if I receive firm instructions to settle an ICBC Injury Claim for a certain amount and I get a better settlement offer on the table.

Lawyers act as agents for their clients. Lawyers can, therefore, bind their clients to a settlement. Typically a client will give a lawyer authority to settle their claim for X dollars and the lawyer will attempt to get that amount or more. If a lawyer accepts an ICBC settlement offer on behalf of their client the client is typically bound to the settlement, even if the client later wishes to get out of the settlement by not signing ICBC's full and final release.

When deciding whether or not to accept an ICBC settlement offer, like many important decisions in life, people sometimes second guess themselves and change their mind. For this very reason I typically negotiate on a non-binding basis making it clear to ICBC or ICBC's lawyers that if a settlement is agreed to in principle it is never binding on my client unless and until they sign the full and final release. This gives clients one last chance to change their mind which is never a bad option to have.

If such a term is not part of the settlement negotiations then a client may be bound even if they get cold feet and decide not to sign ICBC's settlement contract. [Reasons for judgement were released today \(Lacroix v. Loewen\)](#) discussing exactly such a scenario. In Lacroix the Plaintiff gave her lawyer instructions to accept a settlement offer. The lawyer then did accept ICBC's settlement offer. The client, after speaking with some friends, decided not to proceed with the settlement and did not sign ICBC's settlement contract. The client proceeded with her Injury Claim and ICBC brought an application to dismiss the lawsuit on the basis that it was already settled.

In the end Mr. Justice Williamson permitted the claim to continue finding that after the accepted offer ICBC insisted upon a new term which was not part of the agreed settlement thus undoing the agreement to settle. But for this fact, it appears, the Plaintiff would have been bound to the settlement. Mr. Justice Williamson summarized the law relating to offer and acceptance of ICBC Injury Claims and the required paperwork that flows from such a contract as follows:

[14] *In Fieguth v. Acklands Ltd.* (1989), 37 B.C.L.R. (2d) 62, 59 D.L.R. (4<sup>th</sup>) 114 (C.A.), McEachern C.J.B.C., speaking for the court, said at 70:

*In these matters it is necessary to separate the question of formation of contract from its completion. The first question is whether the parties have reached an agreement on all essential terms. There is not usually any difficulty in connection with the settlement of a claim or action for cash. That is what happened here and as a settlement implies a promise to furnish a release and, if there is an action, a consent dismissal unless there is a contractual agreement to the contrary, there was agreement on all essential terms.*

*The next stage is the completion of the agreement. If there are no specific terms in this connection either party is entitled to submit whatever releases or other documentation he thinks appropriate. Ordinary business and professional practice cannot be equated to a game of checkers where a player is conclusively presumed to have made his move the moment he removes his hand from the piece. One can tender whatever documents he thinks appropriate without rescinding the settlement agreement. If such documents are accepted and executed and returned then the contract, which has been executory, becomes executed. If the documents are not accepted then there must be further discussion but neither party is released or discharged unless the other party has demonstrated an unwillingness to be bound by the agreement by insisting upon terms or conditions which have not been agreed upon or are not reasonably implied in these circumstances.*

[15] *In the case at bar, the question becomes whether the defendants, in sending over the cheque for the settlement sum along with the release documents, insisted upon terms or conditions which had not been agreed upon or were not reasonably implied in these circumstances.*

[16] *There is no doubt upon the affidavit material filed by the plaintiff that when ICBC offered the plaintiff \$7,000 via her counsel Mr. Mickelson, she told Mr. Mickelson to accept that offer. He did.*

[17] *It was after a conversation with friends that the plaintiff telephoned Mr. Mickelson again and told him that she would not accept the offer.*

[18] *The plaintiff says that the documents, which she saw only after purporting to withdraw her acceptance, show that Mr. Mickelson did not follow her instructions. She had instructed him to make an offer at \$6,500, plus user fees, plus all of her expenses, an offer that would have amounted to \$7,692. However, she points out that according to the ICBC adjuster's notes, Mr. Mickelson did not make an offer of \$7,692. Instead, he countered ICBC's offer of \$5,500 with an offer of \$7,000. Thus, the offer that he made was \$692 less than the one authorized by the plaintiff.*

[19] *Nevertheless, when Mr. Mickelson told the plaintiff that ICBC had made an offer of \$7,000, it is undisputed that she said she would accept ICBC's offer.*

[20] *In these circumstances, I cannot see how the fact that the offer was \$692 less than what was originally authorized matters. The fact is that there was \$7,000 on the table. Her solicitor advised her to take this offer and she did.*

The lesson in this case is to make sure that when you give your lawyer settlement instructions understand that he/she can make a binding commitment on your behalf based on these instructions. Better yet, if you don't know your lawyers negotiation tactics consider asking him or her to negotiate on a non-binding basis giving you, the client, the final say when the claim settlement paperwork is presented to you.