More On ICBC Injury Claims And "Sufficient Reason" To Sue In Supreme Court

If a Plaintiff sues in Supreme Court but is awarded damages of $25,000 or less (*the current financial limit of the BC Small Claims Court*) the Plaintiff is not entitled to Costs unless they had "*sufficient reason*" for suing in the BC Supreme Court.

It is becoming reasonably well established that a Plaintiff has sufficient reason to sue in Supreme Court when the Defendant is insured with ICBC. The reason being that the Defendant will likely be represented by a lawyer paid for by ICBC whether the claim is filed in Small Claims Court or the Supreme Court. In these circumstances it is reasonable for a plaintiff to hire a lawyer to balance the playing field. Since the Supreme Court allows costs orders to offset some of the legal fees our Courts have held on a few recent occasions that this creates a 'suffient reason' for Plaintiff's to bring modest claims to trial in the Supreme Court. Reasons for judgement were released today demonstrating this.

In today's case (Zale v. Colwell) the Plaintiff was injured in a BC motor vehicle collision. She sued in the Supreme Court. At trial she was awarded just over $10,000 for injuries and losses. Mr. Justice Harvey went on to award the Plaintiff costs despite the fact that the Small Claims Court could have heard the case. The Court provided the following reasons:

[7] None of the factors identified in Spencer have application here. The matter was not factually complex; it proceeded by judge alone; liability was admitted, obviating the need for examination for discovery by the plaintiff; the defendant resided within the jurisdiction; and, the matter did not proceed by way of summary trial.

[8] As was noted in Spencer, the desire of the plaintiff to have counsel, alone, is not a sufficient reason, of itself, to depart from the underlying proposition stated in R. 57(10). In any event, the plaintiff was represented when the action was originally commenced in Provincial Court in 2006.

[9] Lastly, the plaintiff says costs should be awarded owing to the fact the defendant, in effect ICBC, is an institutional litigant with rigid policies in low velocity collision claims such as this.

[10] The defendant, while admitting liability, put the plaintiff to the strict proof of any damages whatsoever arising from the accident. That position did not change throughout the trial process. As in Spencer, I am left with the conclusion that but for the trial process, the plaintiff would be left without a remedy…

[13] In each of the above three decisions, the primary reason for awarding the plaintiff costs, in circumstances not unlike these facing the plaintiff here, was the consideration that given the need to retain counsel to battle an institutional defendant, a reasonable consideration in determining the forum is the matter of indemnity for the costs of counsel.

[14] Recognizing that the onus rests on the plaintiff to demonstrate sufficient reason to have raised the matter from Provincial Court to Supreme Court, I am not persuaded that the distinguishing factor noted by the defendant, that counsel was retained (albeit not the same counsel) for the Provincial Court proceeding, is sufficient to deprive the plaintiff of the costs of the proceeding under R. 66.

[15] I conclude that in the circumstances, it was ultimately reasonable for the plaintiff to make the decision to have the matter heard in Supreme Court.

[16] Accordingly, the plaintiff will have her costs pursuant to R. 66(29)(b).

I should point out that today's case relied on BC Supreme Court Rule 57(10). This rule has now been repealed and replaced with Rule 14-1(10) which reads identically to Rule 57(10) so the precedents developed under Rule 57(10) regarding costs should continue to assist litigants under our new rules. I should also point out that the BC Court of Appeal is expected to

address the issue of sufficient reason for suing in the BC Supreme Court and provide further clarity and certainty to this area of the law.