

Lawyers Hiring Lawyers - A Reasonable Disbursement?

August 12th, 2009

Very interesting reasons for judgment were released today by the BC Supreme Court dealing with the recovery of legal fees after a BC Personal Injury Lawsuit. Before getting into the facts of this case, however, some brief background is necessary.

Generally speaking when a party sues and succeeds in a BC Supreme Court lawsuit he/she is entitled to Court "Costs" which compensate the successful party for having to go through the hassle of a formal lawsuit.

These "costs" have nothing to do with the party's actual lawyer fees, rather they are set by a Tarriff and the amount of costs the party is entitled to is generally tied to the number of steps they took in the lawsuit. In addition to 'costs' a successful litigant is entitled to claim reasonable disbursements (money spent on advancing the case such as court filing fees, expert witness costs etc.).

Interesting reasons for judgement were released today dealing with whether a litigant's actual expense for hiring a lawyer could be recovered after a lawsuit. The general answer to this question is no, however, on the unique facts of this case the Plaintiff was entitled to recover the actual costs of hiring one of his lawyers as a disbursement.

In today's case (Baiden v. Manji et al) the Plaintiff sued various defendants for personal injuries. Before the matter could proceed to trial the Defendant's raised a "s. 10 WCB Defence". A section 10 defence, when successful, prevents a plaintiff from suing in court where the Plaintiff is injured while acting within the scope and course of his/her employment and the at fault entity is also a person or employer that caused the accident in the course of their employment. In these circumstances the Plaintiff must turn to WCB for compensation.

Once this defence is raised, BC Courts cannot deal with its merits rather under s. 257 of the Workers Compensation Act the Workers Compensation Appeal Tribunal (WCAT) has the exclusive jurisdiction to determine the status of parties to a legal action. This is frustrating to Plaintiffs because if this defence is pursued the lawsuit is basically put on hold, a hearing has to be had at WCAT, and only if the defence fails at WCAT can the Plaintiff carry on with their lawsuit.

In today's case this is exactly what happened. The Plaintiff had to go through with a WCAT hearing before his lawsuit was heard in court. In doing so the Plaintiff hired a second lawyer to deal with the WCAT. His legal bill for this second lawyer came to \$8,400.

The s. 10 defence did not succeed and the WCAT found that "*the injuries to the plaintiff did not arise out of and int he course of his employment*". The Plaintiff then proceeded to trial. At the end of trial the Plaintiff asked the Court to allow the \$8,400 as a disbursement. Mr. Justice Chamberlist concluded that this was a reasonable disbursement and allowed the Plaintiff to recover this cost. Specifically the Court reasoned as follows:

I am of the view that having reviewed the legislation applicable to hearings before WCAT that this is a situation where it is necessary that specialist counsel be hired to deal with the issue.

[22] *The Act discloses, through various sections, that the appeal tribunal is not a court of law like the Supreme Court of British Columbia...*

[24] *These very simple observations exemplify the difference between proceedings in the Supreme Court of British Columbia and proceedings under the Workers Compensation Act.*

[25] *As a result, I find attendances before the Workers' Compensation Board and WCAT would be quite different from appearing in court and, as such, represent a need for specialization. ...*

As I have indicated above, a lawyer may be very competent in Supreme Court where he or she has been taught and practised the importance of legal precedent and is familiar with the rules of admissibility of evidence. Section 246.1 and s. 250 of the Act obviously disclose some of the differences in appearing before WCAT and appearing before the Supreme Court....

it is not always the case that a disbursement for legal fees paid to another lawyer and reasonably incurred will be disallowed. Experienced litigators should leave nothing to chance. ...

[39] *The fact is that only after some years that Mr. Ward had been counsel for the plaintiff was s. 10 of the WCA brought into issue. The affidavit filed by the plaintiff discloses that Mr. Ward had never before dealt with the WCAT.*

[40] *I have reviewed the various submissions made to WCAT as set out in the affidavit of Karin Reinhold, along with the decision of WCAT, and I find that the retention of Mr. Ishkanian to act for the plaintiff before WCAT was reasonably incurred at the time and the account is reasonable.*

[41] *The sum of \$8,400.00 is allowed as a disbursement in this action.*