

ICBC Claims And Lawyer Fees

September 26th, 2008

Reasons for judgement were released today by the BC Court of Appeal reducing a lawyer's fee for services performed on a contingency basis.

The facts of the case are tragic. The Plaintiff was catastrophically injured when she was 19 months old in a single vehicle roll over accident in 1993.

A claim was started against the driver of the vehicle. Eventually a new lawyer took over the file and acted for the Plaintiff for over 10 years and had to spend over \$10,000 of her own money to move the prosecution of the claim along.

The claim eventually settled for the ICBC insurance policy limits. Although the fee agreement permitted the lawyer to charge 33.3% of the settlement the lawyer reduced the fee to 20%.

In these circumstances the fees needed the approval of the Supreme Court and in 2007 the fees were approved. The Office of the Public Guardian and Trustee appealed the approval claiming the fees were excessive in the circumstances.

Interestingly, the guardian of the child took no issue with the legal fees and did not oppose the approved fee of 20%. In other words, the client appeared to be happy with the services performed and the fees charged but the government was not.

The BC Court of Appeal reduced the lawyers fee to about 12% of the amount recovered. In doing so the court summarized some of the factors that are considered when approving contingency fee agreements, specifically:

1. *the financial circumstances of the plaintiff;*
2. *the risk to the law firm where it carries disbursements;*
3. *the complexity of the issues;*
4. *the experience and skill of defendant's counsel;*
5. *the experience and skill of plaintiff's counsel;*
6. *the risk assumed by plaintiff's counsel that there would be no pay for effort expended;*
7. *the time expended by plaintiff's counsel;*
8. *the importance of the case to the plaintiff; and,*
9. *whether the settlement is a good settlement.*

The court then went on to adopt some generally accepted propositions regarding contingency fee agreements in British Columbia:

[22] He said, in commenting in general on contingency fee remuneration at p. 269:

A solicitor who undertakes the prosecution of a difficult case, the prospects of which are uncertain due to various issues such as liability, causation or damages, is entitled to be well compensated in the event the case is brought to a successful

conclusion. Such remuneration must be substantial, but not exorbitant, in order to make up for those cases taken by the solicitor on a contingency fee basis which do not result in success.

[23] In *Usipuk v. Jensen, Mitchell & Co.* (1986), 3 B.C.L.R. 283, [1986] 5 W.W.R. 41 (S.C.), Madam Justice Southin observed (at p. 297):

In approaching the question of the fairness of any particular contract for fees on a percentage basis, one must remember that there are many kinds of personal injury cases: motor vehicle accidents, medical and other professional malpractice, products' liability, occupiers' liability and no doubt other kinds which do not, at the moment, occur to me. Medical malpractice cases are notoriously difficult and expensive to pursue. Expert witness fees in themselves can run to many thousands of dollars.

But actions for negligence in the operation of a motor vehicle may or may not be risky or difficult. Sometimes there is an issue of liability; frequently there is not. Sometimes there is a real difference of opinion on the proper amount of damages between the plaintiff and the Insurance Corporation of British Columbia; sometimes, there is very little.