

BC Supreme Court Rules Update: Withdrawing An Admission Of Fault

September 24th, 2010

Reasons for judgement were released today considering when a Defendant can withdraw an admission of fault in a personal injury lawsuit.

In today's case ([Surerus v Leroux](#)) the Plaintiff was injured when he was struck by a vehicle operated by the Defendant. He sued for damages and alleged the crash was the Defendant's fault for a variety of reasons including that the Defendant drove a vehicle with defective brakes. ICBC, the insurer for the Defendant, instructed the defence lawyer to admit fault.

In the course of the lawsuit the Defendant wished to withdraw the admission of fault. The Defendant brought a motion asking the Court's permission to do so. Master Shaw dismissed the motion finding that the request was brought too late in the course of lawsuit.

The Court applied Rule 7-7(5) of the New BC Supreme Court Civil Rules (*the rule dealing with withdrawing admissions*). This is the first case I'm aware of applying this rule however it's worth noting that the rule's language is almost identical to the old rule 31(5)(c) and the Court relies on precedents established under the old rule as being authoritative. In dismissing the motion Master Shaw made the following comments:

[3] Rule 7-7(5) reads as follows:

Withdrawal of admission

(5) A party is not entitled to withdraw

(a) an admission made in response to a notice to admit,

(b) a deemed admission under subrule (2), or

(c) an admission made in a pleading, petition or response to petition

except by consent or with leave of the court. ...

[17] This is not a case where the plaintiff's pleadings set out a variety of allegations of possible negligence. The plaintiff made a specific allegation in his pleadings of poor mechanical condition and faulty brakes.

[18] The defence says that there is an issue to be tried, and states that the defendant's evidence will be that he had no prior knowledge of the brake issue before the accident.

[19] In *374787 B.C. Ltd. v. Great West Management Corp.*, 2007 BCSC 582, Madam Justice Martinson states at para. 27:

27 As a general rule the Court must consider whether in the circumstances of the case the interests of justice justify the withdrawal of the admission. The following factors, which are not exhaustive are relevant: delay, loss of a trial date, a party is responsible for an erroneous admission, inadvertence in the making of the admission and estoppel. See *Meisenholder v. Wikdahl*, 2005 BCSC 630 and *Hamilton v. Ahmed*. A deemed admission can be withdrawn even where the failure to reply was deliberate: *Linear S.R.L. c. CCC - Canadian Communications Consortium Inc.* 2001 BCSC 682.

[20] I am satisfied that the interests of justice do not justify the withdrawal of the deemed admission.

[21] I have reviewed the factors set out by Madam Justice Martinson in *374787 B.C. Ltd.* and affirmed by the Court of Appeal. This claim was filed October 6, 2008. It is almost four years since the date of the accident. There is a trial date scheduled for April 11, 2011. Discoveries have been conducted. The notice of motion was not filed until May 28, 2010, although the defence notified the plaintiff in September of 2009 that they were attempting to withdraw their admission of liability. I find that the delay of the defendant bringing this application, from the time of the accident to now, is a concern which cannot be overcome.

[22] The trial date scheduled for April 11, 2011, is not imminent and, therefore, not necessarily at risk for losing the date.

[23] There was no evidence put before this court with respect to the status of the vehicle. It is unknown if it is even available for inspection. The plaintiff specifically pleads in the statement of claim the condition of the brakes. That should have alerted the adjuster and defence. Even if the admission was inadvertent, there appears to be an element of simply not paying attention to the pleadings.

[24] Withdrawing the admission at this late date would be prejudicial to the plaintiff. The plaintiff has acted to his detriment by relying on the admission.

[25] I find that the interests of justice would not be served by allowing the withdrawal of the admission at this date.

[26] *In the result, I dismiss the application of the defendant. Costs will go to the plaintiff in any event of the cause.*