

Can British Columbia Residents Sue In BC If They Are Injured Out Of Province?

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British Columbia remains the least ‘*tort-reformed*’ Province in Canada and as a result we can be proud that BC offers fair adjudication of claims for those injured at the hands of others. Many other Canadian jurisdictions offer fewer protections with compensation restrictions such as ‘*no-fault*’ laws or ‘*soft-tissue injury caps*’ on damages.

If a British Columbia resident is injured in another Province can they sue in BC to be compensated for their injuries? Reasons for judgement were released today considering this issue.

In today’s case (*Dembroski v. Rhainds*) the Plaintiff was involved in a car crash in Alberta in 2007. The Plaintiff was a British Columbia resident and was in Alberta for a short while to do some work as a farrier. The Plaintiff was injured and unable to perform her work. She returned to BC shortly after the car crash. She had the majority of her treatments in BC.

The Plaintiff eventually sued the alleged at fault motorist for compensation in British Columbia. The Defendant brought a motion to dismiss the claim arguing that BC Courts lack jurisdiction to preside over this case.

Mr. Justice Truscott agreed with the defendants and dismissed the lawsuit. In doing so he made the following points regarding BC Courts’ jurisdiction to preside over a lawsuit arising from an out of Province motor vehicle accident:

[11] The court’s jurisdiction is governed by the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 (CJPTA), which gives the court territorial jurisdiction in particular circumstances.

[12] From the facts here, the only circumstance set out in the legislation that might give the court jurisdiction is the provision in s. 3(e) that “there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.”...

[19] Defence counsel cites a number of court decisions in British Columbia that have denied jurisdiction on what are alleged to be similar circumstances, including: Canadian International Marketing Distributing Ltd. v. Nitsuko Ltd. (1990), 56 B.C.L.R. (2d) 130 (C.A.); Aubichon (Guardian ad litem of) v. Kazakoff, [1998] B.C.J. No. 3058 (S.C.); Jordan v. Schatz, 2000 BCCA 409; Sequin-Chand v. McAllister, [1992] B.C.J. No. 237 (S.C.); Williams v. TST Porter (c.o.b. 6422217 Canada Inc.), 2008 BCSC 1315; and Roed v. Scheffler, 2009 BCSC 731.

[20] All of these cases concluded that where a British Columbia resident plaintiff is injured in a foreign jurisdiction and then returns to British Columbia for treatment of injuries, there exists no real and substantial connection with British Columbia to give the courts of British Columbia jurisdiction because the only connection to this province is the fact that the plaintiff is a resident here at the time of the claim.

[21] In Jordan v. Schatz, Mr. Justice Cumming, writing the decision for the Court, said at para. 23:

What constitutes a “real and substantial connection” has not been fully defined. However, it has been well established by this Court in Nitsuko, supra, and in Ell, supra, that there is no real and substantial connection to British Columbia based on the bare residency of the Plaintiff in the jurisdiction. There must be some other or further sufficient connecting factor or “contacts” to this province. Clear examples of connecting factors include the residency of the defendant in the jurisdiction or the fact that the tortious act was committed or damages suffered here.

...

36] I can see no exception that would be applicable in this case to allow me to depart from the decisions in those cases that have denied jurisdiction to the court when the plaintiff's only connection to the jurisdiction is the fact she continues to suffer from her injuries while she resides here. To accept jurisdiction here would be to accept jurisdiction for a plaintiff who moves to the jurisdiction after an accident in another province and continues to suffer from injuries here. That cannot be.

[37] There is no real and substantial connection between British Columbia and the facts on which the proceeding against the defendants is based. There may be a real and substantial connection between British Columbia and the plaintiff, but that does not satisfy the words of s. 3.

[38] The action is dismissed for want of jurisdiction. The defendants will have their costs.