

ICBC Injury Claims, The Low Velocity Impact Program, And Human Rights In BC

Interesting reasons for judgement were released today by the BC Supreme Court dealing with ICBC's Low Velocity Impact Program (LVI Program) and Human Rights complaints.

The respondent was involved in a motor vehicle collision 2004. This collision fell into ICBC's LVI program and they defended the claim of the Plaintiff in accordance with that LVI program that ICBC had in place at the time. Mr. Justice Wilson, summarized the program as follows:

[5] *On 12 March 2004, Mr. Yuan was involved in a road traffic incident. A vehicle driven by another motorist collided with the rear end of Mr. Yuan's vehicle while Mr. Yuan was stopped at a red light. The Insurance Corporation of British Columbia is the liability carrier for the other motorist.*

[6] *It appears to be common ground that, in addition to a contractual duty the Corporation had to its insured other motorist, to adjust this claim, there was a statutory duty the Corporation owed to Mr. Yuan to adjust the claim. Mr. Yuan did make a claim for personal injuries he alleged he received as a result of the incident. The Corporation, therefore, commenced its adjustment of Mr. Yuan's claim.*

[7] *At all material times, the Corporation had a policy, among others, based upon an analysis of the physical forces generated by the collision of motor vehicles. The Corporation determined that in the ordinary course of events, a collision which resulted from a deceleration of less than eight kilometres per hour would not cause damage or injury to human tissue. That was a rebuttable presumption. But if a collision was determined by the Corporation to involve what is called a "low velocity impact" phenomena, then it was adjusted according to, among other things, an expedited procedure.*

[8] *In this case, the Corporation did determine that the collision involved a low velocity impact between the two motorcars. Accordingly, Mr. Yuan's claim was assigned to the procedures and practices applicable for low velocity impact claims. It is a part of the policies and practices that once the matter is precipitated into this low velocity impact procedure, that the adjuster go about determining whether or not there is information or evidence that will rebut the presumption. That is to say, could the injury complained of be plausibly caused by the collision.*

[9] *In this case, the Corporation determined that there was no information which rebutted the presumption at the time of the investigation and on 4 May 2004, the Corporation's representative informed Mr. Yuan by letter that the Corporation would not consider any payments with respect to his claim against its insured for injuries arising from the incident.*

The Respondent brought a human rights complaint alleging that the LVI program constituted 'discriminatory practice'.

ICBC brought a motion to dismiss the human rights complaint on the basis that the complaint was filed out of time and that 'the complaint had no reasonable prospect for success'.

The Human Rights Tribunal dismissed ICBC's application. ICBC appealed to the BC Supreme Court. Mr. Justice Wilson agreed with ICBC and concluded that the Respondent's application had no reasonable prospect of success. His key findings were made at 46-52 which I reproduce below:

[46] *As the tribunal said in **Ingram**, there would have to be some allegation that the complainant "has been discriminated against on the basis of disability in order for a potentially valid human rights complaint to exist. In other words, a complainant must allege facts that, if proven, would establish that they have been in some way adversely affected by reason of their disability." The member did not do that analysis. I do. There is no evidence*

that Mr. Yuan had his claim adjusted under the low velocity impact guidelines because he was physically or mentally disabled. Indeed, the member found that any information or evidence with respect to his then existing state of health was not relevant to his considerations.

[47] Second, the information before me, which was the same as the information before the member, is that Mr. Yuan was placed into the low velocity impact adjustment guidelines because the Corporation determined that the collision was a low velocity impact type. It had nothing to do with any physical or mental characteristic of Mr. Yuan.

[48] Third, there is no evidence of specifically how this particular method of adjusting a claim adversely affects Mr. Yuan. The evidence is clear. The complaint was received. The determination was made that it was a low velocity impact. Inquiries were made into the nature of the injury complained of, and a determination was made that it was implausible that this kind of a collision would cause the injuries complained of. It was simply a matter of causation. Based on the analysis the Corporation had done, it made a rebuttal presumption that there probably would not be injury to human tissue in the ordinary course of events, but if there was evidence to rebut the presumption, it was open to the complainant to bring that evidence forward. Which Mr. Yuan eventually did do.

[49] This complainant, Mr. Yuan, will not be able to establish that this Corporation put him into the low velocity impact adjustment process on the basis of his physical or mental disability or on the basis that it perceived him to be not disabled. Therefore, I conclude that there is no reasonable prospect that his complaint against the Corporation will succeed under s. 27(1)(c) of the **Human Rights Code**.

[50] What the member did, however, as I say, was to set up a straw man. What he said was, Mr. Yuan is treated differently because the Corporation perceives that he is not, or is less likely to be, injured or disabled. So what attracts s. 8, according to the member, is not that there is discrimination against Mr. Yuan because of physical or mental disability but, rather, Mr. Yuan is discriminated against because the Corporation perceives him to not be physically or mentally disabled.

[51] I agree with Ms. Westmacott. That is to tip the analysis on its head. To accept that notion seems to me to pound another nail into the coffin of common sense.

[52] Those are my reasons.

I don't write this post to support ICBC's LVI program in any way. I strive to have this blog comment on all ICBC cases of interest whether or not the results are pro Plaintiff or pro ICBC. In my opinion the LVI program is designed to minimize claims costs and has little connection to whether or not injuries occur in a collision.

Our courts deal with ICBC LVI claims frequently and the [LVI archives of this website](#) provide a good glimpse into how BC courts deal with LVI tort claims. Nonetheless, this is an interesting judgement dealing with the unique allegation that the LVI program is somehow discriminatory.