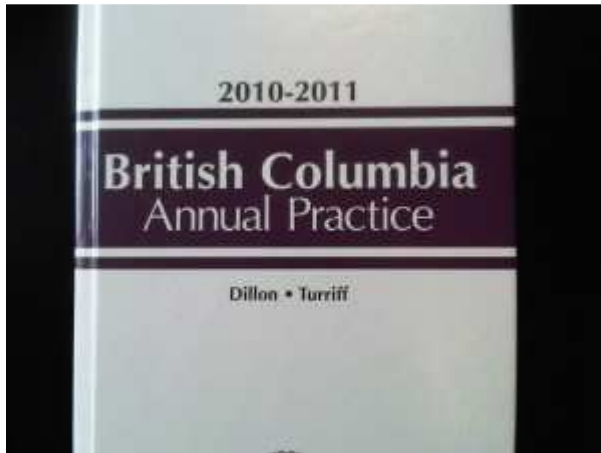


“Proportionality” Given First Judicial Interpretation, Severance Of Liability And Quantum Considered



Reasons for judgement were released today by the BC Supreme Court, Victoria Registry, interpreting two topics under the New BC Supreme Court Civil Rules, the test of “*proportionality*” and the circumstances permitting a Court to sever liability (*the issue of fault*) from quantum (*the value of a personal injury claim*).

In today’s case ([Cayou v. Cayou](#)) the Plaintiff was injured in an intersection collision in 2006. The Plaintiff was the front seat passenger in a vehicle being driven by her daughter. The Plaintiff sued the drivers of both vehicles. ICBC alleged that the Plaintiff was in breach of her policy of insurance and intervened as a statutory Third Party. The Plaintiff’s claim was set for trial in November to be heard by Judge and Jury. The Plaintiff applied for an order separating quantum from liability seeking to have the issue of fault determined by Judge alone.

Mr. Justice Wilson dismissed the application and in doing so found that the New Rules of Court dealing with severance of issues are identical to the old rules therefore old precedents should retain their value as guiding authorities. Specifically Mr. Justice Wilson held as follows:

[22] *The plaintiff’s application is said to be made pursuant to Rule 1-3 and 12-1(9), of the Rules of Court.*

[23] *Rule 1-3 directs the court on the object of the rules, including the notion of “proportionality”.*

[24] *Rule 12-1(9) confers upon the court a power to adjourn a trial.*

[25] *Although not stated, the plaintiff also, presumably, finds authority for her application in Rule 12-5(67) and (68).*

[26] *Rule 12-5(67) confers a power on the court in these words:*

(67) *The court may order that one or more questions of fact or law arising in an action be tried and determined before the others.*

[27] *Rule 12-5(68) confers a power on the court in these words:*

(68) *The court may order that different questions of fact arising in an action be tried by different modes of trial.*

[28] *There is a change in the wording between Rule 12-5(67) and the former rule, Rule 39(29).*

[29] *I conclude that the power to sever issues is the same in substance between the former rule and the current rule.*

[30] *The governing principles established for the exercise of the power conferred under the previous rules have been established. Since I find that the power conferred under the new rule is the same as the old rule, I conclude that the principles defined under the former rule must be considered.*

The Court went on to note that while the law of severance of issues remains the same the Court now must consider the overarching purpose of ‘proportionality’ when applying the Rules of Court. This is the first case I’m aware of addressing this principle. Mr. Justice Wilson provided the following comments:

[48] *To the framework of analysis under the pre-existing rule, must be added a consideration of the objective of “proportionality” mandated by Rule 1-3(2):*

(2) *Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to*

(a) *the amount involved in the proceeding,*

(b) *the importance of the issues in dispute, and*

(c) *the complexity of the proceeding.*

[49] *Expense was the sole factor urged by the plaintiff in support of severance. In the event of a review, however, I will set out my findings on the factors prescribed in the rule.*

[50] *First, I take the “amount involved” to mean the quantum of monetary damages awarded to the plaintiff as the result of a successful prosecution of her lawsuit.*

[51] *This factor was not argued. But, seemingly, the method of trial currently extant is proportionate to, that is to say, “duly related” to, the amount involved. I find this factor to be neutral.*

[52] *Second, the issue of credibility is important to the issue of fault, and, I am told, to the issue of quantum.*

[53] For the reasons given above, for deciding against severance on the ground of interconnected issues, I find that one trial of all issues is proportionate to the expense to be incurred, to conduct one trial.

[54] Severance, for the economic reasons advanced in this case, by denying the trier of fact all of the evidence on the issue of credibility, would be disproportionate to the twin objectives of a just and speedy determination of the action, on its merits.

[55] Third, I would not characterize this action as one of complexity.

[56] Mr. Shumka is probably right. This action arises out of a routine intersection collision, involving a vehicle turning left in the path of an oncoming vehicle, with its attendant personal injuries. In the event, there is nothing on the record to suggest that complexity was a factor contributing to the notion of proportionality.

[57] No other factors (other than economical) were identified.

[58] In result, the plaintiff's application is dismissed. Costs of the application will be in the cause, pursuant to Rule 14-1(12).