

ICBC Claims And Court 'Costs'

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One important difference between the BC Supreme Court and BC Small Claims Court is the availability of court 'costs' to the winning litigant.

A winning party in the Provincial Court is usually awarded their disbursements, that is, the money it cost to bring the legal proceedings such as court filing fees, the cost of producing medical evidence etc. The winner cannot, however, be awarded Tariff Costs (money to compensate the party for the various steps they took in the lawsuit). This can be contrasted with the Supreme Court where a winning party can be awarded Costs and Disbursements. This can make a big difference as a 'costs' award after a Supreme Court trial could easily exceed \$10,000.

What if you bring your ICBC injury claim in Supreme Court but are awarded an amount of money in the Small Claims Court's jurisdiction (currently up to \$25,000). Could you still get awarded Tariff Costs? The answer is sometimes and the starting point is to look at Rule 57(10) which states:

(10) A plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the Small Claims Act is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.

So, the question is when is there sufficient reason for bringing an ICBC injury claim in Supreme Court when the claim ends up being worth less than \$25,000? [Reasons for judgement were released today](#) by the BC Supreme Court addressing exactly this question.

In today's case the Plaintiff was awarded \$20,000 in damages as a result of a 2005 BC motor vehicle collision. In deciding that the Plaintiff is entitled to costs Mr. Justice Truscott summarized and applied the law with the following reasons for judgment:

[17] *The plaintiff Truong relies upon a decision of this court in **Caldwell v. Maga** [1997] B.C.J. No. 2166 (BCSC) where there were two plaintiffs, one being awarded \$5,500 for damages and the other \$4,500 for damages, both involved in a rear end accident. This was at a time when the limit in small claims actions was \$10,000.*

[18] *Mr. Justice Drost referred to a previous decision of Mr. Justice Drake where he also dealt with two plaintiffs, who were each awarded under \$10,000, and said in awarding them costs that the totality of the two judgments amounted to more than the small claims limit and they were entitled to costs.*

[19] *Mr. Justice Drost determined to follow the reasoning of Mr. Justice Drake in that decision (*Phosy & White v. Island Pacific Transport Ltd.* [1996] B.C.J. No. 1037, (2 May 1996), Victoria Registry No. 95/1123).*

[20] *I question the correctness of these two decisions as I tend to agree with defence counsel that taken to its logical conclusion that reasoning would mean that 26 claimants each with \$1,000 claims would be entitled to sue in Supreme Court in one writ because the total would exceed \$25,000, the present limit of small claims jurisdiction.*

[21] *I consider it far more likely that the \$25,000 limit of small claims jurisdiction should apply to each claim of each plaintiff no matter how many plaintiffs there might be.*

[22] *However, I am obliged to follow the previous decisions of this Court which would probably entitle the two plaintiffs to sue in Supreme Court.*

[23] *Apart from this, at the best of times I consider it difficult for any plaintiff's counsel to estimate the appropriate range involved for personal injury claims of his clients at the initiation of the action. The medical conditions of many plaintiffs continue to change following the initiation of the action as they continue to recover from their injuries or continue to suffer.*

[24] *Here, even after Dr. Yong's optimistic report of March 14, 2006, by January 26, 2008 he was still saying that it was likely that the plaintiff Truong would continue to suffer some degree of left shoulder pain probably for another one or two years.*

[25] *The award to the plaintiff Truong of \$20,000 is by itself less than the limit of jurisdiction in small claims of \$25,000, but is not less by any large amount, and with the difficulty facing counsel of accurately estimating the range for a personal injury for his client at the initiation of litigation, knowing that if action is commenced in small claims his client will be limited to \$25,000 no matter that the assessment might be in excess of \$25,000, I am satisfied this plaintiff did have sufficient reason for bringing her claim in Supreme Court.*

[26] *The plaintiff Truong will therefore have her costs of her claim at Scale B, only attributable to her claim.*