

## More From BC Court Of Appeal On Deductibility Of ICBC No-Fault Benefits In Tort

November 17th, 2008

[Reasons for judgement were released today](#) addressing the deductibility of Part 7 Benefits from a tort award claim for damages:

I have previously discussed the deductibility of Part 7 benefits from a BC tort award [here](#), [here](#), and [here](#) and you can read my previous blog posts and website articles for background information.

In the case at bar the Plaintiff was a paraplegic. He was confined to a wheelchair since being 29 years of age. When he was 43 he suffered injuries in a car accident. He sued for those injuries and was awarded damages of \$210,000. The Defendant at the trial level argued that \$137,223.90 of that award should have been deducted because payment for the needs that portion of the tort award was addressing was available directly from ICBC pursuant to ICBC's no-fault Part 7 benefits.

The trial judge allowed only a nominal deduction of \$1,000.

The defendant appealed arguing that the trial judge was in error for failing to allow a meaningful deduction for future Part 7 benefits.

The Court of Appeal dismissed this appeal. In doing so the Court referenced a well known previously decided case from the Court of Appeal addressing the issue of deductibility of ICBC Part 7 Benefits in a tort trial and restated that case as good law. Particularly the Court noted that:

*Although I do not subscribe to all of the learned trial judge's reasoning on the issue, I have not been persuaded that he reached the wrong conclusion. The defendant bears the onus of proving that the plaintiff is, or will be, entitled to the benefits which it claims to have deducted from the award for the cost of future care. Strict compliance with the requirements of the statute is called for. Uncertainty as to whether Part VII benefits will be paid or whether they would "match" elements of the tort award must be resolved in the plaintiff's favour.*

While the Plaintiff was successful in this action in avoiding a potentially financially devastating 'deduction' this case yet again illustrates the importance of properly applying for your No-Fault Benefits from ICBC if you are injured in a BC car accident. Failure to do so could result in a significant deduction of damages in a tort claim.