

ICBC Claims, Low Velocity Impacts And Engineering Evidence

November 28th, 2008

Like many insurance companies the ICBC has a "[Low Velocity Impact Program](#)" (LVI) where tort claims are denied on the basis of little vehicle damages in collision.

When these claims are prosecuted one of the strategies often used by ICBC defence lawyers is to try to have the trial focus on the amount of vehicle damage sustained in the collision. This can be done in many ways. Often the Defendant is called to give evidence on the lack of vehicle damage, photos of the vehicles can be put into evidence and evidence of ICBC Vehicle Repair Estimators is sometimes put before the court. Sometimes ICBC goes further and retains a professional engineer to give evidence about the amount of force involved in the collision.

British Columbia courts are not always receptive to engineering evidence being permitted in motor vehicle tort claims. [Reasons for judgement were released today by the BC Supreme Court ordering that such a report was indeed inadmissible](#). Since the judgement is very succinct and easy to follow I reproduce it in its entirety below:

- [1] *The plaintiff applies for an order that the expert report prepared by James Bowler, a professional engineer, not be admitted as evidence on the basis that it is neither relevant nor necessary.*
- [2] *Mr. Bowler graduated in 1995 and since then has worked for MEA Forensic Engineers & Scientists. The report makes the assumption that "the provided materials accurately describe the vehicle damages from this accident."*
- [3] *Some of the material that was provided and referred to in the report was a final I.C.B.C. CL14 Repair Estimate and an I.C.B.C. CL14E Low Velocity Impact claim form on the plaintiff's vehicle, and an I.C.B.C. CL14E Low Velocity claim form on the defendant's vehicle.*
- [4] *None of this material is before me.*
- [5] *The purpose of the report was to prove what speed change occurred when the plaintiff's vehicle was struck by the defendant's vehicle. The vehicles were not examined by the engineer. He relied entirely upon the photographs and the materials supplied by I.C.B.C.*
- [6] *Mr. Bowler stated that the impact severity was assessed by comparing the damage in the incident with two staged collisions tests previously conducted by MEA.*
- [7] *The tests involved a 1985 Mazda RX7 and a 1984 Chevrolet Celebrity. The plaintiff was driving a Nissan 2002 Sentra GXE 4-door sedan and the defendant was driving a Honda 2005 Element 4-door wagon.*
- [8] *The experiment that was conducted by the MEA concluded that on the white Celebrity used in the experiment, which had a mass similar to that of the plaintiff's vehicle, there was a speed change of 1.3 km/hour.*
- [9] *The conclusion reached was that the plaintiff's vehicle likely sustained a speed change (slowing of 1.3 km/hour to 2.9 km/hour in the accident).*
- [10] *The defendant says that the change in speed is a factor that I can consider when determining the injuries suffered by the plaintiff. However, without medical evidence as to the effect of the change in speed, this information is not of assistance.*
- [11] *It is trite to say that the opinion expressed by an expert is only as good as the facts that have been proven. Here, there is no evidence as to the validity of the two-stage collision test conducted by MEA. There is no*

evidence as to the qualifications of the people that performed these tests, whether or not this experiment was published in a peer review article, or whether or not Mr. Bowler had anything to do with those experiments. It seems from the evidence that he did not, as he reviewed two video tapes of these staged collisions. Additionally, the defendant has not put into evidence the I.C.B.C. Low Velocity Impact claim forms or the repair estimate.

[12] *I find that the report is not admissible.*