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More On Car Accident Claims, Complexity And Jury Trials

June 12th, 2009

When car accident cases are prosecuted in the usual course (not using Rule 66 or 68) in the BC Supreme Court either side can elect to have trial by jury.

In certain circumstances, however, a jury trial is inappropriate and a court and strike a jury notice. One of the reasons a court can strike a jury notice is complexity. Reasons for judgement were released today by the BC Supreme Court, Victoria Registry, dealing with this issue.

In today's case (McIntosh v. Carr) the Plaintiff was involved in 3 car accidents and the parties agreed that all 3 cases were to be heard at the same time. Fault was not at issue in any of the cases but the alleged injuries were serious and included '*pain and suffering, shock, brain injury, concussion, physical injuries to the head, neck, back, shoulders and knee, headaches, cuts, loss of sensation in the scalp, depression, anxiety, insomnia, sleep disorder and post-traumatic stress disorder*'. The case was expected to be complex, take 25 days to hear with over 30 witnesses including 17 professionals testifying.

The Defendants elected trial by Jury. The Plaintiff's lawyer brought a motion to dismiss the jury notice claiming that it was too complex. Mr. Justice Macaulay of the BC Supreme Court granted the Plaintiff"s motion and in doing so summarized and applied the area of the law as follows:

[6] A 25 day trial requires a significant commitment by jurors. Experience tells us that juries are capable of understanding the expert medical evidence typically heard in cases involving an alleged brain injury but experience also indicates that juries have more difficulty retaining that understanding throughout longer trials. This affects my consideration whether it is convenient for a jury to undertake the medical, or "scientific" investigation required in this case.

[7] A 25 day trial involving intricate medical, psychological and behavioural issues involving a young person who was not yet fully developed at the material time, presents such a risk. That risk is compounded by a number of complications that the evidence must address. Taken together, these factors also render the issues too complex for a jury.

[8] It is now about ten years post-accidents. Over that period, the plaintiff has undergone extensive treatment and a variety of testing including cognitive or psychological testing. The outcome of testing as it relates to the diagnosis or proof otherwise of the alleged brain injury is complicated by factors such as the identification and effect of a pre-existing learning disability as well as other social, scholastic and family stressors already present in the plaintiff's life before the accidents. There are live issues as to whether these factors explain or at least materially contributed to the plaintiff's ongoing difficulties. The factors also impact the application of any expert evidence respecting future pecuniary losses.

[9] The defendants contend that the evidence is not too complicated for a jury. They point out that the court refused to strike the jury notice in Forde v. Interior Health Authority (c.o.b. Royal Inland Hospital), 2009 BCSC 254, a medical negligence claim involving 19 experts and 26 detailed expert reports and summaries of evidence. The medical evidence covered some of the same areas as in the case at bar as well as others, including neurosurgery, radiology, neuroradiology and kinesiology. The trial in that case was scheduled for 15 days. In another case, Furukawa v. Allan, 2007 BCSC 283, the court also declined to strike the jury notice. The plaintiff claimed a brain injury in that case and the trial, as here, was scheduled for 25 days.

[10] Each case is necessarily fact dependent but the results in Forde and Furukawa may be taken as confirmation that factors such as the length of trial, the extensive number of medical experts and complex medical issues do not automatically remove the right of a party to a trial with a jury.

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[11] For convenience, Rule 39(27) in its entirety reads:

Court may refuse jury trial

(27) Except in cases of defamation, false imprisonment and malicious prosecution, a party to whom a notice under subrule (26) has been delivered may apply

(a) within 7 days for an order that the trial or part of it be heard by the court without a jury on the ground that

(i) the issues require prolonged examination of documents or accounts or a scientific or local investigation which cannot be made conveniently with a jury, or

(ii) the issues are of an intricate or complex character, or

(b) at any time for an order that the trial be heard by the court without a jury on the ground that it relates to one of the matters referred to in subrule (25).

[12] In Furukawa, commencing at para. 10, Dorgan J. summarized the authorities respecting the analysis required under the rule. The court must first determine, as a question of fact, whether the matters at issue at trial will require either a prolonged examination of documents or accounts or a scientific or local investigation. If either answer is yes, the court must consider whether a jury can conveniently make the examination or investigation. Convenience in this sense refers to the ability of the jury to both understand the evidence and retain that understanding throughout the trial. The length of trial may be a factor, albeit not determinative, in addressing the issue of convenience. The court also has discretion to strike the jury notice if the issues are too intricate or complex.

[13] It is likely in the present case that the plaintiff's entire life, at least from the start of school through to the time of trial, a period of about 20 years, will be subjected to microscopic expert analysis and comment. That will require the trier of fact to absorb and retain a vast amount of information, some of which is likely to be, at least, nuanced if not complex, with a view to later deciding the issues.

[14] I am persuaded that this is not an appropriate case for a jury. It would not be convenient, as defined by the authorities, for a jury to undertake the scientific examination required in this case. In any event, the issues are too intricate given their intertwined nature and, in some instances, likely too complex as well.