

## ICBC Claims, Medical Experts And Evasive Opinions

Reasons for judgement were released today awarding a Plaintiff \$50,000 for non-pecuniary loss (pain and suffering) as a result of injuries sustained in a 2004 rear-end BC car crash.

The Plaintiff suffered various injuries including chronic pain, a disc herniation in her neck, a soft tissue injury to her neck, anxiety and depression. The chronic pain was the most significant symptom that was focused on at trial.

The Plaintiff called various witnesses to support her injuries including her family doctor. The Defendant, on the other hand, relied on the opinion of an ‘independent medical examiner’ who ICBC frequently uses in the defence of car accident injury claims (Dr. Schweigel).

In awarding \$50,000 for pain and suffering the Court made the following findings:

[26] *I am satisfied that as the result of the Defendants’ negligence, the Plaintiff suffered an injury to her shoulder and knee, a soft tissue injury to her neck and back which included a disc herniation; and an aggravation of her anxiety disorder and depression symptoms.*

[27] *Specifically, with respect to her psychological injuries, I am satisfied that as a result of the collision her anxiety disorder and depression symptoms worsened, and that the worsening included the development of additional phobias such as a fear of crowds, social interaction, and driving. There has been some improvement with respect to these symptoms. For example, the Plaintiff is now able to drive her vehicle and her fear of social interactions has lessened some.*

[28] *There has also been some improvement in her physical injuries. In particular, her knee and shoulder injuries resolved within a short period.*

[29] *As far as her chronic pain injury is concerned, I am satisfied that it arises primarily from the soft tissue injuries to her neck and back and from her disc herniation. However, the severity of the pain from these injuries is aggravated or intensified by her anxiety disorders. As her anxiety or stress levels increase, her chronic pain also increases in severity.*

In ICBC injury claims judges and juries are often asked to pick between competing medical opinion evidence. It is not uncommon to read reasons for judgment in ICBC injury claims where a Plaintiff’s treating physicians support injuries while ICBC’s doctors testify that the injuries are not related to the trauma or that the injuries are not as severe as presented by the Plaintiff.

In today’s case Madam Justice Sinclair Prowse gave the following reasons in preferring the treating doctor’s opinion over Dr. Schweigel’s. Cases such as this one are worth reviewing for anyone preparing to take their ICBC injury claim to trial where there is competing medical evidence:

[34] *In any event, on all material issues, the Plaintiff’s evidence was consistent with and supported by other evidence. In particular, the evidence of her injuries was supported by the evidence of her family doctor, Dr. Leong – a witness whom I found to be credible and on whose evidence I relied.*

[35] *As the Plaintiff’s treating physician, Dr. Leong had seen the Plaintiff over a long period of time. Dr. Schweigel, on the other hand, only saw the Plaintiff on one occasion for about an hour to an hour and a half.*

[36] *Throughout her testimony, Dr. Leong presented as a measured person who was endeavouring to be clear, accurate and fair. Her answers were thoughtful and balanced. Her testimony was both internally consistent and consistent with the other evidence.*

[37] For example, it was Dr. Leong's opinion that the collision caused the Plaintiff's disc herniation in one of two ways: (1) either the collision caused the herniation completely; or (2) if the herniation pre-dated the collision, then the collision caused the herniation to become symptomatic. This evidence was based on the fact that the Plaintiff did not display any symptoms of cervical disc herniation prior to the collision. Although she had experienced some pain in her neck which had occasioned the earlier x-ray, that pain was occasional rather than chronic. It was also different in kind from the type of pain that can arise from disc herniation and that the Plaintiff experienced after the collision. Furthermore, the x-ray taken shortly before the collision did not show a disc herniation.

[38] Dr. Schweigel, on the other hand, was evasive and argumentative in his evidence. He gave opinions in this trial that were inconsistent with opinions that he had tendered in other trials, demonstrating that he was not impartial but, rather, tailored his evidence to favour the party that had called him. For example, in this trial he opined that arthritis could not be triggered by trauma whereas in another action he gave the opposite opinion.

[39] Dr. Schweigel opined that the Plaintiff had suffered a mild soft tissue injury to her neck and back as a result of this collision and that that injury had probably resolved itself within 3 to 4 months. He opined that the disc herniation pre-dated the collision as such conditions can arise from a longstanding arthritic condition and that, in any event, the Plaintiff's chronic pain arose from neither the herniation specifically nor the collision generally but, rather, from her psychological or psychosomatic problems.

[40] However, during cross-examination, he did concede that trauma could trigger further degeneration. He further went on to testify that if this injury did not pre-date the collision, that it would probably have arisen within 2 to 3 years to a maximum of 5 years. In my view, this opinion contradicts his initial opinion that a disc herniation cannot be caused by trauma or become symptomatic because of trauma.

[41] For all of these reasons, I found Dr. Schweigel's evidence to be unreliable. I preferred the opinion of Dr. Leong. Where her opinion differed from the opinion of Dr. Schweigel, I relied upon her opinion.