

BC Personal Injury Claims And The Cost Of Litigation

April 2nd, 2009

Personal Injury Claims can be very expensive to prosecute. There are many typical expenses involved such as court filing fees, process servers, administrative expenses and the costs associated with gathering relevant information and documents. However, by and far the greatest expenses associated with prosecuting a Personal Injury Claim are expert witness fees.

Expert witnesses play a role in almost every Personal Injury and ICBC Injury Claim. Typical expert witnesses include family physicians, treating therapists such as chiropractors and physiotherapists, specialist physicians such as orthopaedic surgeons and physical medicine doctors. In serious cases where the effects of the injury are permanent often times economists, future cost of care experts and vocational consultants are retained as well.

All of the above professionals are entitled to charge for their involvement as an expert witness in an ICBC Injury Claim and these costs can be significant. Reasons for judgement were released yesterday ([Narvaez v. Zhang](#)) illustrating just how expensive an expert witness can be in a case involving serious injuries.

In yesterday's case the Plaintiff suffered a serious brain injury as a result of a 2004 collision when she was struck as a pedestrian in Richmond, BC. The case settled before trial for \$850,000 plus costs and disbursements. One of the disbursements incurred by the Plaintiff's lawyer was associated with expert witness reports by a well respected economist.

The economist had to prepare 'several different future income loss assessments and different cost of future care calculations in order to show losses based on (various) plans'. In preparing these reports the economist charged about \$10,600.

The Defendants refused to pay this account in the settlement claiming it was excessive. A motion was brought before Registrar Blok of the BC Supreme Court to determine whether this expense was reasonable in the prosecution of the injury claim. In concluding that this was a reasonable expense Registrar Blok found as follows:

[19] *Here, the question of what the plaintiff had intended as a career path was very much in dispute: in one version of the evidence the plaintiff was going to train as a registered nurse and move to the United States and in another version she would achieve lesser credentials (e.g., licensed practical nurse) and probably would not be able to emigrate to the U.S. There was evidence going both ways. The evidence of the plaintiff's U.S. immigration plan was not fanciful or unreasonably speculative (in which case the cost might be properly disallowed), and there was a reasonable basis to argue that her examination for discovery admission ought not to be accepted at face value. A registrar considering whether a disbursement was necessarily or properly incurred need only decide that there was a sufficient basis to incur the cost of a disbursement relating to a certain claim; it is not the role of the registrar to decide whether that claim would have succeeded.*

[20] *For these reasons I conclude that the evidence supporting the claimed disbursement is admissible and that it was reasonable for plaintiff's counsel to have asked the economist to provide opinion evidence on U.S.-based scenarios.*

[21] *The defendants also argue that the scope of the economist's reports is excessive in that he was asked to opine on six different scenarios in circumstances where it would have been sufficient to set out just a couple of the more likely scenarios and to then provide a multiplier for the jury to use (for this was to have been a jury trial) to assess damages for any other scenarios the jury concluded would be most likely. Similarly, the economist was also asked to do six different scenarios for the cost of future care (as distinct from future income loss) and, again, the defendants argue that a multiplier and a table would have been sufficient for the purpose.*

[22] *In reply, the plaintiff noted that the economist was asked to do more than provide mere arithmetic, he was asked to compile statistical information on earnings of registered nurses both in Canada and the U.S., the earnings of licensed practical nurse and residential care aides, the likely amount of her residual earnings (that is, her likely earnings given her cognitive impairment) and to prepare projections of lost earnings for those positions using two different start years. As for the cost of future care, had the situation been straightforward (e.g., based on predictable costs that would be incurred in each and every year) it might have been appropriate to have a multiplier with a table or two, but in this case some of the care items were intermittent or temporary, and some were based on possibilities that she would require more extensive care later in life. It was thus submitted that it would not be reasonable to expect a jury to use a multiplier or table in a fashion that would properly address these cost variations.*

[23] *I have reviewed the reports and accounts of the economist in some detail and conclude that in the circumstances of this particular case it was proper for counsel to ask the economist to set out his opinion on future income loss and future care costs using the different scenarios he did. There were several employment possibilities for the plaintiff and she might either have ended up in the United States or stayed in Canada, and there was the question of the income that she was now capable of earning in her impaired state. Similarly, for the cost of future care I conclude that it was reasonable for counsel to set out relatively understandable numbers for presentation to a jury in light of the fact that a number of the future care items were uncertain, intermittent or temporary. I do not think it inappropriate to conclude that a jury might have difficulty using a mere multiplier or table in light of these sorts of complications.*

[24] *In the result, I allow in full the amounts claimed for the costs of the economist's reports.*