IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***McCreight v. Currie,***
2008 BCSC 1751

Date: 20081219
Docket: 68242
Registry: Kelowna

Between:

Sandra Marion McCreight

Plaintiff

And

John Stuart Currie

Defendant

Before: Master Barbara Young
(As Registrar)

Reasons for Judgment

Counsel for the Plaintiff:	T.L. Napora
Counsel for the Defendant:	E.A. Harris
Date and Place of Hearing:	July 24 and September 12, 2008 Kelowna, B.C.

[1] This is a personal injury action arising out of a motor vehicle accident which occurred on May 3, 2004. The plaintiff, Sandra McCreight, was involved in a T-bone collision when the vehicle driven by the defendant, John Currie, struck her vehicle as he was in the process of making a left-hand turn. The accident occurred at an intersection in Castlegar. Ms. McCreight's then 2-year-old daughter, Michaela, was a passenger in the back seat. The matter went to trial in Kelowna on November 20, 2006, for 10 days before Madam Justice Ross. Madam Justice Ross gave her decision on January 29, 2007. Ms. McCreight received $87,625 for non-pecuniary damages, loss of earning capacity, loss of homemaking capacity, special damages and future care costs.

[2] On May 3, 2007, the parties reappeared before Madam Justice Ross to argue that certain deductions pursuant to s. 25 of the Insurance Motor Vehicle Act should be made against the judgment. After deductions were made, the entire $15,000 for cost of future care was deducted and the final award reflecting the deduction was $69,319. The plaintiff was awarded costs at Scale B to and including October 24, 2006, and the defendant was entitled to costs at Scale B from and after October 25, 2006. That decision was successful appealed and the plaintiff was entitled to her costs for the entire proceeding.

[3] Counsel have consented the tariff items at $18,500 after tax. They have also made several consents with respect to disbursements. This decision deals with those disbursements to which they did not consent. I will first list those disbursements to which they did consent (Tab 10 of plaintiff's book of documents).

Item No.	Description of Disbursement	Amount
12.	Facsimile Recovery – incoming	$ 76.65
13.	Facsimile Exp. Recovery	200.00
14.	Long distance Recover	150.00
15.	Photocopy Exp. Recovery	2,205.25
16.	Postage Expense	1.53
17.	Postage Exp. Recovery	261.23
...		
23.	March 31/06 – Purolator	6.59
...		
25.	[Travel from Nelson to Castlegar]	Deleted
26.	[Travel from Nelson to Castlegar]	Deleted
...		
28.	[Travel from Nelson to Castlegar]	Deleted
29.	[Travel from Nelson to Castlegar]	Deleted
30.	[Travel from Nelson to Castlegar – Meal]	Deleted
...		
35.	August 23/06 – Hotel for Client in Vancouver – Appt with Schlender	99.99
36.	August 23/06 – Hotel for Client – Room Tax	10.00
37.	October 26/06 – Witness Fee Deposit	1,500.00
...		
47.	November 6/06 – Dr. M. Krabbe – Prep and Attendance at Court	2,118.43
48.	November 7/06 – Kelowna Registry Filing Fee for Affidavit	10.00
...		
50.	November 14/06 – Kootenay Process Services	75.00
...		
53.	November 19/06 – Dr. Craig – Preparation and Attendance at Court	2,059.00

54.	November 22/06 – Witness Conduct Fees for Trial	110.00
...		
56.	November 23/06 - Dr. Horvath – Prep and Attendance at Trial	1,713.80
57.	November 26/06 – Meals in Kelowna	270.00
...		
67.	November 29/06 – Hotel for Witness	198.00
68.	November 29/06 – Room Tax for Witness	19.80
...		
72.	November 30/06 – Costs for Wendy Underwood	601.04
73.	November 30/06 – Hotel Taxes for W. Underwood	6.00
...		
80.	February 7/07 – Dr. Corrine Knox – Prep and Attendance	1,961.00
...		
83.	May 30/07 – Canadian Magnetic Imaging – Interest on Scans	92.88

[4] The defendant challenges the remaining disbursements on grounds that they were not properly or reasonably necessary as is required by Rule 57(2).

[5] The defendant quotes ***Hall (Guardian ad litem of) v. Strocel***, [1983] B.C.J. No. 506 (S.C.), at para. 10. This is an appeal of a registrar's decision where the registrar finds that a charge for an expert report can be nothing more than what is reasonable in the circumstances of the action. If the plaintiff chooses to employ an expert of some renown who bills more than most people in his field for the work he does, which others are also capable of doing, then it is plain that the party must pay the difference in cost for having made that choice. This principal does no harm to

the right of a party to prepare and present his case as he sees fit. It simply limits the recovery for preparation and presentation to what is reasonable. The defendant submits that many of the charges claimed as disbursements by the plaintiff are blatantly excessive.

Disbursements and Contentions

Item No. 18 – Flight for Spouse to Vancouver - $303.35

[6] The first challenged disbursement is for the plaintiff's spouse to accompany her to Vancouver when she attended more than one independent medical examination. McCreight had more than one piece of luggage and found it difficult to find her way around Vancouver to travel from appointment to appointment. The defendant is able to take care of herself and she is, in fact, still working and therefore capable of attending medical appointments on her own.

[7] In reviewing the reasons for judgment, I see that the plaintiff has never lived in Vancouver. She has soft tissue injuries which make it difficult for her to lift or carry luggage. She is unfamiliar with the city and was required to attend more than one appointment during the two days. I find it reasonable for her to be accompanied by a family member to assist her with the stressful appointments necessitated by the injuries caused by the defendant. The amounts charged by her husband to accompany her were not excessive.

Item No. 19 - Vancouver Medical Expense Cab Fare- $200

[8] Plaintiff's counsel provide that the plaintiff withdrew $200 for travel expenses and did require her to obtain receipts for cab fare. She took taxis to her hotel, which

I am assuming was in downtown Vancouver, although I did not hear this evidence. She had more than one medical appointment to attend, one of which was in North Vancouver. Although I am not aware of the other addresses, I am assuming that she may have had four cab rides while she was in Vancouver attending these appointments. I am aware that a taxi from the Vancouver airport to downtown Vancouver will cost approximately $30. That would leave $140 for four cab rides to medical appointments. There could have been more than four cab rides. Although this method of billing is not precise, I do not find that $200 for all of the taxi travel during this trip is excessive.

[9] The defendant also complains that the plaintiff made telephone calls while staying in the hotel in Vancouver. Again, I do not think that this is an unreasonable expense given the plaintiff was inconvenienced by having to attend medical appointments in Vancouver to assess her damages as a result of this motor vehicle accident. The difference in hotel rates between single and double occupancy is minimal. The defendant quotes ***Moore v. Dhillon***, [1992] B.C.J. No. 3055 (S.C.), which says that the question of hotel expenses should be reasonable and not extravagant. I do not find that the hotel expenses charged by the plaintiff and her husband were extravagant.

Item No. 20 - Canadian Magnetic Imaging – 3 MRI Scans - $2,925

[10] The plaintiff's counsel says that Dr. le Nobel and Dr. Craig could not come up with a clear diagnosis for the plaintiff's hip pain, which is why an MRI was obtained. Neither the MRI nor the report was used at trial because the MRI was inconclusive.

Dr. le Noel in his September 19, 2006 report recommends an MRI of the lumbar spine, right hip and right shoulder. He says:

> I feel more likely that the magnetic resonance image scanning images will be of help in respect to diagnosis of an explanation for Sandra's ongoing pain symptoms more than providing a cure for her condition.

[11] On cross-examination, plaintiff's counsel says that the MRI was conducted because it was recommended by the expert. He was concerned about causation and therefore followed through with obtaining their report. He thought it was reasonable at the time he authorized the MRI. The results were inconclusive and that is why Mr. Napora did not refer to them at the trial, but this is not the test. The legal test for reasonableness of a disbursement when involving an expert report is whether it was reasonable at the time the report was ordered. Counsel, of course, cannot predict what the result of the test will be until one is conducted. The decision in ***Van Daele v. Van Daele***, [1983] B.C.J. No. 1482 (C.A.), says in the headnote:

> ...A disbursement should not be considered unnecessary because it was for a report that was irrelevant to the final judgment. The proper test was whether at the time the disbursement was made it was proper in the sense of not being extravagant, negligent, mistaken or a result of excessive caution or zeal, in the situation.

[12] Counsel for the defence says that ordering this MRI was excessive in the circumstances. In the decision of ***Parrotta v. Bodnar***, 2006 BCSC 787, [2006] B.C.J. No. 1165, District Registrar Sainty disallowed a disbursement for an MRI on the basis that there was no benefit obtained from the MRI. In that case, the Dr. herself said that she did not think the MRI was going to show anything, and

Registrar Sainty said there should have been consideration given to whether an MRI should have been done.

[13] In ***Phelan v. Newcombe***, [2007] B.C.J. No. 1072 (S.C.), Registrar Blok assesses the party and party bill of costs in which a disbursement of $6,405 was claimed for five MRI scans. The plaintiff's treating doctor sent the plaintiff for a CT scan which did not reveal matters of concern. The plaintiff' counsel then arranged for the plaintiff to attend a private MRI clinic and MRI scans were taken of the head; the cervical, thoracic and lumbar spine, and the sacrum. The MRI scans did not reveal anything of consequence. The lawyer said that he had arranged to have MRIs done because of the nature of the plaintiff's injury. He testified that he did not order MRIs in every personal injury case. The MRI referrals were signed by a physician, but the lawyer acknowledged that he had asked the physician to sign the requisitions. Therefore there was no medical input or advice actually sought from the physician as to the usefulness or necessity of the scans. The lawyer referred an article in the B.C. Medical Journal entitled "*Litigation, MRIs – Why lawyers are asking for it and why a patient needs it*". Basically the article recommended an MRI to rule out any possibility of future problems. Registrar Blok had difficulty with plaintiff's counsel's submissions and the article as both were expressed so broadly that MRIs would be considered necessary and reasonable in disbursements in virtually every personal injury case. The learned registrar rejected the blanket approach and quoted his previous unreported decision in ***Ward v. W.S. Leasing Ltd.*** (9 January 2007), Vancouver No. M062039 (B.C.S.C.). In that case, the lawyer had a standing practice of obtaining MRIs for his personal injury clients as soon as

he was retained, and no consideration was given to the necessity of an MRI in any particular case. The learned registrar concluded in the ***Ward*** decision:

> [15] ...A blanket conclusion that an MRI is necessary in every personal injury case renders the cost extravagant or as a result of excessive caution or zeal, as that language was used in ***Van Daele v. Van Daele*** [(1983), 56 B.C.L.R. 178 (C.A.)]. In my view there must be some judgment applied, perhaps with medical input, in considering the necessity for the procedure in a litigation context, given the injuries involved, the likely damages, what the MRI is expected to achieve from a litigation standpoint, and so on. There is no proper basis on which I can conclude that the MRIs were necessary, at the time they were ordered, in this particular case.

[14] I believe the case before me can be distinguished from the ***Ward***, ***Phelan Parrotta*** decisions. Dr. le Nobel clearly did recommend an MRI to try to assess the cause for Ms. McCreight's ongoing problems. He did so because diagnosis was uncertain, and he was hopeful at the time that the MRI would clear up some of that uncertainty. Unfortunately, it did not but neither Dr. le Nobel nor Mr. Napora knew that at the time the MRIs were ordered. I will therefore allow this disbursement.

Item No. 21 – Whiplash Imaging C-Spine X-ray - $900

[15] The plaintiff acknowledged that whiplash imaging c-spine x-ray is untried technology and it has never been accepted by a court. The plaintiff chose to obtain it knowing that it hasn't been accepted by a court but thinking it was reasonable at the time. Again the plaintiff was searching for some proof of causation and took a risk when he ordered this x-ray that it may assist. The risk, of course, was that if it did not assist and it was unproven technology, it might not be a reasonable disbursement. Given that, at the time it was ordered, the plaintiff's counsel knew that it was unaccepted technology, I find that it was not a reasonable disbursement

even at the time he ordered it. Had it been positive, he still would have had difficulty having it accepted by the court. It was not a test that was requested by a physician but one that the plaintiff's counsel himself had ordered. I will disallow this disbursement.

Item No. 24 – Kelowna Court Registry Fax File WOS for Part VII - $218

[16] The next disbursement that is being challenge is $218 to the Kelowna court registry to file the writ of summons for a Part VII benefit claim. It is reasonable to file a Part VII writ, and in this case, the issue of s. 25 deductions became an issue not only at the trial but resulted in a successful appeal by the plaintiff. The question, however, is whether this disbursement should be allowed in this action or whether the plaintiff should be required to wait until he taxes a bill of costs in the Part VII action. The problem with the latter argument is that Part VII actions are usually commenced just to meet a limitation period. Rarely are there any litigation activities in the Part VII action itself. The plaintiff is being told that she should be put to the extra expense of taxing a Part VII bill of costs separate from the tort action. It is my view that this is an unreasonable excessive procedure where no steps have been taken the Part VII action. The plaintiff is entitled to reimbursement for this disbursement.

[17] The defendant's argument is that the Part VII action was not necessary to commence. I disagree with this submission. If this Part VII claim had not been commenced and the limitation period had expired, the plaintiff would not have had recourse against the insurance company for medical expenses if the medical insurance company refused to pay those expenses. The only question is whether it

is reasonable to add this as a disbursement in the tort action. I find that it is, in situations where there will be no other litigation in the Part VII action. Where the filing fee is the sole disbursement in the Part VII action, it seems reasonable to me to consolidate the two bills of cost and conduct one review to avoid multiplicity of proceedings and extra costs to all of the parties.

Item No. 27 – Adfect Designs – Video Editing & DVD Design - $475

[18] The plaintiff's counsel described the injuries sustained by the plaintiff. She suffered from Post-traumatic Stress Syndrome and did have a history of other psychiatric problems which made the post-traumatic stress worse. She had a hard time giving her counsel instructions as conferences with him were stressors for her. Her psychological injuries were complex and her physical injuries were not easily diagnosed. It was difficult for her to participate in the litigation process, and therefore instead of doing a mediation appearance, plaintiff's counsel prepared a DVD mediation video setting out what others have observed of the plaintiff's injury. This video was presented to ICBC together with a settlement proposal. Plaintiff's counsel says that he has done this many times and had approximately 80 percent success with this approach. He was not successful in this particular case and it did go to trial. He pointed out that the cost of preparing this DVD video was less than the cost of attending mediation. In his opinion as experienced personal injury counsel, he did not believe that the plaintiff could participation in the mediation effectively. Mr. Napora was cross-examined on this point. He was asked and agreed that it was not a usual expense for many counsel, but he did not agree that it was unnecessary and he did edit out some material so as to just present the

plaintiff's best case, which he would also do in a mediation hearing but in person. Plaintiff's counsel submits that the expense is reasonable in the circumstances in trying to obtain a settlement. The fact that it did not bring about a settlement in this case does not make the expense unreasonable. In her submissions, defence counsel called this a Cadillac service and argued that the cost of the video editing should be considered an overhead expense and just a cost of doing business. She submits that it should be absorbed by plaintiff's counsel.

[19] I find that the video preparation and editing was a reasonable expense in the circumstances. It was less costly than attending a mediation hearing, and I rely on the plaintiff's counsel's assessment of the plaintiff's inability to attend such a hearing. Although it did not bring about a settlement, it likely resolved some issues and made ICBC's committee more aware of what the plaintiff's condition was. I find that $475 is a nominal expense compared to what parties often pay for mediation. I will allow the expense in full.

Item No. 31 – J.C. WordAssist - $130.50

[20] This expense was for the transcript of a ***Highway Traffic Act*** proceeding relating to the traffic accident. Although liability was admitted, the mechanics of the accident were unusual. The defendant, John Currie, was at a stop light and turning left and the plaintiff was going in the opposite direction. The accident occurred near where they live and all of the streets were at odd angles. Mr. Currie was a defendant's witness and he was called to testify as to the mechanics of the accident. The transcript was obtained for the purpose of cross-examining him. The

defendant's counsel did not agree that it was necessary to call a liability witness given that liability was admitted.

[21] Counsel for the plaintiff said that he did some description of the impact and the reaction of the plaintiff put before the judge. The plaintiff could speak to her own injuries, but it was better to hear her injuries described by other witnesses. Given that Mr. Currie had testified in the traffic hearing, I find that it was a reasonable expense to get a copy of the transcript of what his previous sworn statement had been.

Item No. 32 – Trust Administration Fee - $10

[22] This is a mandatory fee imposed by the Law Society if there is any trust transactions. It has been found to be a reasonable expense in the ***Parrotta v. Bodnar*** case at para. 25.

Item Nos. 33 and 34 – Hotel for Client Medical Appointment- $174.90

[23] I am not certain why these items are being challenged. It seems like a reasonable amount for a hotel for someone attending a medical appointment. I will allow this expense.

Item No. 37 – Witness Fee Deposit - $1,500
and Item Nos. 38 through 45 – Conduct Money for Trial - $3,200

[24] The plaintiff paid conduct money to every witness who was attending the trial, including the plaintiff's family, one of his physicians, and another witness who was not cooperating.

[25] Mr. Karassowitch was an independent witness to the collision, and he was subpoenaed. Myra Duff was a former employer who could give evidence of the plaintiff's condition after the collision. She was subpoenaed. Rhonda Park was the ex-director of the community centre where the plaintiff was an employee. She was subpoenaed. Ray McCreight, the plaintiff's husband, was subpoenaed to give both before and after picture evidence regarding the plaintiff's condition.

[26] Counsel for the plaintiff says that it has been his practise always to subpoena witnesses. He calculated a round number for each party which was less than what the Rule entitled the parties to.

[27] The plaintiff's parents did testify on different days. The plaintiff subpoenaed her own family members because there was a possibility that they could not attend because of weather conditions and then the plaintiff was in a better position to seek an adjournment of the trial. Leanne Ireland is a social friend and baseball team mate, and she was subpoenaed. Diane Orser was also a baseball team mate and she was subpoenaed.

[28] It was necessary to serve the physician because she had not been returning their calls, and they were uncertain as to whether she would cooperate and attend trial.

[29] It was necessary to serve the adjuster because the plaintiff intended to call the adjuster as a witness because the defendant had pled that the plaintiff had failed to mitigate her loss but did not provide particulars of the failure to mitigate. A consent procedure was obtained and the adjuster did not ultimately have to go to

trial. It is my view that it was reasonable to subpoena those witnesses who were critical to the plaintiff's case. Subpoenaing them provided them with a small witness fee but also conduct money to attend the trial. There is some criticism of subpoenaing and providing conduct money to both of the plaintiff's parents given that they were travelling together. I do not think that the plaintiff's counsel can be sure that that will be the case, and therefore out of an abundance of caution, he provided each of them with conduct money. It was not extravagant or excessive in my view and I will allow it.

Item No. 46 – Media Output – Exhibits - $51

[30] This expense is for an overhead photograph to show how the accident occurred. Counsel for the plaintiff advises me that the roadway was unusual and not at right angles so the overhead photograph clarified the layout of the roads. I do not find this an excessive or extravagant expense and will allow it.

Item No. 49 – ExpressLegal – Service of Documents - $130

[31] I believe this expense was to serve the doctor at WCB who was not responding to their telephone calls, and therefore she was served personally. That was a necessary expense which I will allow.

Item No. 51 – Retainer for Dr. Kettner's Court Appearance - $700

[32] Dr. Kettner is the psychologist who initially provided the diagnosis of post-traumatic stress. Dr. Kettner attended by video and was provided with a $700 fee for appearance. I find this to be a necessary expense and allow it.

Item No. 52 – Travel from Nelson to Kelowna Return - $359.08

[33] This was the cost for Mr. Napora's return trip from Nelson to Kelowna. He charged the same gas mileage rate that the sheriffs would charge to travel. I will allow it.

Item No. 55 – Meal Expenses Paid by Client at Trial - $198.33

[34] The plaintiff attended all days of trial and incurred some meal expenses as she was away from her home. I do not find that $198.33 is excessive for 10 days of meals. The defendant challenges whether the plaintiff had to attend or not at this trial. As the plaintiff is a party to the action, I believe that she did have to attend the trial so that she could properly instruct her counsel and paying a nominal fee for her to eat meals during the two weeks of trial seems to me to be a reasonable expense. If the plaintiff paid for alcohol with her meals, I disallow that portion of the expense, even if that portion was nominal. I do not believe that the defendant should be paying for alcohol or entertainment for witnesses for attending a trial.

Item No. 58 – Trainer Vocational Prep and Attendance at Court - $1,312.50

[35] Mr. Trainer is a vocational rehabilitation consultant. He was asked to prepare a report to explain what employability the plaintiff actually lost and how her vocational opportunities have been affected. She had a claim for a loss of earning capacity. This was a hotly contested head of damage. The argument was that there were certain jobs that the plaintiff could no longer fall back on to supplement her income given her difficulties. She did work as a local advocate for the mentally disabled and did enjoy this job. However, in the future, if she did lose that job for any reason, her capacity to do other jobs would have been limited. I find that Mr.

Trainer's expenses were not excessive, and I do believe that his evidence was necessary in order to establish a loss of earning capacity. I will allow this expense.

Item No. 59 – Dr. Shuckett – Prep and Attendance at Court - $2,391

[36] I am advised that Dr. Shuckett charged according to the BCMA guidelines. The defendant does not object to the necessity of hiring Dr. Shuckett or the cost of her report but does challenge the $165 charge for typing of the report. She says that this is the cost of doing business and should have been absorbed by the plaintiff. I disagree. Dr. Shuckett breaks down her costs for a sum experts would have provided a lump sum amount that did not break down the actual physical preparation of the report. It is reasonable that the report be typed up. If Dr. Shuckett does not have the facilities within her office and has to pay someone else to prepare the type-written report, I think it is reasonable that she pass that expense on to the plaintiff and that the plaintiff pass that expense on to the defendant.

Item Nos. 60 and 61 – Cell Phone Calls Kelowna - $132.58

[37] These items refer to cell phone calls while Mr. Napora's legal assistant was in Kelowna assisting him. The cell phone calls are $7.73 and $124.85. Mr. Napora's legal assistant attended the trial, interviewed witnesses and lined up witnesses for appearance at trial. She was required to use her cell phone while she was doing this. I do agree with defence counsel's submission that this is an overhead expense and should be covered by the hourly rate charge or contingency fee rate charge of Mr. Napora and not passed on to the defendant. I will disallow the cell phone costs.

Item No. 64 – Office Supplies - $147.07
and Item No. 65 – PST on Office Supplies - $10.29

[38] Mr. Napora has passed on his office supplies' expense of $147.07 and PST on those office supplies of $10.29. Again, these are overhead costs and I do not believe they are legitimate costs for bill of costs. I disallow them.

Item No. 62 – Dr. Kettner – Trial Prep - $140

[39] This item seems reasonable and will be allowed.

Item No. 63 – Wendy Makortoff – Prep and Attendance at Court - $900

[40] Wendy Makortoff is a massage therapist. She provided massage therapy to the plaintiff both before and after the accident and so had important evidence to provide the before and after picture. Ms. Makortoff had never testified at a trial before and was very apprehensive. She prepared a written synopsis for Mr. Napora to review with her. He attended with her in person and reviewed this and provided her with some information about the trial process. I think this is a completely reasonable expense to ensure that a witness is prepared for trial. Her lack of experience will be reflected in her lower hourly rate but may actually require more hours of preparation which, in this case, it did. I think it is a reasonable expense and I am prepared to allow it.

Item No. 66 – Dr. le Nobel – Prep and Attendance at Court - $5,379

[41] Defence counsel objects to Dr. le Nobel charging 12 hours for preparation for attendance at trial. This amount was way above what other witnesses charged. Most of the other witnesses charged for two hours to prepare for attendance at trial. Defence counsel says that he should have been familiar with the file given that he

already prepared and charged for a report. Counsel for the plaintiff says that he told Dr. le Nobel to know the file inside and out and that he had many telephone calls with him. Defence counsel refers me to the case of ***Prehara v. Royer***, [2007] B.C.J. No. 1392 (S.C.), a decision of Registrar Bouck. In that case, evidence was led before Registrar Bouck that one physician's medical/legal bill was considerably higher than the norm for vocational rehabilitation consultants. She relied on those submissions and did reduce the physician's charge to an amount that fit within the normal range. In the present case, I am provided with evidence that many other physicians charge for preparation of trial in the range of two to three hours. I do conclude that Dr. le Nobel's 12-hour charge is excessive. It is possible that he had more medical reports to review than the other physician, and I am prepared to allow him five hours to prepare for trial. That is essentially one full day of preparation to attend trial.

Meal and Hotel Expenses for Mr. Napora and Wendy Underhood

[42] The meal and hotel expenses are as follows:

Item No. 69 – Meal Expenses for T. Napora - $177.37

Item No. 70 – Addition Meal Expenses for AC - $166.47

Item No. 71 – AC's Travel Kelowna to Grand Forks - $33.35

Item No. 74 – Hotel and Meal Expenses for T. Napora - $5,436.59

Item No. 75 – Room and Taxes for T. Napora - $487.85

[43] Mr. Napora gave evidence that he and his legal assistant stayed in a suite at the Grand Hotel in Kelowna, which is across the street from the court house. They selected that location for a few reasons. Firstly, its proximity to the court house

makes it easier to go back and forth to the room during the trail. The suites that they rented had two bedrooms and a central sitting area. Mr. Napora and his secretary each had a separate room, and they used the central area for an office to prepare documents for the trial and to interview witnesses for the trial. This living room provided a waiting area for the witnesses. Mr. Napora could contact his legal assistant by cell phone and advise her when he needed more witnesses to come over to the court house.

[44] It is interesting to note that this room configuration was exactly the same room configuration that defence counsel occupied in the same hotel. Defence now claimed that this hotel expense was excessive and the defendant should not have to pay for it. If this room configuration and choice of hotel was acceptable for defence counsel, then I cannot imagine how they can in all seriousness complain that the plaintiff's counsel stayed there. I am aware of all of the available hotels in the downtown area, and certainly the Grand Hotel does have the most convenient location to the court house.

[45] The next question related to this type of accommodation is whether or not it is reasonable for the defendant to have to pay for the paralegal to attend the trial. I would have thought this to be a reasonable expense given the difficulty in lining up witnesses, interviewing and preparing them, while acting as counsel on a 10-day trial. Without administrative backup, it is a very difficult task to be in court and line up witnesses at the same time. I note that the legal assistant did not charge an hourly rate to attend the trial.

[46] I have been referred to several authorities by plaintiff's counsel. Firstly, the decision of Master Wilson in ***Moore v. Dhillon***, [1992] B.C.J. No. 3055 (S.C.) in reference to hotel expenses. In that case, Registrar Wilson does disallow certain expenses for hotels where he found them to be excessive. I do not find the rate charged by the Grand Hotel during the winter months to be excessive.

[47] The decision of Registrar Bouck in ***Denmar Equipment Rentals Ltd. v. 342699 B.C. Ltd.***, [2004] B.C.J. No. 1874 (S.C.), deals with the cost of junior counsel attending a trial to assist. Registrar Bouck found in that case that junior counsel's attendance was probably of assistance but not necessary given senior counsel's skill and expertise in the previous litigation.

[48] I distinguish the ***Denmar Equipment*** decision from the case at bar. That case dealt with a summary trial based on affidavit evidence and so there was no requirement of marshalling witnesses during an ongoing trial. Trial preparation and organizing is much different than attending a chambers application where all of the evidence is bound and tabbed in binders and is at the fingertips of senior counsel. In the present case, I find the attendance of the legal assistant to be of assistance and reasonable in the circumstances, and I will allow it. I will also allow her reasonable expenses including that portion of the hotel charged relating to the legal assistant and those meals relating to "AC" provided they do not include alcohol. I will allow the $33.35 travel expense from Kelowna to Grand Forks, as she was required to take a bus to get back to the trial. I think that was a reasonable expense and a frugal way to travel.

Item No. 76 – Reimburse Client for Cables and DVDs - $15.44

[49] The plaintiff was reimbursed for purchasing cables and DVDs, which were required to copy evidence for use at trial. This is, however, an overhead expense and this disbursement will not be allowed.

Item No. 77 – Damien Moroney – Prep and Attendance at Court - $840

[50] Mr. Moroney is a physiotherapist. He attended by video conference to give his evidence for part of the morning of the 21st. Defence counsel says that he should not have charged for a full day given that he only gave evidence for half a day. This is a reasonable complaint and if he did, in fact, only attend for half a day, he should only charge $400 for that attendance. I will reduce his account to $400.

Item Nos. 78 and 79 – Canadian Magnetic Imaging - $354.45

[51] This item is for CDs of the imaging scans plus interest. I have already authorized the expense for Canadian Magnetic Imaging; therefore, the copying of those images seems to be reasonable. The interest charged is a separate issue. The defendant says that he had no choice but to charge that interest. The plaintiff really had no choice but to pay the interest given that she did not have the funds to be retaining experts and paying for their reports up front. I suppose the defendant's choice was that the defendant could have offered to pay for report up front once it was disclosed to him, but no offer was forthcoming. Given this was the only way to finance the obtaining of a report, I find this to be a reasonable expense and I will allow it.

Item No. 81 – TU Meal with Client - $31.65

[52] I will allow this item.

Item No. 82 – Purolator from NU to Kelowna - $18.07

[53] I will allow this item.

"B.M. Young"
Master Barbara M. Young