

CANADA / JUDGMENT

Bajwa v. Y&Y Enterprises Ltd.

2025 BCSC 2043

COURT

Supreme Court of British Columbia

DECIDED

23 September 2025

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2025 BCSC 2043 Bajwa v. Y&Y Enterprises Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bajwa v. Y&Y Enterprises Ltd.,

2025 BCSC 2043

Date: 20250923

Docket: M222408

Registry: New Westminster

Between:

Sukhdeep Kaur Bajwa

Plaintiff

And

Y&Y Enterprises Ltd. and Paulo Sison Yen

Defendants

Before: The Honourable Justice Hoffman

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

J.S. Malik

Counsel for the Defendants:

R. Monty

Place and Date of Hearing:

New Westminster, B.C.

September 23, 2025

Place and Date of Judgment:

New Westminster, B.C.

September 23, 2025

- [1] THE COURT: These are my oral reasons for judgment. I reserve the right to edit these reasons to add citations and for grammar and clarity in the event that the transcript is ordered. However, the substance and the result will not change.
- [2] The plaintiff seeks an order under s. 5(6) of the Disbursements and Expert Evidence Regulation, B.C. Reg. 210/2020 [Regulation], that disbursements from three expert reports the plaintiff intends to obtain be excluded for the purposes of the Regulation. The proposed experts are a physiatrist, a neurologist, and an economist.
- [3] There is urgency to this application because there are appointments scheduled with two of the experts tomorrow and the following day. Cancellation fees will be incurred if this application is not successful and those appointments are not proceeded with. Due to this urgency, I am giving these reasons on an expedited basis.
- [4] The plaintiff also seeks an order that any disbursement incurred in connection with the present application are excluded for the purposes of the Regulation.
- [5] The plaintiff is seeking damages in two actions for injuries sustained in two motor vehicle accidents that occurred in 2018 and 2019.
- [6] The plaintiff is a physician and a high-income earner. The two actions are scheduled for a nine-day trial commencing on February 6, 2026. The deadline for the disclosure of expert reports is in November 2025.
- [7] At the request of the defendants, the plaintiff has already attended, by consent, two independent medical examinations, one with a neurologist and one with a physiatrist.
- [8] To secure the order sought, the plaintiff must meet the requirements set out in s. 5(7)-(9) of the Regulation.
- [9] The defendants oppose this application on two grounds. First, the defendants submit that the plaintiff has not established that there is a reasonable risk that the total amount of disbursements the plaintiff intends to incur to resolve the vehicle-injury proceeding will exceed the disbursement limit as required by s. 5(9)(b)(i).

- [10] Second, the defendants submit that the plaintiff has failed to establish that she would be unable, without undue hardship, to incur the disbursements that are the subject of the application were those disbursements not excluded as required by s. 5(9)(b)(iii).
- [11] Given that the defendants have retained a neurologist and a physiatrist that presumably will prepare reports for trial, the defendants reasonably concede that the plaintiff has satisfied the necessity requirement in s. 5(9)(b)(ii) in wishing to retain experts in the same specialty.
- [12] The Regulation has been the subject of many decisions drawn to my attention by the helpful submissions of counsel. The background of the Regulation is helpfully set out by Madam Justice Wilkinson in *James v. Riar*, 2024 BCSC 605 at paras. 16-23, and there is no need for me to repeat that background here.
- [13] The plaintiff submits that there is a reasonable risk that the total amount of the disbursements she intends to incur in obtaining the three reports will exceed the disbursement cap. The plaintiff relies on findings in previous cases regarding the magnitude of this risk. For example, based on statistical data regarding the resolution of ICBC claims in 2019, this Court concluded in *Le v. British Columbia (Attorney General)*, 2022 BCSC 1146, that disbursements exceeded six percent of the award or settlement in two-thirds of the cases where the plaintiff received between \$100,000 and \$1 million.
- [14] As noted by Associate Judge Neilson in *Sekhon v. McCullagh*, 2024 BCSC 595 at para. 12, this translates to an approximate 66% chance that disbursements will exceed the cap. In *Le* at paras. 18-21, Justice N. Smith observed that whether the 6% cap is exceeded or not depends on many different variables. Even separate plaintiffs who suffer the same injuries can receive vastly different awards depending on their age, their pre-accident income, and future prospects.
- [15] Based on the evidence before me, it is estimated that the disbursements associated with the proposed expert range between \$14,520 to \$20,000. The disbursements related to the preparation for and attendance of these experts at trial are estimated to add at least another \$15,000, and possibly more, depending on the time required for preparation and cross-examination.
- [16] The plaintiff submits that she will seek an award between \$100,000 and \$1 million for injuries that, while not catastrophic, have continued to impact her day-to-day functioning. The plaintiff is 45 years of age and is currently working. Her income loss claim is based on her inability to work at walk-in clinics and do locums when she is not working in the hospital setting, as she did prior to the accident.
- [17] I accept that this could result in a substantial income loss award if this claim is made out. However, without the benefit of the expert evidence which this application has been brought to obtain and without access to the defendants' expert reports, it is very difficult for the court to determine whether there is a basis to support a substantial income loss claim let alone where within the projected range the plaintiff's award would fall. Accordingly, I am satisfied

that there is at least a reasonable risk that the total amount of disbursements the plaintiff intends to incur to resolve her claim for damages will exceed the disbursement limit.

- [18] Turning to the second ground. The defendants argue that the given the plaintiff's high earnings, she should be able to cover the cost of the \$40,000 proposed disbursements without undue hardship. According to the plaintiff's affidavit evidence, she nets \$14,000 to \$15,000 in monthly net income. Her income tax returns and discovery evidence establish that she has a corporation from which she runs her medical practice, which has retained earnings. However, she also sets out in her affidavit that she has high monthly expenses in the amount of \$20,000, which includes mortgage, groceries, utilities, gas, insurance, school tuition, and children's activities.
- [19] Based on the plaintiff's income tax returns, her corporation purchased a building in 2021 worth just over \$1 million, and while it generates income, it also appears to have a substantial mortgage against it. I have no evidence before me regarding the purpose of this purchase. Counsel for the plaintiff submits that it is consistent with the type of retirement planning one typically sees self-employed professionals with no pension benefits engage in.
- [20] While the plaintiff earns a significant amount of money, I do not have any evidence before me to suggest that her equally significant claimed monthly expenses are inflated, illegitimate, or otherwise unreasonable. I am satisfied that requiring the plaintiff to remove \$40,000 from her corporation or from her family's finances to cover disbursements to retain experts to provide opinions similar to the experts that have been retained by the defendants would work an undue hardship. She commenced this litigation on the basis that it would be pursued on a contingency basis and, therefore, has is not budgeted for this amount. The plaintiff says that she would not have brought this claim if she had to finance the reports herself.
- [21] I find the proposed reports from the neurologist, physiatrist, and economist that the plaintiff wishes to retain are excluded for the purposes of s. 5(6) of the Regulation. I also find that the disbursements incurred by the plaintiff to pursue this application are also excluded.

(SUBMISSIONS ON COSTS)

- [22] THE COURT: Okay. Costs will be in the cause. Thank you, counsel, for your very helpful submissions.

"Hoffman J."

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