

CANADA / JUDGMENT

Chawla v. Gebert

2024 BCSC 1502

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 1502 Chawla v. Gebert IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Chawla v. Gebert, 2024 BCSC 1502 Date: 20240815 Docket: M200898 Registry: New Westminster Between: Rina Chawla Plaintiff And Kevin Leonard Gebert Defendant

- and - Docket: M237443 Registry: New Westminster Between: Rina Chawla Plaintiff And Lorenzo Joseph Cavasinni and Cierra Judith Harris Defendants And Insurance Corporation of British Columbia Third Party Before: The Honourable Mr. Justice Gibb-Carsley Reasons for Judgment Counsel for the Plaintiff: J. Malik Counsel for the Defendants and Third Party: M. Carter Place and Date of Hearing: New Westminster, B.C. May 21, 2024 Place and Date of Judgment: New Westminster, B.C. August 15, 2024 Table of Contents I. Introduction.. 4 II. Background Facts. 7 III. dISCUSSION.. 8 A. Changes to the Legislation. 8 B. General Principles of Disclosure. 10 C. Should Disclosure Be Ordered?. 12 IV. Order.. 18 V. Conclusion.. 18 I. Introduction

- [1] This is an application for disclosure brought by ICBC, the third party defendant in this motor vehicle action. ICBC seeks documentary disclosure from the plaintiff, Rina Chawla.
- [2] The plaintiff was involved in two motor vehicle accidents that were the subject of a jury trial that occurred from January 15, 2024 to January 29, 2024. The first accident occurred on June 2, 2016 (the "First Accident") and the second on May 19, 2019 (the "Second Accident").
- [3] A jury awarded the plaintiff damages at a trial (the "Trial Award"). ICBC contends it requires the disclosure in order to determine the amounts, if any, it is entitled to deduct from the amount the jury awarded the plaintiff in respect to benefits paid or payable to the plaintiff from her private insurers and employer.
- [4] Specifically, ICBC seeks the following orders:
- a) the plaintiff shall order and provide the complete file from Pacific Blue Cross, including but not limited to her extended health benefits printout from May 19, 2019, to the present, and the amount of the subrogated claim of Pacific Blue Cross;

- b) the plaintiff shall order and provide her complete Salary Indemnity Plan file from the British Columbia Teacher's Federation from May 19, 2019, to the present, including the amount of the subrogated claim of the British Columbia Teacher's Federation and/or Salary Indemnity Plan; and
 - c) the plaintiff shall order and provide her complete file from Canada Life, including but not limited to her extended health benefits printout from May 19, 2019, to the present and the amount of the subrogated claim of Canada Life.
- [5] ICBC contends it is entitled to know the amounts that the plaintiff's private insurers have paid or will pay to her since the Second Accident so that those amounts can be deducted from the Trial Award, or at least so ICBC can argue that the amounts should be deducted from the Trial Award should a hearing under s. 83 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231 [Act], occur. ICBC asserts that without the disclosure, it will be deprived of the opportunity to make complete submissions on the proper deductions from the Trial Award as it pertains to the special damages and wage loss awards pursuant to s. 83 the Act.
- [6] The complicating issue in this application is that the First Accident occurred on June 2, 2016, and the Second Accident occurred on May 19, 2019. The significance of the accident dates is that they straddle May 17, 2018; the date that British Columbia's Insurance (Vehicle) Amendment Act, 2018, S.B.C. 2018, c. 19, took effect, thus amending the Act. For clarity, I will refer to the Insurance (Vehicle) Act prior to the amendment as the Pre-Amendment Act and the legislation in its current form as the Act.
- [7] As I will describe below, the amendments included changes to s. 83 of the Pre-Amendment Act. The amended version of s. 83 eliminates the private insurer/employer subrogation rights by making formerly non-deductible collateral benefits deductible. The First Accident occurred before the amendments were in effect. The Second Accident occurred after the amendments were in effect.
- [8] Under the Pre-Amendment Act, disclosure of private insurer payments or amounts payable would not be necessary, because there could be no deduction from the tort claim by ICBC for those amounts. However, under the Act, disclosure of amounts paid or payable to a plaintiff may be relevant for ICBC to know what amounts might be deductible under s. 83.
- [9] The primary disagreement between the parties, and thus the plaintiff's opposition to disclosure, relates to which legislation applies to the plaintiff's injuries.
- [10] The plaintiff opposes the disclosure application for two reasons. First, she contends that the documents sought are not relevant. She says that, the disclosure sought relates only to the Second Accident. However, because the jury determined that the injuries she suffered were indivisible between the First Accident and the Second Accident, only the s. 83 regime in place when the First Accident occurred is engaged. The plaintiff asserts that under the Pre-Amendment Act, the disclosure would be irrelevant because ICBC would not be entitled to deduct from the damages awarded at trial any amounts related to benefits received by the

plaintiff from her private insurer or employer.

- [11] Second, the plaintiff contends that, even if the documents are relevant, ICBC should have brought the application for disclosure to the third party record holders because the documents sought are not in the possession of the plaintiff. Indeed, the requested order seeks to have the plaintiff order the documents from her insurers.
- [12] I note that ICBC has requested these same documents from the plaintiff before trial, but they were not provided. The insurance policies and the plaintiff's private insurance were also the subject of questioning during the plaintiff's examination for discovery by ICBC. Further, since the conclusion of the jury trial, ICBC has requested the documents from the plaintiff. She has opposed production, either because she says she does not have the documents in her possession or because she says she is not obligated to provide them to ICBC.
- [13] I pause to note that the issue raised in this application is likely relatively unusual because it engages a question of the application of s. 83 of the Act involving more than one accident, when one accident occurs before the May 2018 amendments were made to the Pre-Amendment Act, and a second accident occurs after the amendment. I expect that these issues will generally resolve naturally with the passage of time and may occur infrequently.
- [14] For the reasons that follow, I conclude that the order as drafted by ICBC should issue, requiring the plaintiff to request copies of the various documents from the institutions and, if received, produce them to ICBC.
- [15] In these reasons for judgment I will first provide some background facts for context and then move to my analysis and determination. II. Background Facts
- [16] The First Accident occurred on June 2, 2016, at or near 82 Avenue and 120 Street, in Surrey, BC. The plaintiff was rear-ended by Mr. Gebert.
- [17] The Second Accident occurred on May 19, 2019, at or near Jones Creek Forest Service Road, in Chilliwack, BC. A motor vehicle driven by Mr. Cavasinni and owned by the defendant Ms. Harris, rear ended a motor vehicle in which the plaintiff was a passenger. ICBC is the third party defending the actions.
- [18] On January 29, 2024, the jury rendered its decision, awarding the plaintiff damages caused by both the First Accident and the Second Accident, according to the following heads of damages: 1. Non-pecuniary Loss Pecuniary Losses \$10,000.00 2. a. Special Damages \$16,000.00 b. Past Loss of Income \$28,000.00 c. Loss of Future Income Capacity \$107,000.00 d. Loss of Homemaking Capacity \$70,000.00 e. Cost of Future Care i. Pain Management \$1,300.00 ii. Home Making Assistive Devices \$1,500.00 iii. Home Making Assistance (seasonal assistance only) \$9,000.00 iv. Ergonomics \$1,800.00 v. Rehabilitation/Health Related Costs 1. Pain Program \$12,500.00 2. Fitness Pass, Adult no award 3. Fitness Pass, Senior no award 4. Fitness Pass, 70+ no award 5. Kinesiology no award 6. Massage Therapy \$23,000.00 7. Acupuncture (in place of physiotherapy) \$23,000.00 8. Chiropractic Treatment no award 9. Psychologist, initial 12 sessions \$3,000.00 10. Occupational Therapy \$3,000.00 vi.

Medication Related Costs no award

- [19] The total damages amounted to \$309,100.00.
- [20] The jury was asked specifically about the divisibility of the plaintiff's injuries as between the First and Second Accident. The charge to the jury contained the following instruction regarding divisibility of injuries: As I understand the defendants' theory of the case, they argue that Ms. Chawla, if she were injured at all in the first accident, had fully recovered from those injuries by January 2017. As such, they are asking you to divide Ms. Chawla's injuries between the first and second accidents. To determine whether the injuries are divisible or indivisible, you should consider whether you can sensibly determine which aspects of the injuries can be attributed to each event and divide them accordingly. For example, if you think either Mr. Gebert or Mr. Cavasinni can rightly point to some aspect of the injuries and say "I had nothing to do with that", then the injuries are divisible. An obvious example might be where the first event results in a broken leg, while the second event results in a broken arm.
- [21] The jury did not distinguish the plaintiff's injuries between the First and Second Accident and found them to be indivisible. The jury was asked if the plaintiff's injuries resolved prior to the Second Accident, and they answered "no". III. dISCUSSION A. Changes to the Legislation
- [22] Under both the Pre-Amendment Act and Act, s. 83 is aimed, in part, at preventing double recovery by the plaintiff of both damages and Part 7 benefits which arise from the same loss: *L.A.F. v G.M.F.C. Ltd.*, 2021 BCSC 2370 at para. 34; *Aarts-Chinyanta v Harmony Premium Motors Ltd.*, 2020 BCSC 953 at paras. 51-52. In *Amer v. Geoghegan*, 2023 BCSC 125, Justice Warren described the various purposes of s. 83:
- [15] The overall purpose of s. 83 of the Act is to remove the burden of future care from the tortfeasor and place it on the insurance provider, at least so far as no-fault benefits are concerned: *Del Bianco v. Yang*, 2021 BCCA 315 at para. 55. Two specific purposes of s. 83(5) of the Act are to determine the amount of damages that should be immediately payable to the plaintiff by the defendant, and to prevent double recovery or double compensation on the part of the plaintiff in actions arising from motor vehicle accidents: *Del Bianco* at paras. 29-30. Another purpose, which features prominently in this case, is to encourage plaintiffs to seek payment of no-fault benefits from the insurance provider and to do so in conformity with the statutory and regulatory scheme: *Petersen v. Bannon*, 1993 CanLII 4719 (BC CA), [1993] B.C.J. No. 2357, 84 B.C.L.R. (2d) 350 (C.A.).
- [23] Section 83 of the Pre-Amendment Act was amended to change "among other things, the definition of 'benefits'." In *Wheeler v. Wilson*, 2023 BCSC 246, Justice Armstrong explained the changed definition:

- [46] The result of the 2018 amendment to s. 83(1) of the Act is that for accidents which occurred on or after May 17, 2018, the meaning of "benefits" is expanded to include "amounts paid or payable, for loss or expense covered by benefits under Part 1" including "under insurance, wherever issued and in effect". In this case, the change to the definition of "benefits" is relevant due to the application of s. 83(2) of the Act, which was not changed by the 2018 amendments, and reads as follows:
- (2) A person who has a claim for damages and who receives or is entitled to receive benefits respecting the loss on which the claim is based, is deemed to have released the claim to the extent of the benefits.
- [47] The effect of this scheme, after the 2018 amendment, is that amounts paid or payable under an injured person's private or extended health insurance plan "for a loss or expenses similar to a loss or expense covered by benefits under Part 1" are considered "benefits" and the injured person is deemed to have released their claim to the extent of those benefits: Act, s. 83(1)(b)(i) and (2).
- [48] The deemed release provision in s. 83(2) applies to persons who have claims for damages and receive or are entitled to receive "benefits". Under s. 83(5), after the plaintiff's damages have been assessed, the amount of any "benefits" paid or payable must be disclosed to the Court and deducted from the damage award. Most importantly, for accidents that occurred before May 2018, the release mechanism in ss. (2) will include the benefits payable by extended health insurers.
- [49] Section 88 of the Regulation was also amended on April 1, 2019, thereby changing ICBC's liability for expenses paid or payable to the injured person under another plan or policy. The post-amendment s. 88 of the Regulation applies in relation to medical or rehabilitative benefits payable under s. 88 for expenses incurred on or after April 1, 2019 regardless of the date of the accident: Regulation, s. 104.2.
- [50] The result of this amendment is that for expenses incurred on or after April 1, 2019, regardless of the date of the accident, ICBC is required to pay for services described in s. 88(1)(a) and (b) of the Regulation and is not liable to pay for "expenses paid or payable by another insurer" under s. 88(c): Regulation, s. 88(6); Rix at para. 42.
- [24] Ultimately, the deductions that ICBC is entitled to make have been expanded under the amended s. 83, as the definition of "benefits" has broadened, and ICBC is to deduct them directly from damages.
- [25] In effect, this means that ICBC (or the Court) will deduct from any damages award all benefits paid or payable to the plaintiff under private insurance, employment insurance benefits, and government benefits extended through an employment agreement. There are some exceptions such as British Columbia's Medical Service Plan.

- [26] ICBC says the plaintiff's extended health insurance benefits insurance documents are required so that the plaintiff is not double compensated for her loss. ICBC argues that it requires the disclosure to assess whether it will be required to reimburse the plaintiff's insurers for amounts those insurers have, or will have to pay to the plaintiff.
- [27] Had the Second Accident, which occurred after the amendment, been the only accident and cause of the plaintiff's injuries, it appears settled that the disclosure sought by ICBC would be relevant and producible. B. General Principles of Disclosure
- [28] As with any determination of whether to order disclosure, the court must consider the purpose for which the disclosure is sought. In the case at bar, the plaintiff contends that the disclosure sought is irrelevant to the court's ultimate consideration of ICBC's deductions to the award paid to the plaintiff because ICBC is unable to deduct any amounts paid or payable to the plaintiff for the Second Accident because the plaintiff's injuries were indivisible as between being caused by the First or Second Accident, thus the regime under the Pre-Amendment Act applies.
- [29] ICBC asserts that the Act in its current form, mandates that the plaintiff produce the documents and also argues the documents will be relevant to deductions ICBC may be entitled to make to avoid double recovery of the award by the plaintiff. As I understand ICBC's argument, it wants the disclosure to be able to argue at a s. 83 hearing that it should be entitled to deduct benefits paid or payable to the plaintiff from her private insurers so that she is not doubly compensated, for example, through compensation she may have received for lost wages specifically as a result of the Second Accident.
- [30] Principles of relevance in issues of disclosure have been considered under the Supreme Court Civil Rules, B.C. Reg. 168/2009. Justice Riley in *Economical Mutual Company v. Teck Metals Limited*, 2021 BCSC 1582 provided the following summary:
- [4] Rule 7-1 contemplates two "tiers" of relevance for the purposes of document disclosure. The first tier of relevance is provided for in R. 7-1(1), which requires a party to list all documents in its possession or control that could be used to prove or disprove a material fact. A material fact is "one that is essential in order to formulate a complete cause of action and that, when resolved, will have legal consequences between the parties": *Nelson and District Credit Union v. Fiserv Solutions of Canada Inc.*, 2017 BCSC 1139 at para. 24, applying *Sahyoun v. Ho*, 2013 BCSC 1143 ["*Nelson and District Credit Union*"] at para. 25-26. The scope of relevance extends to documents that could be "used" for such a purpose, in other words documents that "can assist" in proving or disproving a material fact: *Natural Trade Ltd. v. MYL Trading Ltd.*, 2019 BCSC 1368 at para. 9 ["*Natural Trade Ltd.*"]. However, this standard of relevance is "significantly narrower" than the threshold established by the *Peruvian Guano* case, effectively creating a "necessary limitation" to the broad test for production developed in the 19th century when dealing with 21st century records: *Marsh Canada Limited v. BFL Canada Insurance Services Inc.*, 2014 BCSC 1171 ["*Marsh Canada Limited*"] at para. 65(a).

- [5] The second tier of relevance is found in R. 7-1(11), under which a party may make a written demand for the opposing party to produce any document or class of documents that "relate to any or all matters in question in the action". The threshold of relevance under this sub-rule has been equated with the so-called Peruvian Guano test applied under the former Rules: *Marsh Canada Limited* at para. 65(b). The requesting party must identify the document or documents with reasonable precision and must indicate a rationale or basis for the request. The operative questions under this sub-rule are whether a requested document could be said to "contain information which may enable [the requesting party] to either advance [its] own case or damage the case of the adversary", or alternatively whether the document may fairly lead the requesting party to a "train of enquiry" that would serve that purpose: *Global Pacific Concepts Inc. v. Owners of Strata Plan NW 141*, 2011 BCSC 1752; *Natural Trade Ltd.* at para. 23.
- [7] In considering a contested application for document disclosure, the court must bear in mind that the object of the Rules is to ensure the "just, speedy and inexpensive determination", per Rule 1-3(1). To this end, the Rules are to be interpreted and applied with a view to ensuring, so far as is practicable, that the proceedings are conducted in a manner that is proportionate to the amounts of money involved, the importance of the issues, and the complexity of the proceeding, per Rule 1-3(2). In the context of document disclosure, the court may sometimes have to balance the burden of document production in terms of time, cost, and effort, against the materiality and probative value of the documents in issue: *Natural Trade Ltd.* at para. 26. More specifically, the court has a discretion in deciding whether to order production of second tier documents caught by the broader scope of relevance contemplated in Rule 7-1(11). In exercising that discretion, the court should consider the relevance of the documents or information sought, and the principle of proportionality: *Nelson and District Credit Union* at para. 27; *Marsh Canada Limited* at para. 66, 68.
- [31] Further, "[f]ull and complete disclosure between or among litigants prior to trial is essential to the truth-seeking function of the litigation process and proper administration of justice": *Nikolic v. Olson*, 2011 BCSC 125 at para. 93; see also *Marsh Canada Limited v. BFL Canada Insurance Services Inc.*, 2014 BCSC 1171 at para. 67.
- [32] It is with these general principles of disclosure that I will turn to my analysis of this particular application. C. Should Disclosure Be Ordered?
- [33] The plaintiff says, because the jury determined that the injuries are indivisible, that only the Pre-Amendment Act applies. The plaintiff contends that there is no clear divisible injury that would allow ICBC in this instance to pursue s. 83 deductions related to the Second Accident under the Act. In short, the plaintiff says that the jury's conclusion that the plaintiff's injuries were indivisible means that the entirety of her damages were caused by the First Accident.

- [34] ICBC contends that the disclosure obligations provided in s. 83 of the Act are unambiguous and require the plaintiff to disclose the documents of the types she now resists disclosing. Section 83 of the Act provides the rules and process by which defendants are to apply to deduct benefits received by plaintiffs after judgment is rendered. Section 83(2) states: A person who has a claim for damages and who receives or is entitled to receive benefits respecting the loss on which the claim is based, is deemed to have released the claim to the extent of the benefits. [Emphasis added.]
- [35] Section 83(1) includes an expansive definition of "benefits" beyond benefits provided by ICBC: 83 (1) In this section, "benefits" means amounts paid or payable, or things or services provided or to be provided in kind, directly or indirectly and whether or not as a result of a right of indemnity,
- (a) as benefits under Part 1,
 - (b) as follows, for a loss or expense similar to a loss or expense covered by benefits under Part 1:
 - (i) under insurance, wherever issued and in effect; (ii) under the Workers Compensation Act or a similar law of a jurisdiction other than British Columbia; (iii) under the Employment Insurance Act (Canada); (iv) by the government of a province or territory of Canada, Canada or another jurisdiction;
 - (v) under terms or conditions of employment or an agreement for collective bargaining, and
 - (c) in prescribed circumstances, for a loss or expense similar to a loss or expense covered by benefits under Part 1, but does not include
 - (d) a payment made under third party liability insurance coverage,
 - (e) health care services as defined in section 1 of the Health Care Costs Recovery Act, or
 - (f) in prescribed circumstances, an amount paid or payable, or a thing or service provided or to be provided in kind, directly or indirectly and whether or not as a result of a right of indemnity, under paragraph (b). [Emphasis added.]
- [36] Section 83(5) provides that after the award of damages is assessed, the amount of benefits the plaintiff received must be disclosed to the court, and taken into account:
- (5) After assessing the award of damages under subsection (4), the amount of benefits referred to in that subsection must be disclosed to the court, and taken into account, or, if the amount of benefits has not been ascertained, the court must estimate it and take the estimate into account, and the person referred to in subsection (2) is entitled to enter judgment for the balance only.

- [37] Section 83(5) of the Act is unambiguous. Disclosure must be made to the court of "the amount of benefits paid or provided". The Act is clear that the amounts of the benefits - which includes amounts paid or payable - must be disclosed.
- [38] In my view, the plaintiff's Pacific Blue Cross, Canada Life, and salary indemnity plan fall under the definition of benefits contemplated by s. 83 which are to be deducted from the awards for wage loss and special damages at trial. Clearly the Second Accident occurred after the time of the amendment. As such, pursuant to the Act, the plaintiff must disclose what is now requested by ICBC.
- [39] However, the plaintiff says because the jury found the plaintiff's injuries were indivisible, the court must accept that the entirety of the plaintiff's injuries were caused by the First Accident and so the Pre-Amendment Act applies. In support of her argument the plaintiff directed me to Wheeler. She contends that Wheeler provides that when a subsequent accident occurs after the amendment, but the plaintiff's injury was caused by a previous accident that occurred before the amendment, no deductions can be made for items contemplated under the Act in its current form.
- [40] In Wheeler, there were two accidents, the first before the amendment and the second afterwards. Armstrong J. addressed the changes to the legislation and their impacts on the insurer's desired deductions for extended health coverage:
- [52] First, I will consider whether any deductions for Botox medication costs are appropriate in this case taking into account the plaintiff's extended health insurance coverage. As discussed, 2018 changes to s. 83 of the Act involved a revised definition of the term "benefit" which now includes amounts payable by an injured party's extended health insurer. However, this change applies only to accidents happening on or after May 17, 2018. Given that the plaintiff's First Accident occurred in 2014, this broader definition of "benefit" does not apply when considering the effect of the deemed release under s. 83(2) of the Act.
- [53] Because the Second Accident occurred after May 17, 2018, amounts payable under the plaintiff's extended health coverage in relation to injuries flowing from that accident are included in the meaning of "benefits" under the amended s. 83(1) and would be included in the deemed release in s. 83(2) of the Act.
- [54] In the Trial Decision, I formed the view that the plaintiff's injury necessitating Botox treatments was caused by the First Accident. To the extent that the plaintiff experienced some headaches shortly after the Second Accident, the evidence did not satisfy me that the Second Accident was more than an aggravation of her pre-existing pattern of headaches that had been ongoing since the First Accident. Treatment for those headaches began in 2017 and continued every three months; her headaches would stop for a period of time but worsen towards the end of the interval after the last treatment. These headaches continued at a significant level before Botox treatments and there was simply no opinion evidence that the Second Accident caused an injury. The global assessment of damages including both accidents did not involve any finding concerning the impact of the second accident on the

plaintiff's headaches; her need for intermittent Botox treatments was well established on the evidence concerning her medical condition well before the Second Accident. It is more likely than not that these headaches exacerbated temporarily by the Second Accident but were not the cause of the injury necessitating the Botox treatments. [Emphasis added.]

- [41] As I understand the plaintiff's arguments, she submits that the circumstances of her case are analogous to those in *Wheeler*. Given *Armstrong J.* concluded that the second accident only temporarily exacerbated the headaches caused by the first accident, the relevant payments should be assessed under the Pre-Amendment Act.
- [42] However, in *Wheeler*, the court was hearing the merits of the s. 83 application, it was not a disclosure application. It strikes me that a s. 83 application is better argued on a record of relevant documents including those mandated disclosed under s. 83(5) of the Act. Refusing disclosure precludes the parties from making the arguments as to what, if any, amounts paid or payable should be deducted from ICBC's payment to the plaintiff.
- [43] Further, while perhaps a nuanced difference, in my view *Wheeler* is not determinative of how all s. 83 claims should be resolved when accidents straddle the Pre-Amendment Act and Act and injuries are found to be indivisible. In *Wheeler*, there was no clear articulation that the two accidents were indivisible and *Armstrong J.*'s analysis focused on the Botox treatments for the plaintiff's headaches. *Armstrong J.* determined that "her need for intermittent Botox treatments was well established on the evidence concerning her medical condition well before the Second Accident": para. 54. In the case at bar, it may be that ICBC wishes to argue at the s. 83 hearing the deductibility of an expense or treatment incurred by the plaintiff that has a clear nexus only to the Second Accident, such as time away from work immediately after the Second Accident.
- [44] It strikes me as artificial and illogical to attribute time away from work or a distinct treatment that occurs immediately after the Second Accident to be caused solely by the First Accident. While the plaintiff's current injuries may be indivisible as between the two accidents such that it is not possible to say which accident was the cause of her current pain, surely a concrete expense for a treatment or lost wages immediately after the Second Accident cannot be said to have been caused only by the First Accident which occurred three years prior.
- [45] As Justice Horsman, as she then was, noted in *Sharma v. Day*, 2020 BCSC 1365 a para. 90, indivisible injuries "cannot, by definition, be divided into distinct parts". As a result, "[d]efendants are jointly liable to the plaintiff because it is impossible to divide the injury up into constituent causes or points in time": *Sharma* at para. 90, citing *Bradley v. Groves*, 2010 BCCA 361 at para. 34.
- [46] In my view, there remains ambiguity as to how specific damages should be assessed for the purpose of s. 83 when two or more accidents occur under the different versions of the legislation. Ambiguity favours disclosure so that a complete argument, based on the relevant documents, can be made by the parties as to whether ICBC may deduct amounts

from the Trial Award. To reiterate, it appears to me to be unfair to ICBC to deprive them of the opportunity to have the documents it requests to make the argument at the s 83 hearing. ICBC's argument may or may not ultimately prevail, but it strikes me as premature and unfair to foreclose that opportunity by denying disclosure.

- [47] Further, as noted above, the requirements for disclosure under the Act as it is currently written appear unambiguous; a plaintiff must disclose the amounts of the benefits paid or payable by a private insurer or employer. The language of s. 31 of the Insurance (Vehicle) Amendment Act, 2018 is also clear that the revised legislation is to "apply in relation to a bodily injury or death caused by a vehicle or the user or operation of a vehicle on or after the date this Act receives Royal Assent". Again, the amendments took effect on May 17, 2018, before the date of the Second Accident.
- [48] I will now turn to the plaintiff's argument that ICBC should have properly brought an application naming the third parties because the insurers are the record holders. The plaintiff argues that Rule 7-1(18), supports her argument:
- (18) If a document is in the possession or control of a person who is not a party of record, the court, on an application under Rule 8-1 brought on notice to the person and the parties of record, may make an order for one or both of the following:
- (a) production, inspection and copying of the document;
 - (b) preparation of a certified copy that may be used instead of the original.
- [49] Recognizing the limits of compelling the plaintiff to provide something she may not have in her possession or control, ICBC has framed its order as compelling the plaintiff to request the documents from the record holder. In my view, a formal and technical approach to requiring a party to make a third party demand when the documents are obtainable by the party seems an inefficient manner to litigate. Further, while the plaintiff focusses on possession of the documents she does not consider that documents must be disclosed if the party has control of those documents. I expect that, the plaintiff could exercise control over the documents sought by ICBC, but she has refused to do so.
- [50] However, should the third party record holder not produce the documents to the plaintiff upon her request, which I expect will be unlikely, then it may be that ICBC will be required to bring a further application. IV. Order
- [51] Given the foregoing, I order that:
- a) Within seven (7) days of receipt of an entered Order, the plaintiff shall order her complete file from Pacific Blue Cross, including but not limited her extended health benefits printout from May 19, 2019, to the present, and the amount of the subrogated claim of Pacific Blue Cross;

- b) Within seven (7) days of receipt of an entered Order, the plaintiff shall order her complete Salary Indemnity Plan file from the British Columbia Teacher's Federation from May 19, 2019, to the present, including the amount of the subrogated claim of the British Columbia Teacher's Federation and/or Salary Indemnity Plan;
 - c) Within seven (7) days of receipt of an entered Order, the plaintiff shall order her complete file from Canada Life, including but not limited her extended health benefits printout from May 19, 2019, to the present and the amount of the subrogated claim of Canada Life; and
 - d) the plaintiff will provide ICBC with confirmation of the details, including the dates of her requests made, and any responses received, in relation to the requests for the documents sought set out in this order upon the request of ICBC. V. Conclusion
- [52] ICBC has been successful in this application. As such, they are entitled to their costs of this application in any event of the cause. In my view, given this application was only for disclosure and not the substantive issue of resolving payment of the Trial Award, it was not an efficient or effective use of the parties' or the court's resources. While I understand that the plaintiff took a principled approach in opposing ICBC's application, it strikes me that a better and more efficient use of time and energy in resolving the issue would have been to argue these issues at the s. 83 hearing on a complete record.
- [53] Finally, from comments made at the last appearance before me, I understand that the plaintiff is concerned that certain amounts which are not in dispute have not been advanced to her by ICBC. I do not know if that remains the case at this time. However, I request of ICBC that they make efforts to resolve payments of amounts that are not in dispute to the plaintiff as soon as possible.
- [54] I thank counsel for their submissions on this application. "Gibb-Carsley J."

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