
CANADA / JUDGMENT

Grahovac v. Hartfiel

2015 BCSC 1142

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Supreme Court of British Columbia

DECIDED

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2015 BCSC 1142 Grahovac v. Hartfiel

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grahovac v. Hartfiel,

2015 BCSC 1142

Date: 20150507

Docket: M055147

Registry: Vancouver

Between:

Borislav Grahovac

Plaintiff

And

Morgan K. Hartfiel and Susan Klinkhamer

Defendants

Before: The Honourable Madam Justice S. Griffin

Corrected Judgment: The date of the judgment

was corrected on the cover page on July 14, 2015

Oral Reasons for Judgment

Counsel for the Plaintiff:

Jeff M. Naylor

Counsel for the Defendants:

Avon M. Mersey, QC;

Eric B. Clavier

Place and Date of Hearing:

Vancouver, B.C.

May 6, 2015

Place and Date of Judgment:

Vancouver, B.C.

May 7, 2015

- [1] THE COURT: The plaintiff has brought two applications in this case where three actions have been ordered tried together. The three actions relate to three motor vehicle accidents which the plaintiff claims caused him personal injuries. The accidents occurred on February 5, 2004, Action Number M055147; December 4, 2004, Action Number M060492; and May 19, 2006, Action Number M071046.
- [2] The background is that the plaintiff emigrated from the former Yugoslavia to Canada prior to the accidents. He claims that at the time of the February 5, 2004, accident, he was intending to move back to his country of origin to seek employment as a law professor and businessman. His wage loss claim or loss of earning capacity claim arises from alleged delays in realizing these plans and an ongoing diminished earning capacity. He did become a law professor in 2008.
- [3] The two applications are: first, for an order that the trial be heard without a jury; and second, for an order that five witnesses who live in Europe, all relating to the plaintiff's loss of earning capacity claim, be called by the plaintiff to testify by videoconference at trial.
- [4] Both applications are opposed by counsel for all defendants, except the defendant Mr. Perez. Counsel for the defendant Perez, who is a defendant in Action Number M071046, has not appeared on these applications, stating he takes no position on the application to set aside the jury notice, but opposes the application regarding the witnesses testifying by videoconference.
- [5] For ease of reference, I will refer to the defendants who appeared in opposition to this application as "the defendants", meant to exclude Mr. Perez.

- [6] The trial is set to begin May 25, 2015, and is set for 15 days. No party has submitted that the trial cannot be completed in the time allotted; however, the parties assume in part that a trial judge will be assigned early and could hear and determine motions regarding the admissibility of expert opinion evidence in advance of the start of trial. I am not sure this scheduling will be possible this close to trial. Also, in my view, the parties underestimate the impact of using interpreters at trial for several witnesses.
- [7] After consulting with the parties and Supreme Court Scheduling at the close of the parties' submissions, I made a direction extending the trial for an additional five days. This, in my view, will provide a cushion, should the trial take longer than expected.
- [8] Given the close proximity of trial, there is urgency to decide these applications. I have had the benefit of helpful submissions and motion materials, which I have read and considered.
- [9] The legal principles set out in the notice of applications and the application responses are not in dispute.
- [10] My reasons for judgment will, of necessity, be quite brief.

Application for Trial Without a Jury

- [11] Under the Supreme Court Civil Rules, BC Reg 168/2009, the governing rule for the first application is R. 12-6(5)(a) which provides:
- (5) Except in cases of defamation, false imprisonment and malicious prosecution, a party on whom a notice under subrule (3) has been served may apply
- (a) within 7 days after service for an order that the trial or part of it be heard by the court without a jury on the ground that
- (i) the issues require prolonged examination of documents or accounts or a scientific or local investigation that cannot be made conveniently with a jury,
- (ii) the issues are of an intricate or complex character, or
- (iii) the extra time and cost involved in requiring that the trial be heard by the court with a jury would be disproportionate to the amount involved in the action
- [12] The reference to subrule (3) is to service of the notice requiring a trial by jury. The parties did not raise any issue before me regarding the timing of the present application.
- [13] There is also no argument that a jury trial would be disproportionate to the amount involved in the action. The plaintiff is advancing a claim for loss of earning capacity of close to \$3 million prior to discounting.
- [14] Personal injury claims are often tried by jury, even those involving complex medical issues.

- [15] The background facts are that the plaintiff was in three separate car accidents, each of which involved his vehicle being rear-ended. All of the defendants but Mr. Perez are connected to the vehicles which collided with the rear of the plaintiff's vehicle. Mr. Perez was driving a vehicle which collided with the rear of another vehicle, which then hit the rear of the plaintiff's vehicle.
- [16] The defendants say that the medical evidence indicates that the plaintiff's injuries from the first accident had resolved by the time of the second accident. The plaintiff says that there will be evidence that the first accident made him more vulnerable to the injuries subsequently incurred, and the implications of this will need to be addressed in any jury charge.
- [17] The nature of the injuries, which are soft-tissue injuries, are similar in relation to all three accidents. There will be a contest at trial as to whether or not the injuries are divisible as between the accidents.
- [18] As for liability, the defendants pleaded that the plaintiff was contributorily negligent. On questioning from the Court, these defendants have conceded that they will not contend at trial that there is any contributory negligence. This is not a concession made on behalf of Mr. Perez, and I am not aware of whether he pleads contributory negligence. However, even if he does plead it, it is difficult to believe this will actually be a serious issue at trial.
- [19] The plaintiff concedes that while there are some medical issues in the case, there is likely to be less evidence of a scientific and medical nature than is seen in some other cases where plaintiffs' applications to set aside jury notices have been unsuccessful.
- [20] The defendants emphasize two such cases where the expert evidence and issues were much more extensive than the present case, but the right to a jury trial was upheld: *Cliff v. Dahl*, 2012 BCSC 276, and *Rados v. Pannu*, 2015 BCSC 453 [*Rados*].
- [21] However, the plaintiff argues that because these actions involve three car accidents spanning a long time period, the factual and legal issues of causation and apportionment will be so complex that they cannot be conveniently determined by a jury. On the pleadings and evidence, the issues include: whether the plaintiff's injuries in each accident are divisible; whether one accident was an intervening cause of the plaintiff's injuries; to what extent the "thin-skull" rule applies; and apportionment of damages as between the various defendants in relation to the three accidents.
- [22] The plaintiff points out that in a parallel set of actions in which this plaintiff's wife was a plaintiff, *Abrioux J.* granted the wife's application to have the action tried without a jury: see *Grahovac v. Hartfiel*, (2 August 2014), Vancouver M055151 (B.C.S.C.) [*Grahovac v. Hartfiel*].

- [23] Ms. Grahovac was in the same three accidents as was the plaintiff herein. However, she was in three other relevant car accidents as well, one on May 2, 2011, one on January 27, 2012, for which she had started actions in relation to her injuries, and another one on March 1, 2009, in which she was at fault.
- [24] After reviewing the applicable legal principles, at paras. 19-22 of *Grahovac v. Hartfiel*, Abrioux J. adopted the reasoning of Loo J. in *Pajger v. Williams*, 2003 BCSC 1542 [Pajger] at paras. 9-11, and set aside the jury notice.
- [25] The case of *Pajger* involved a plaintiff injured in three motor vehicle accidents for which he advanced claims which were to be tried together. Liability was admitted in two of the cases, but not the third. At the pre-trial conference, Loo J. noted at para. 5:
- [5] If that were the only issue that was to be resolved by a jury, I would agree that, although the issues require a scientific investigation, they could be dealt with by a jury. What makes this case more complicated, is that these three accidents aggravated a soft tissue injury that the plaintiff had sustained in two prior motor vehicle accidents, one in July of 1994 and the other in December of 1994. Fortunately, both counsel before me dealing with the three later accidents were counsel for the action involving the two earlier accidents, which I have been told was settled for a sum in excess of \$250,000.
- [26] The Court in *Pajger* also held at paras. 8-11:
- [8] Based on this brief summary, the issues to be determined at trial not only involve liability in the second accident, meaning the second of the last three accidents, but whether the plaintiff was contributorily negligent, the state of his medical and psychological condition immediately before each of the last three accidents, his financial circumstances immediately before each of the last three accidents, and his current medical, psychological and financial status. The plaintiff is a plumber in a family-run business. Unlike a regularly employed person, his earnings fluctuate, and this makes the issue of financial loss all the more difficult.
- [9] The cause of the plaintiff's present medical and psychological condition requires resolution of a number of issues, including what injuries he sustained in the first accident, that is the first of the last three accidents, to what extent the first accident aggravated the injuries he sustained in the 1994 accidents, what injuries he suffered in the second of the last three accidents, whether that accident aggravated the injuries he suffered in the first accident, or the 1994 accident, what injuries he suffered in the third of the last three accidents, and whether that last accident aggravated the earlier accidents.

- [10] Next, the trier of fact would have to determine the proper apportionment of damages payable by the various defendants in respect of each of the accidents. Moreover, the jury will need to understand and apply the thin skull rule, the crumbling skull rule, and I accept that a jury would suffer a real disadvantage compared to a judge who has more time to analyse the evidence at the end of the trial than would a jury. I simply say that this case is unlike many of the cases Mr. Burgess referred to where the judge has refused to strike a jury notice.
- [11] For these combined reasons, that is, the issues being of an intricate and complex character, and the nature of the scientific investigation, I find that the plaintiff has met the burden, and I order the notice of trial by jury struck.
- [27] In *Rados*, in analyzing the appropriateness of a jury trial, Fitch J. helpfully noted that issues may be considered complex if a judge would experience difficulty in framing questions for the jury: at para. 34.
- [28] The defendants submit that the issues in this case will not be too prolonged or difficult to be conveniently assessed by a jury. When I asked for a sample as to questions to be put to the jury at the end of the trial, the defendants' counsel prepared and read a list of fairly simple questions. Of course, the plaintiff did not have the opportunity to compare that list to the defendants' pleadings. In addition, it did not seem entirely consistent with the approach taken in *R. Dean Wilson et al, CIVJI: Civil Jury Instructions*, loose-leaf (consulted in May 2015), 2d ed (Vancouver: Continuing Legal Education Society of British Columbia, 2009).
- [29] I note that *Grahovac v. Hartfiel* is distinguishable because there were six accidents at issue. Likewise, *Pajger* is distinguishable because it required considering injuries caused by five accidents. Also, *Pajger* involved active claims of contributory negligence and one accident in which liability apparently was still at issue.
- [30] The impression I have, after hearing the parties' submissions and reading the motion materials, is that the key issues in this case at trial will have to do with factual issues of whether the accidents caused the plaintiff to suffer injuries which interfered with his earning capacity.
- [31] I have concluded that the case is not too complex. Having considered the facts and authorities, I am not persuaded that the plaintiff has met the onus he is required to meet in order to take away the defendants' fundamental right to have a civil trial by jury.
- [32] However, I reach this conclusion with an important caveat. I have relied to some extent on the defendants' position that the questions to be put to the jury will be straightforward. While I have decided to dismiss the plaintiff's application, I have also decided to direct the defendants to provide, at the start of trial, the other parties and the trial judge with a draft list of questions the defendants submit ought to form the framework for questions to be decided by the jury, along with submissions as to how the interplay of issues as between the three accidents ought to be addressed in a jury trial.

[33] Further, I wish to make it clear that the trial judge will retain his or her discretion to reconsider the appropriateness of a jury trial, and I simply observe that should the submissions not be helpful at the start of the trial, that may be taken into account by the trial judge.

Evidence by Videoconference

[34] I now turn to the application for an order that five witnesses who reside in Europe testify by means of videoconference.

[35] This application is based on ss. 73(2) and (3) of the Evidence Act, R.S.B.C. 1996, c. 124, which provide:

73 (2) A court may allow a witness to testify in a proceeding by means of closed circuit television or any other technology that allows the court, the parties and the witness to engage in simultaneous visual and oral communication, unless

- (a) one of the parties satisfies the court that receiving the testimony in that manner would be contrary to the principles of fundamental justice, or
- (b) the technology is not available for the proceeding.
- (3) If a party objects to the court receiving evidence in the manner described in subsection (2), the court may consider any of the following circumstances:
 - (a) the location and personal circumstances of the witness;
 - (b) the costs that would be incurred if the witness had to be physically present;
 - (c) the nature of the evidence the witness is expected to give;
 - (d) any other circumstance the court considers appropriate.

[36] As noted by the language of the statute, granting such an order is discretionary, but there is an onus on the party opposing it to satisfy the court that receiving the testimony in this manner would be contrary to the principles of fundamental justice. Also, the applicant must establish that the technology is available for the proceeding.

[37] The plaintiff has filed evidence that identifies that the technology is available for the proceeding, and I am satisfied that this part of the test is met. However, I note that the courts do not have an abundance of videoconferencing equipment available and so, if ordered, advance arrangements will have to be made with the court technology staff for the technology to be available in the trial.

[38] Further, I note that it will be the plaintiff who will ultimately bear the risk that the videoconferencing technology may not be available at trial due to technical issues or other complications.

[39] There are several factors weighing in favour of granting the plaintiff's application.

- [40] The first factor is the location of the witnesses. They all live and work in Serbia or Bosnia-Herzegovina ("Bosnia"), and it would be extremely time-consuming to bring them to Vancouver for a trial. The travel time is estimated to be approximately 13 hours, including stopovers.
- [41] A second factor requires looking at the personal circumstances of each witness. Some have other employment commitments that do not allow them to take such time away from work as would be required to attend the trial in person. Further, each would require a Canadian visa to attend trial. Two of the witnesses provided information to illustrate that their commitments are not minor. One witness says he has government duties and university lectures as a professor. Another professor says he has university lecture obligations and these run to the end of June. A third witness simply says he will be in Europe and would like to testify by video link.
- [42] As for the nature of the evidence, the plaintiff at the time of the first accident was apparently living in Canada, working on a PhD in law. He alleges that it was always his plan to return to Serbia and Bosnia where he had roots, property, and a previous career. In order to prove the employment and economic opportunities in those countries which he says were lost to him due to his injuries, he must call witnesses from those countries.
- [43] Three witnesses are expected to give evidence regarding their direct knowledge of the plaintiff and employment opportunities that would have been available to him in Serbia or Bosnia, had he been healthy.
- [44] The fourth and fifth witnesses are economists and financial consultants retained by counsel for the plaintiff to provide opinion evidence relating to an economic opportunity the plaintiff alleges was lost to him due to his injuries. This apparently relates to the potential conversion of his home in Mostar, Bosnia, to a hotel. These two expert witnesses say that they have too many other professional commitments to be able to attend in person at trial.
- [45] I must say that the evidence of all of these witnesses as to their inability to travel to Vancouver for trial was somewhat thin. I will concede that one of the problems may be that there are interpretation issues which impede the ease of communication with counsel for the plaintiff. Regardless, as a matter of common sense, it would no doubt be seriously inconvenient for these witnesses to travel to Vancouver for the trial. Each witness would lose not just the one or two days required for testimony. They would each also lose two days before and at least one and perhaps two days after testifying due to the travel time between their homes and Vancouver, and the need to accommodate some flexibility in the trial schedule.

- [46] These witnesses are not in the control of the plaintiff and, based on the theory of his claim that but for his injuries he would have enjoyed economic opportunities in Serbia and Bosnia, I accept the plaintiff's submission that they are critically important to his case. I also accept the plaintiff's submission that without an order permitting the witnesses to testify by way of videoconferencing, he will not be able to call comparable evidence.
- [47] The importance of the witnesses goes both ways here. It is a factor that the defendants say should weigh in favour of requiring the witnesses to attend at trial. I accept this.
- [48] The plaintiff had the option of trying to obtain an order for a deposition of the evidence of these witnesses before trial. However, it is quite likely, given the defendants' position that these witnesses should be available at trial, that the defendants would have opposed a deposition in advance of trial.
- [49] Further, the Rules provide that on an application for an order for a deposition, the court must take into account the possibility and desirability of having the person testify at trial by videoconferencing or other electronic means: R. 7-8(3)(d). As noted by Master Bouck in *Campbell v. McDougall*, 2011 BCSC 1242 at paras. 47-48, this is a relatively new addition to the depositions rule which takes into account the benefits of modern technology.
- [50] Another factor I must consider is the cost of getting these witnesses here, which would be a significant cost, given that they will be travelling from Europe.
- [51] The defendants point out that the cost of videoconferencing is also great, as it will have to take place outside what would be normal business hours in the locations of the witnesses. It may be that the videoconferencing cost would exceed the cost of bringing the witnesses here by economy fare flights.
- [52] I take the defendants' point, but in my view it is not fair to require a witness to fly in economy class for such a long flight. These witnesses would not be travelling for a holiday. The most inexpensive business class fare would be appropriate to allow the witnesses room to stretch out, to sleep, and to do work over the many hours of the flight. On top of the cost of airfare would be hotel accommodation and food, and any other fees charged by these witnesses for the lost time at work.
- [53] I am satisfied that reasonable travel costs and costs for the witnesses' time would exceed the cost of videoconferencing. However, in my view, costs are not the most important factor; it really is the inconvenience to the witnesses in having to take so much time to come to Vancouver to testify.
- [54] There are other circumstances that are relevant as well. The defendants are challenging the admissibility of the evidence being called from these witnesses. The trial judge will be required to make rulings at trial regarding the admissibility of the evidence. When a trial proceeds with a jury, there can be interruptions in the evidence while submissions and then rulings are made in the absence of the jury. Clearly, if the witnesses are required to travel to Vancouver, the travel time and travel arrangements will have to be made in advance, taking

into account the possibility there could be delays in the trial and not knowing the result of any ruling by the trial judge regarding admissibility of the evidence.

- [55] There is a risk in this situation not only that a witness who has travelled a long distance could be greatly inconvenienced, but also that considerable costs could be thrown away. Counsel for the plaintiff has inquired about travel insurance, but has been informed that none is available to cover the cost of a cancelled flight due to court circumstances.
- [56] The defendants say that they strongly challenge the evidence that these witnesses are expected to give, and indeed they will challenge the credibility of the three witnesses who know the plaintiff. They submit that it is important for the witnesses to be in the courtroom, given that their evidence is so highly contentious. As already noted, it is expected that these witnesses will be used to support the plaintiff's large claim for damages for loss of earning capacity. The defendants say that it will be difficult to effectively cross-examine the witnesses by videoconference because of the need to put documents to them, and because of the need for an interpreter.
- [57] I accept that cross-examination by videoconference may have somewhat less of an impact than cross-examination in the courtroom, but I do not accept it will have a significant impact on the jury's ability to assess the evidence in this case. While the defendants argue that the credibility of the witnesses will be challenged and that eye contact is important to do so, in the context of the nature of the evidence, I think it is more likely that the reliability of their evidence will be challenged and this will turn more on the content of the evidence.
- [58] Notably, the fact that an interpreter would have to be used with these witnesses, in any event, means that the pace of cross-examination and ability for eye contact when questioning the witness was already going to be hindered, even if the witnesses testified while present in the courtroom.
- [59] As for an interpreter, the plaintiff's plan is to have an interpreter present in the courtroom in Vancouver, rather than with the witness in Europe. This makes the most sense to me, as the interpreter will then be under this Court's supervision.
- [60] The plaintiff assures the Court that arrangements can be made in advance for documents to be provided to the witnesses. The defendants have not provided me with any details of the documents that might be involved in the testimony, other than perhaps the witnesses' own reports. I am satisfied that if counsel work together, the documents that are going to be relevant can be provided to the witnesses in advance and can be organized so that agreement is reached that what is seen by a witness is a true copy of an exhibit in the courtroom. Whether what is provided is a hard copy or an electronic image accessible in real time by computer, I will leave for counsel to determine.
- [61] It is my view that any risk to the defendants that their examination of the witnesses will be hampered if done by videoconference is at least equalled by the risk to the plaintiff that the evidence will not be as helpful to him as it might be if the witnesses were in court. It surely

has to be the case that, all things being equal, the plaintiff would prefer to have his witnesses in court. If in court, the witnesses would have the opportunity to look directly at the jury and there would then be a greater chance that the sincerity of the evidence would resonate with the jury. This was the point made by plaintiff's counsel referring to eye contact in *Miley v. Abulaban*, 2014 BCSC 1905 at para. 16. Counsel for the defendants quite fairly conceded this point in submissions.

- [62] But again, as I have already stated, in this case the plaintiff appears to have no choice, given that the witnesses have indicated that they will not voluntarily travel to Canada for the trial.
- [63] Of course, a witness does not dictate to the court whether or not they will be allowed to testify by videoconferencing. Nevertheless, when a procedure exists under the law to accommodate witnesses who live a long distance away from the trial, and this evidence will not be otherwise available to the plaintiff, it would seem to me consistent with the principles of fundamental justice to attempt to accommodate the witnesses.
- [64] In *Slaughter v. Sluys*, 2010 BCSC 1576 [Slaughter], Beames J. allowed an application to have seven lay witnesses and four expert witnesses testify at trial by videoconferencing. The estimated time at trial to be taken up by these witnesses was approximately four days. The Court noted that credibility could still be assessed when a witness testifies by videoconference: at para. 9.
- [65] Here, the estimated time of the witnesses' evidence might be as much as five days.
- [66] The defendants point out that in *Slaughter*, the Court did not allow some witnesses to testify by videoconference because of the possibility that their evidence would be very contentious, going to the plaintiff's most significant claim (loss of earning capacity), and because each knew the plaintiff: at para. 12. As the defendants point out, that is somewhat similar to the facts here.
- [67] However, the fact distinguishing this latter aspect of *Slaughter* from the facts of the present case was the lack of any evidence in *Slaughter* that those witnesses would be personally inconvenienced or suffer hardship as a result of testifying in person, as noted at para. 12. The witnesses would simply have to travel from Northern Ontario to Vernon, BC. Here it is obviously a much greater inconvenience to bring the witnesses from Serbia or Bosnia to Vancouver to testify at trial.
- [68] The far greater inconvenience to the witnesses in this case also distinguishes the present circumstances from other cases relied on by the defendants, such as *Pack All Manufacturing Inc. v. Triad Plastics Inc.* (2001), 29 C.P.C. (5th) 354 (Ont. S.C.J.), and *Feeney v. Labatt*, 2007 CanLII 1862 (Ont. S.C.J.).
- [69] The defendants also question whether the witnesses would be as inclined to tell the truth if testifying outside of this Court's jurisdiction. I have no reason to be concerned about that issue. Sections 73(6) and (7) of the Evidence Act provide:

73 (6) The court must require evidence under subsection (2) to be given

- (a) under oath in accordance with the law of British Columbia,
 - (b) under oath in accordance with the law in the place in which the witness is physically present, or
 - (c) in another manner that demonstrates that the witness understands that he or she must tell the truth.
- (7) When a witness outside of British Columbia gives evidence under subsection (2), the evidence is deemed to be given in British Columbia, and given under oath in accordance with the law of British Columbia, for the purposes of the laws relating to evidence, procedure, perjury and contempt of court.

[70] The biggest factor affecting the compulsion of a witness to tell the truth is personal morality and a sense of duty, which is brought home to the witness by the oath to tell the truth and by the formality of the courtroom setting. These factors will still be at play when the witnesses testify by videoconferencing, although I accept that the physical distance could potentially lessen the moral suasion of the courtroom setting to some extent. Regardless, the challenge to the evidence of these witnesses, in my view, is most likely to come through in the content of the evidence as tested in cross-examination, rather than being a matter of oath-taking or demeanour.

[71] As a balancing exercise, I am not persuaded that allowing these witnesses to testify by videoconferencing will prejudice the defendants as much as not allowing them to testify would seriously prejudice the plaintiff.

[72] Considering all of the factors, I am not persuaded it would be contrary to fundamental justice to allow the witnesses to testify by videoconference in the circumstances of this case.

[73] I order that the plaintiff's application that five named witnesses testify by means of videoconferencing in the trial be granted, subject to certain conditions:

- a) This order is subject to the overriding discretion of the trial judge.
- b) This order is subject to counsel making arrangements with court staff for videoconferencing equipment to be available at the necessary time in the courtroom. It is also subject to the technical quality of the video transmission being acceptable to the trial judge.
- c) The parties must make advance arrangements to allow for the presentation of documents to the witnesses at trial. If the parties cannot agree on this process, they must appear at a trial management conference for directions.
- d) The witnesses' testimony by videoconferencing will be at the times and dates directed by the trial judge.

- e) Prior to a witness testifying by video, the plaintiff must address the form of oath-taking with the witness ...

[74] COUNSEL 1: I'm sorry, My Lady, what did you say there?

[75] THE COURT: The plaintiff must address the form of oath-taking.

[76] COUNSEL 1: Address the form, thank you.

[77] THE COURT: Address the form of oath-taking with the witness, opposing counsel, and the trial judge.

[78] The point here is to minimize any delay and confusion when the witness is called, and to sort out any issues that the parties might have as to the proper oath in advance.

[79] That concludes the directions. I also want to make a couple of recommendations.

[80] I make a recommendation that the plaintiff make best efforts to do a test run with the videoconferencing provider to check the technology and the setup of the camera, taking into account that there will be an interpreter, prior to the first videoconferencing witness testifying.

[81] Counsel, I am not sure how you do that. It could be helpful to have someone from each side come here the morning of or late one day during the trial to do it. I am not sure how far in advance you can do it with the use of the court equipment, but I will let you try to figure that out. I also do not know what the person on the other side will see: will they have a screen with two divisions or three divisions, for example. But I want you to try to work that out together so that there is some agreement. I want to avoid any excessive delays during the trial due to technology issues.

[82] I will simply ask the defendants' counsel to do their best to cooperate with the plaintiff in that regard.

[DISCUSSION]

[83] THE COURT: All right, and costs?

[84] COUNSEL: I guess the issue of costs should come up.

[85] THE COURT: Yes, in my view costs should just be in the cause at this stage.

[86] COUNSEL: For both parties?

[87] THE COURT: Yes.

"The Honourable Madam Justice S. Griffin"

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