
CANADA / JUDGMENT

Kusch v. Wong

2020 BCSC 2146

COURT

Supreme Court of British Columbia

DECIDED

1 October 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 2146 Kusch v. Wong

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kusch v. Wong,

2020 BCSC 2146

Date: 20201001

Docket: M167454

Registry: Vancouver

Between:

Tanyia Kusch

Plaintiff

And

Yuen Wong

Defendant

Before: Master Muir

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff, appearing by teleconference:

A.D. Brine

Counsel for the Defendant, appearing by teleconference:

N. Badesha

Place and Date of Hearing:

Vancouver, B.C.

October 1, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 1, 2020

[1] THE COURT: This is an application by the defendant for orders that the plaintiff attend two separate independent medical examinations ("IMEs"), the first by Dr. Rehan Dost, a neurologist, and the second by Dr. Catherine Paramonoff, a physiatrist, and for ancillary orders.

background

[2] The background is that the plaintiff was involved in a motor vehicle accident on November 15, 2014. She alleges injuries, including back pain, neck pain, chest pain, soft tissue injuries, concussion, anxiety, depression, a broken wrist, bruising, and chronic pain. In her examination for discoveries conducted on June 18, 2019 and September 14, 2019, the plaintiff acknowledged suffering headaches, migraines, stiffness, fatigue, dizziness, nausea, loss of focus and concentration, memory issues, tightness and discomfort and pain in her left leg, neck, back, mood, and sleep disruption issues.

[3] The trial of this matter is set for nine days commencing February 8, 2021, and the 84-day deadline is therefore November 13, 2020. Neither party has, as of yet, served any expert reports. The plaintiff has, as treating physicians, including her family physician, a doctor with expertise both in neurology and psychiatry, as well as a chiropractor, physiotherapist, and others.

[4] At the request of the defendant, the plaintiff has attended a medical examination with Dr. Paul Janke, a psychiatrist, on June 4, 2020.

[5] The defendant essentially asserts that the injuries of the plaintiff are in three discrete areas:

1. mood and anxiety, which the defendant has asked Dr. Janke to investigate;
2. concussion and post-concussion symptoms, including dizziness, nausea, loss of focus, concentration, memory issues; and
3. physical injury of back, neck and chest pain and soft tissue injuries and chronic pain.

- [6] The defendant argues that it is entitled to investigate all three discrete areas to support its position at trial. It says that a neurologist has the expertise to investigate the plaintiff's concussion and post-concussion symptoms, and a physiatrist the physical symptoms. Although these specialties may overlap to some degree, the defendant has produced the instruction letters to the experts where it is clear that the neurologist should give a neurological opinion and the physiatrist should give an opinion on physical injuries.
- [7] There is no report, as yet, from Dr. Janke and, obviously, no reports from either the neurologist or physiatrist. I do not have the CVs of the experts, although no issue was taken with them being qualified in their respective fields. Obviously, I do not know to what extent their fields might be intertwined by ancillary expertise. The only issue taken by the plaintiff up to today was that the specialties of the experts were such that their reports could overlap, and it would agree to one report but not both. Today the plaintiff also argued that as we do not have the report of Dr. Janke, who has already seen the plaintiff, we do not know if Dr. Janke commented on the neurological injuries allegedly suffered by the plaintiff.

the parties' positionS

- [8] The defendant referred to many cases, but I will refer to only one, and that is the decision of our Court of Appeal in *Tran v. Abbott*, 2018 BCCA 365, which has perhaps set the tone for decisions subsequent to that regarding the entitlement of defendants to engage experts. In *Tran*, the issue was that Ms. Tran had already attended an IME with a neurologist, Dr. Alister Prout, and the application was for an order to compel her to attend an examination with an orthopedic surgeon.
- [9] The plaintiff distinguishes this decision from *Tran* on the basis that the Court of Appeal in *Tran* had the benefit of seeing the report from Dr. Prout in coming to their conclusions.
- [10] The gist of the plaintiff's argument is that, without seeing the report of the other expert, the court is incapable of making a determination as to whether another examination is appropriate. In other words, the court cannot establish that there is a necessity for another examination without seeing the report from any earlier IMEs.
- [11] The plaintiff's position is that the defendant would only be entitled to have an examination by an expert, have that report produced, then seek another examination, have that report produced, and so forth, so that the court would be able to determine if the defendant was entitled to additional examinations.

analysis

- [12] With respect, I do not believe that the cases support the plaintiff's position. Our Court of Appeal in *Tran*, said:

- [30] As this Court noted in [Webster v.] Wildemann [(1990), 50 B.C.L.R. (2d) 244 (C.A.)], "[t]he rules are designed to secure a just determination of every proceeding on the merits and to encourage full disclosure" (at 246). The rules should be given a fair and liberal interpretation to meet those objectives.
- [33] Multiple examinations may be appropriate and necessary where a variety of injuries are alleged, or the etiology of illness is not straightforward. In exercising its discretion on an application pursuant to Rule 7-6, the court must consider the effect of refusing the order sought on the conduct of the trial.
- [34] Where, as here, an injured party claims both neurological and musculoskeletal injuries, the practical effect of the ruling [to refuse the second examination] was to preclude the defendant from proceeding to trial with a medical opinion from an appropriate expert.
- [13] At para. 37 of Tran:
- [37] In this case, the judge concluded that parts of the neurologist's report went beyond his expertise, and thus a report from an expert with appropriate and different expertise would "bolster" the first report (at para. 26). Without opining on whether that view is correct, the practical effect of the ruling is to preclude the defendant from obtaining a report from an expert with appropriate qualifications on a live issue, the etiology of the plaintiff's complaints.
- [14] The plaintiff referred me to my decision in Gray-Verboonen v. Mandurah, 2019 BCSC 1697. In my view, that decision is quite distinguishable. There, the plaintiff had been seen by two experts, both of whom had been shown to have some expertise in investigating work impairment, but I did not have the benefit of opinions from either. In those circumstances, I refused to order a functional capacity evaluation. That, in my view, is quite different from the application before me today.
- [15] The defendant, although in reply, referred me to the decision of Chahal v. Sandhu, 2020 BCSC 879, a decision of Justice Jenkins dealing with the same issue. I will just read from His Lordship's reasons starting at paragraph 11:
- [11] The gist of the objection by counsel for the plaintiff is that the defence has already retained and instructed Dr. Kemble to carry out an IME relating to the neurological injuries which the plaintiff has suffered. His concern is that the opinion of Dr. Kemble "could" comment on Ms. Chahal's physical symptoms. That examination has not been carried out and there obviously is no report available from Dr. Kemble. It may be that comments by Dr. Kemble in the future could comment on the plaintiff's physical systems as they may relate to her nervous system.

- [12] Looking at the plaintiff's injuries alleged in the Notice of Civil Claim, the concussion and injury to the head are distinct from the physical injuries to the plaintiff's right shoulder, leg and foot. A neurologist could comment on the etiology of the head injuries and may comment on the physical injuries claimed by the plaintiff. A physiatrist would be qualified to opine on the soft tissue injuries to the plaintiff's right shoulder, leg and foot and any rehabilitation required for those injuries.
- [13] If either Dr. Kemble or Dr. Khan provide written reports commenting on issues which the plaintiff submits are outside the scope of their expertise, it is open to counsel to object and the admissibility of the opinion could be addressed by the trial judge or the trial judge may admit the opinion and assess the same in terms of weight.
- [14] In these circumstances, I find that with the variety of injuries alleged, it is appropriate to order a further IME and that the plaintiff attend for the purposes of an IME with Dr. Khan on July 24, 2020.
- [16] As I said, with respect to the plaintiff's position that the defendant is not entitled to an IME unless there is no potential for a comment by a different expert on symptoms that might be outside of their area of expertise, I am of the view that that position is very much overreaching.
- [17] It may have been supportable in the past, but with the decision in *Tran*, I am satisfied that, given the separate qualifications of the neurologist and the physiatrist here, and given the instructions to both the neurologist and the physiatrist to give opinions within their expertise, the examinations are appropriate. Similar to Justice Jenkins' decision in *Chahal*, if those experts stray outside of their respective expertise, the matter can be dealt with at the trial. As a result, it is my conclusion that the defendant's application should be allowed and both IMEs (with Dr. Dost and Dr. Paramonoff) should proceed.
- [18] I will hear you on costs.
- [SUBMISSIONS ON COSTS]
- [19] THE COURT: All right. In the circumstances that liability has been admitted and the defendant has been successful on this application, the defendant should have costs in any event of the cause.

"Master Muir"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/21/2020BCSC2146.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/kusch-v-wong-2020>

Prepared on 25 October 2026 · Esheria