

CANADA / JUDGMENT

Lee v. Khan

2025 BCSC 1562

COURT

Supreme Court of British Columbia

DECIDED

17 July 2025

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2025 BCSC 1562 Lee v. Khan IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Lee v. Khan, 2025 BCSC 1562 Date: 20250717 Docket: M182524 Registry: Vancouver Between: Wonjae Lee Plaintiff And Mohammed Khan, Yellow Cab Company Ltd., and Lucy Singh Defendants Before: Associate Judge Nielsen Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: E. Orr-Ewing Counsel for the Defendants: P. Wingenbach Place and Date of Hearing: Vancouver, B.C. July 17, 2025 Place and Date of Judgment: Vancouver, B.C. July 17, 2025

- [1] THE COURT: This is an application by the defendants for an order that the plaintiff attend a vocational assessment examination with Dr. Colleen Quee-Newell on July 18, 2025, which is tomorrow. There are time constraints here.
- [2] The plaintiff's claim arises out of a motor vehicle accident that occurred on September 26, 2017. The plaintiff alleges injuries to the neck, left shoulder, back, and pelvis. There are claims for loss of past earnings and future earning capacity. Those are the critical claims here that underlie the application made by the defence.
- [3] The plaintiff has served a physiatrist's report of Dr. Chawla and a functional capacity evaluation and cost of future care report.
- [4] At the time of the motor vehicle accident the plaintiff was a student at BCIT in his first year of computer and electrical engineering. The plaintiff graduated in 2018. He was not able to get a job of his choice and, instead, returned to Korea to secure employment.
- [5] Initially he obtained employment at a sushi restaurant as a waiter, then he worked at Inno Foods doing mostly machine maintenance, and in September of 2021 he became an office assistant for a real estate office, however, he was never able to get the job that he wanted in the engineering, electrical, and computer industry.
- [6] There is evidence that the plaintiff has had difficulties with squatting, long periods of standing, lifting, and working with heavy machines. It was hoped that his job with the real estate office, being more sedentary, would be easier for him. However, he has had challenges with driving to work, computer work with long periods of sittings, answering emails, and long periods of screen time. At present, he does not have any future career plans and he is evaluating his progress and performance in the workplace and he is taking it as it

comes.

- [7] The plaintiff's psychiatrist, Dr. Chawla, recommended an assessment of the plaintiff and that functional assessment has been completed. The defendant retained Dr. O'Connor, who is also a psychiatrist. His report has not been served. However, a letter has been produced which was authored by him dated June 17, 2025. In that letter he makes reference to the benefits of vocational assessment by an expert. He indicates: However, when it comes to identifying specific occupations that might align with a patient's medical limitations, transferable skills, or wage replacement goals I typically defer to vocational counsellors or specialists in occupational rehabilitation. These professionals are better equipped to perform labour market research, identify suitable job matches, and provide targeted vocational retraining plans that consider socioeconomic factors beyond the scope of my medical expertise. And he continues: My role, therefore, is to define the medical boundaries within which such vocational planning can occur, not to determine which specific jobs will meet wage thresholds or long-term career outcomes.
- [8] The plaintiff objects to a vocational assessment, in part because the plaintiff submits that Dr. O'Connor does, in fact, provide vocational opinions. There is reference to *Parhar v. Dawe*, 2014 BCSC 580, at paras. 51 and 53; *Torrance v. Davies*, 2022 BCSC 1630, at para. 53; *Barre v. Dupasquier*, 2020 BCSC 524, at para. 52; *Giczi v. Kandola*, 2014 BCSC 508, at para. 65; and *Hoy v. Williams*, 2014 BCSC 234, at para. 68.
- [9] What distinguishes those cases from the case at bar is that in *Parhar*, *Torrance*, *Barre*, and *Hoy*, Dr. O'Connor's opinion was essentially that the plaintiff could continue in their current occupation either with limitations or with difficulties. The exception is *Giczi*, where he indicated the plaintiff was completely incapacitated and unable to perform any occupation.
- [10] Therefore, those cases refer to situations where Dr. O'Connor was of the opinion that the patient could work, but not in his former employment. In each of those cases, it was Dr. O'Connor's view that, in fact, the patient could return to their former employment, or could not return to any form of employment whatsoever.
- [11] In my view, that is a different shade on what we have here where the plaintiff submits that while the plaintiff is currently working full time, he has limitations and a loss of capacity, but that does not equate with no ability to earn into the future. Indeed, he is doing precisely that at present, just not in his preferred form of employment.
- [12] The seminal case on ordering further expert examinations for the purpose of a report pursuant to Supreme Court Civil Rule 7-6(2) is the *Tran v. Abbott*, 2018 BCCA 365. In that case, the Court of Appeal indicates first at para. 27 that: there is nothing in the language of the Supreme Court Civil Rules, or in logic or reason, that would mandate exceptional circumstances as a requirement for a second IME. And they quote Blok J. in *Kenny*, where Justice Blok states, a plaintiff displaying multifactorial injuries may appropriately be required to attend IMEs by a number of specialists (at para. 62). There is nothing exceptional in that.

- [13] Then, at para. 30, the BC Court of Appeal notes that: "[t]he rules are designed to secure a just determination of every proceeding on the merits and to encourage full disclosure
- [14] Then, at para. 32 they state: In my view, it is well-established that the purpose of an IME is to put the parties on an equal footing with respect to the medical evidence, and Rule 7-6 specifically contemplates more than one IME: *Wright v. Sun Life Assurance Company of Canada*, 2014 BCCA 309 at para. 31.
- [15] And then at para. 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.
- [16] And then at para. 40 the court states: The primary purpose of Rule 7-6 is to put the parties on an equal footing with respect to medical evidence
- [17] The evidence before me includes the letter of Dr. O'Connor, which I already referred to, that recommends a vocational assessment. Dr. Chawla in his report dated May 25, 2022 states at p. 14 of 16 at para. 585, under "Recommendations": My recommendation for Mr. Lee would be to undergo an occupational therapy and functional capacity evaluation and vocational assessment for better understanding of his career options going forward as pertains to his limitations.
- [18] I cannot say that in the case before me there is an absence of evidence of the need for a vocational assessment. Indeed, both psychiatrists recommend a vocational assessment. Further, we have a plaintiff who pursued an academic program and has been unable to engage in that vocational field of his choice. In my view, the occupational options that may be available to the plaintiff, and what, if any, those options may have in store for him in terms of an impact on his potential earnings, is relevant and would be of assistance to the court.
- [19] And in that regard, I note the decision of Master Cameron (as he then was) in *Evangelista v. Chohan*, 2021 BCSC 476, where he ordered an IME with a vocational specialist to put the parties on an equal footing to prepare for trial. I note Master Cameron's reference to *Henderson v. Fisher*, 2020 BCSC 981, at paras. 12 and 15. Where he quotes Justice Weatherill at para. 12: It is apparent that a significant issue at trial will be whether the plaintiff suffered a loss of function and earning capacity as a result of the Accident and, if so, to what extent. That issue necessarily raises the extent to which the plaintiff is both emotionally and physically capable of working and in what capacity or vocation(s).

- [20] And then at para. 15: In my view, the defendant is entitled to conduct an independent assessment of the plaintiff's vocational capacity even though she did not seek an order prior to the first trial date. The assessment will assist the court in identifying the employment options for which the plaintiff is suited And then he goes on and states: The assessment will even the playing field and will provide the trial judge with a more complete evidentiary foundation for the determination he or she will be asked to make.
- [21] In my view, that approach is warranted here. I am going to make the order that the plaintiff attend the vocational assessment.
- [22] And the typical order is the defendant would be entitled to their costs in the cause. Have you admitted liability?
- [23] CNSL P. WINGENBACH: Your Honour, liability is admitted.
- [24] THE COURT: All right.
- [25] CNSL. P. WINGENBACH: And in the order that was sought that counsel prepared she was looking for an award for costs in any event of the cause.
- [26] CNSL E. ORR-EWING: I would see no reason to depart from the general rules of the costs following the cause, Your Honour. So, it should be costs in the cause.
- [27] THE COURT: The defendant will have their costs in the cause.
- [28] CNSL P. WINGENBACH: Your Honour, I do have a vetted order.
- [29] [DISCUSSION RE CHANGES TO VETTED ORDER]
- [30] THE COURT: So, everyone has looked at that and you are satisfied with it?
- [31] CNSL P. WINGENBACH: Yes, Your Honour.
- [32] THE COURT: I will sign the order. "Nielsen A.J."

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