

## **ACTION RECOMMENDED**

CBABC recommends that the *Evidence Act* regulations regarding vehicle injury cases be further amended to give the court or tribunal the discretion to decide:

- The reasonable amount of recoverable disbursements based on the individual case, and
- The reasonable amount of recoverable experts' fees based on the individual case, or alternatively, establish a mandatory tariff of experts' fees based on consultation with the professional associations representing experts in vehicle injury cases.

## **ISSUE**

In July 2020, the BC Government passed Bill 9, *Evidence Amendment Act, 2020*, which seeks to limit the amount of money a successful party may recover for expert fees and overall expenses to prove their case in a vehicle injury proceeding. Future regulations will specify the precise limitations.

Experts are people who provide their professional opinion to the court about technical, specialized facts and likely outcomes. They include doctors, specialist doctors, vocational rehabilitation specialists, economists, and engineers. The person injured in a vehicle injury case and the insurer defending that case use the expert's evidence to prove to the court what happened and what compensation is fair for the person injured.

The experts charge for their service to provide a written report, and if required to give evidence in court, they charge for their time reserved to testify in court. The cost can be anywhere from \$3,000 - \$10,000, and in complicated cases, can exceed \$10,000. There is no limit on what fees an expert can charge for a report. The private market for expert reports is subject to the law of supply and demand and is outside the control of the person injured, the insurance company, and their lawyers.

In addition to expert fees, the person injured and the insurance company defending will have expenses for the litigation. These expenses include

- a) fees paid to the government for starting and defending a claim, making a court application, and having a trial;
- b) fees paid to private court reporters who record and issue transcripts of evidence-gathering before the trial;
- c) fees paid to mediators who attempt to help the parties resolve the dispute before a trial; and
- d) reimbursement to the party's lawyer to travel between communities to attend court.

The successful party in a dispute will need to be reimbursed these reasonable expenses, which were necessary to prove their case in court.

Currently, if the parties to the dispute cannot agree on the amount paid, the dispute is resolved by a judicial court official who has developed knowledge of the reasonableness of the fees and expenses and



can best assess what should be recoverable by the successful party. This is a fair and reasonable method for determining the costs. The new limitations recently proposed by the BC Government are generally arbitrary and will negatively impact those vehicle accident victims who have complex medical injuries or must prove they are not liable for the accident.

## WHY IT MATTERS

Setting arbitrary limits on the recovery of reasonable expert fees and expenses is unfair, particularly to the injured person who is trying to receive money to help them deal with the effects of their injury on their quality of life and economic earning power.

If only a portion of the fees and expenses is recoverable, the injured person is forced to use their compensation to cover the rest of their fees and expenses. This will mean they will have less money to improve their quality of life, pay for their recovery, or replace their income loss.

This result is not fair.

## REFERENCE MATERIALS

[Letter to Ministry of Attorney General re: Limits on Expert Reports and Disbursements in Motor Vehicle Personal Injury Litigation](#), CBABC Submission (Aug 2020)

[Submission to Ministry of Attorney General re: Attorney General Statutes \(Vehicle Insurance\) Amendment Act, 2020 and Evidence Amendment Act, 2020](#), CBABC Submission (May 2020)

Bill 9 – 2020: [Evidence Amendment Act, 2020](#) (leg.bc.ca)

Links to all *Agenda for Justice 2021* reference materials are available at [cbabc.org/A4Jbackground](http://cbabc.org/A4Jbackground).