

ICBC Claims And Formal Admissions

ICBC personal injury claims lawyers know all too well that the true issues in an ICBC injury claim are not always narrowed down at the beginning of a claim.

Typically, after a Writ of Summons and Statement of Claim are filed, rather boiler-plate Statements of Defence are filed. Oftentimes not only is the issue of fault not admitted but allegations are made that the Plaintiff was not injured, if injured the Plaintiff is at fault for such injuries, if injured the injuries are not connected to the trauma and on and on. Such defences can significantly broaden the scope of a lawsuit. As the lawsuit progresses the true focus of the claim often times becomes narrower.

One of the tools in a litigants arsenal in the BC Supreme Court to help narrow the focus of a lawsuit is the Notice to Admit. Rule 31 permits either side in a BC Supreme Court lawsuit to ask the other side to make formal admissions. This tool can be effective in helping narrow the scope of an ICBC injury claim. If a side fails to make reasonable admissions in a BC lawsuit the court can penalize that party with a costs order pursuant to Rule 31(4).

Rule 31 reads as follows:

Rule 31 — Admissions

Notice to admit

(1) In a proceeding in which a statement of defence, answer or answer and counter petition has been filed, a party may, by delivery of a notice to admit in Form 23, request any party of record to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document specified in the notice.

[en. B.C. Reg. 143/94, s. 6.]

Effect of notice to admit

(2) Unless the court otherwise orders, the truth of a fact or the authenticity of a document specified in the notice to admit shall be deemed to be admitted, for the purposes of the proceeding only, unless, within 14 days, the party receiving the notice delivers to the party giving the notice a written statement that

(a) specifically denies the truth of that fact or the authenticity of that document,

(b) sets forth in detail the reasons why the party cannot make the admission, or

(c) states that the refusal to admit the truth of that fact or the authenticity of that document is made on the grounds of privilege or irrelevancy or that the request is otherwise improper, and sets forth in detail the reasons for the refusal.

Copy of document to be attached

(3) Unless the court otherwise orders, a copy of a document specified in a notice to admit shall be attached to the notice when it is delivered.

Unreasonable refusal to admit

(4) Where a party unreasonably denies or refuses to admit the truth of a fact or the authenticity of a document, the court may order the party to pay the costs of proving the truth of the fact or the authenticity of the document and may award as a penalty additional costs, or deprive a party of costs, as the court thinks just.

Withdrawal of admission

(5) *A party is not entitled to withdraw*

(a) *an admission made in response to a notice to admit,*

(b) *a deemed admission under subrule (2), or*

(c) *an admission made in a pleading*

except by consent or with leave of the court.

Application for order on admissions

(6) *An application for judgment or any other application may be made to the court using as evidence*

(a) *admissions of the truth of a fact or the authenticity of a document made*

(i) *in an affidavit or pleading filed by a party,*

(ii) *in an examination for discovery of a party or a person examined for discovery on behalf of a party, or*

(iii) *in response to a notice to admit, or*

(b) *admissions of the truth of a fact or the authenticity of a document deemed to be made under subrule (2)*

and the court may, without waiting for the determination of any other question between the parties, make any order it thinks just.

Repealed

(7) to (9) *Repealed. [B.C. Reg. 95/96, s. 14.]*

The reason why I author this blog post is because [interesting reasons for judgement were released today](#) dealing with the issue of when 'deemed' admissions can be set aside.

In this case the Plaintiff delivered a Notice to Admit. The Defendant failed to deliver a response as required by Rule 31 thus deeming that the facts noted in the Notice to Admit being admitted by the Defendant.

The Defendant brought a motion asking that the deemed admissions be set aside. The court granted the motion noting that *'the interests of justice require that the Defendants be at liberty to withdraw (their admissions)'*

In doing so the court summarized the following factors which can be considered when considering whether deemed admissions should be judicially set aside:

1) *That the test is whether there is a triable issue which, in the interests of justice, should be determined on the merits and not disposed of by an admission of fact.*

2) *That in applying that test, all the circumstances should be taken into account including the following:*

- 3) *That the admission has been made inadvertently, hastily, or without knowledge of the facts.*
- 4) *That the fact admitted was not within the knowledge of the party making the admission.*
- 5) *That the fact admitted is not true.*
- 6) *That the fact admitted is one of mixed fact and law.*
- 7) *That the withdrawal of the admission would not prejudice a party.*
- 8) *That there has been no delay in applying to withdraw the admission.*

If you are involved in an ICBC injury claim in the BC Supreme Court and believe the focus of your lawsuit can be narrowed you may wish to consider delivering a Notice to Admit under Rule 31.