

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ranseth v. Kirby Insurance Agencies Ltd.*,
2026 BCSC 832

Date: 20260421
Docket: S251242
Registry: Vancouver

Between:

Jeremy Ranseth

Plaintiff

And

Kirby Insurance Agencies Ltd. and John Doe and/or Jane Doe

Defendants

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

J.M. Green

Counsel for the Defendant
Kirby Insurance Agencies Ltd.:

E. Lundberg

Place and Date of Trial/Hearing:

Vancouver, B.C.
April 14, 2026

Place and Date of Judgment:

Vancouver, B.C.
April 21, 2026

[1] **THE COURT:** Since issuing these oral reasons for judgment I have made edits to assist with readability, including by inserting full citations, such edits not affecting the substance or final disposition.

[2] The defendant, Kirby Insurance Agencies Ltd. (the “Defendant”) brings two applications today, one for production of documents pursuant to R. 7-1(11), those documents being ones originally requested on record at an examination for discovery of the plaintiff, and the second being for the plaintiff to provide further and better answers to questions from his examination for discovery held on February 4, 2026, with attendance at a further examination for discovery in that regard.

Background

[3] The plaintiff commenced this action against the insurance brokerage agency from whom he obtained his vehicle insurance with ICBC. His claim is that the broker failed to comply with their duties and/or was negligent in not providing him with adequate information as to his excess underinsured motorist protection (“UMP”) coverage.

[4] On December 11, 2018, shortly after obtaining the renewal of his ICBC policy with only the required minimal coverage, he was involved in a hit-and-run motor vehicle accident in which he suffered significant damages and injuries. He advanced a personal injury claim which went to trial (the “MVA Trial”).

[5] As indicated in the MVA Trial reasons rendered on December 16, 2024, *Ranseth v. Doe*, 2024 BCSC 2281 (the “Trial Reasons”), the plaintiff was awarded damages of approximately \$2.4 million, which far exceeded the limits in place with respect to his UMP coverage, that being a \$1 million limit.

[6] The plaintiff argues that had he been properly advised as to excess UMP coverage, he would have in fact purchased sufficient excess UMP to address what he calculates is an approximate \$1.7 million shortfall between the judgment amount as granted in his favour and the amount payable by ICBC under the policy limits in

place, after all deductions are taken into account. That is the basis for the claim in this action.

[7] The Defendant denies all liability, and specifically that the individual broker failed to canvass excess UMP when she met with the plaintiff as well as pleading a limitation defence at para. 7 of its response to civil claim as follows:

The Plaintiff's claim is barred by the affliction of time, and Kirby pleads and relies on the *Limitation Act*, SBC 2012, c. 13, and amendments thereto.

[8] The Defendant conducted its examination for discovery of the plaintiff on February 4, 2026. Counsel canvassed, among other things, the plaintiff's pre-accident medical condition given a workplace injury that occurred in 2016 (the "WPI") in which the plaintiff suffered a mild traumatic brain injury ("MTBI").

[9] In particular, the Defendant sought information regarding the plaintiff's cognition as affected by his MTBI that could have, the Defendant argues, affected the reliability of his evidence as to his later meetings with the broker, as well as the overall medical history including that which went into the damages claim the plaintiff advanced at the MVA Trial, specifically as to when the medical evidence may have shown that there was a limits issue, which goes to when the claim was discovered for the purpose of the limitation defence.

[10] The plaintiff objected to those questions or any document demands relating to them.

Legal Framework for Discovery

[11] There is no dispute that the obligation to disclose documents includes documents that could assist in proving or disproving a material fact, as noted in *Biehl v. Strang*, 2010 BCSC 1391 ("*Biehl*"), that being what is often referred to as the former *Peruvian Guano* test, and is now enshrined in R. 7-1(1).

[12] Pursuant to R. 7-2(16), a person being examined must produce for inspection on his examination all documents in that person's possession or control relating to the matters in question with the scope of those questions being set out in R. 7-2(18),

namely, any question within the party's knowledge or means of knowledge relating to a matter in question and not otherwise privileged.

[13] There is a broad scope of permitted discovery, as defined by the pleadings: See *Kendall v. Sun Life Assurance Company of Canada*, 2010 BCSC 1556 at para 8.

[14] The scope is, in fact, broader than trial, in that objections to relevance and admissibility which would be sustained by a trial judge, are not often maintainable at discovery: See *British Columbia Hydro and Power Authority v. Cominco Ltd.*, [1985] B.C.J. No. 1484, at para 6.

[15] Unless it is very clear that the answers will not be relevant the better course is to allow the questions, given that it is not a concession that the evidence will ultimately be admissible at trial: See *Kendall*, at para 8 to 10, where the court concluded as follows:

[18] A largely “hands off” approach to examinations for discovery, except in the clearest of circumstances, is in accord with the object of the *Rules of Court*, particularly the newly stated object of proportionality, effective July 1, 2010. Allowing wide-ranging cross-examination on examination for discovery is far more cost-effective than a practice that encourages objections, which will undoubtedly result in subsequent chambers applications to require judges or masters to rule on the objections. It is far more efficient for counsel for the examinee to raise objections to the admissibility of evidence at trial, rather than on examination for discovery.

[16] The Defendant argues that the questions posed which were objected to, or the line of inquiry he was pursuing, go to the following issues in dispute:

- a) what occurred and what was discussed during the meeting between the plaintiff and the broker when the insurance was placed, specifically what was said about excess UMP coverage;
- b) when the claim was discovered for the purpose of the limitation defence; and
- c) what damages, if any, have been suffered by the plaintiff.

[17] The plaintiff argues that the medical evidence as to the plaintiff's cognitive functioning is not subject to disclosure on the basis that it goes to credibility, relying on decisions such as *Shickele v. Rousseau*, 1965 CanLII 742, and *Derue Investments Ltd. v. Wallace*, 1995 CanLII 724, at para. 13, where the court confirmed that "testing credibility alone is not a proper basis for ordering further discovery".

[18] As to discoverability of this claim, the plaintiff argues discoverability could not have occurred until the Trial Reasons were issued, at which point the damages were crystalized in an amount higher than the policy limits, that being on December 16, 2024. The plaintiff specifically points to the fact that liability for the accident was in dispute, as was causation for the injuries suffered given the WPI, meaning that there was a possibility that no damages would be found to be owing at all.

[19] Further, the plaintiff takes the position that the findings of the court as set out in the Trial Reasons are more than sufficient for the court to address, and determine, any of these issues as raised. In essence, the plaintiff says given the Trial Reasons will be before the court, no further disclosure is warranted or necessary.

[20] In reply to that latter position, the Defendant argues that they ought not be held to the plaintiff's theory as to how they may wish to prove their case. The Defendant submits that the fact that a trial judge, at a trial in which the Defendant did not participate, made findings does not necessarily mean that every finding is binding upon the trier of fact in all respects of this case, particularly ancillary facts which may be more in the nature of *obiter*, or that other documentation which may add to clarify or refute those facts in the specific context of this case are not relevant.

[21] In short, the Defendant's argument is that it is contrary to the interests of justice to allow one party to force the other to a theory of the case that they cannot refute due to a lack of disclosure, particularly at the discovery phase.

[22] The Defendant also argues that the full medical evidence may go to the issue of damages with the parties disputing whether the damages in this case will be

entirely based on the quantum of the judgment awarded at the MVA Trial. For the purpose of these Reasons, I need not go into that basis of relevance, namely what findings of the presider at the MVA Trial will and will not be binding on this presider.

[23] The first two questions at issue, namely what was said and not said at the meeting with the broker, and what facts may be relevant to issue as to when the claim was discovered, are sufficiently dispositive of this application.

[24] The plaintiff also argues that the demands for discovery themselves are improper. Specifically, that plaintiff argues that any demand for documents must be properly made. Requests that are overly broad and lack specificity are likely to be considered fishing expeditions with numerous decisions being rendered since *Lit v. Hare*, 2012 BCSC 1918:

[68] In my view, the applications are premature and framed in overly broad and vague terms. The lack of specificity which characterizes this application is fatal to its success. In addition to the challenges faced by the respondents as a consequence of the manner in which the applications have been framed, it is difficult for the court to adjudicate on a document production application where what is sought are “all documents not yet produced” in broadly defined categories. That the application lacks sufficient particularity is very likely a function of the failure to observe the procedure contemplated by the *Rules*. That failure cannot, in this case, be attributed to mere oversight. Had the written demand process mandated by the *Rules* been followed, I think it reasonable to suppose that many of the difficulties associated with this application would not have arisen. Moreover, had the procedure mandated by the *Rules* been observed, I think it is unlikely that it would have been necessary to file the volume of material that accompanied these applications.

[25] The plaintiff argues that these applications fall into this category.

Analysis

Reliability of the Plaintiff's Evidence

[26] I will first address the relevance of the reliability of the plaintiff's evidence as to the meeting with the broker, and what was said and not said during that meeting. Based on the Trial Reasons the plaintiff did suffer a mild traumatic brain injury from the WPI, describing the WPI as follows:

[10] The WPI was a serious accident. On November 16, 2016, Mr. Ranseth was working under a car as a mechanic. The jack shifted, and the frame of

the car fell on him, causing injuries to his head. He was taken to hospital where a CT scan of his head was taken. He was admitted to hospital overnight, released the next day. A week later, he attended for further assessment, and surgery was recommended to repair his facial injuries. He underwent that surgery November 24, 2016. For a period afterward, his jaw was wired shut.

[27] Further, the injuries suffered including those from the WPI were later summarized, albeit for the purpose of considering the plaintiff's pre-existing injuries and causation as to his ongoing symptoms, as follows:

[151] Dr. Ganesan, the only psychiatric expert who testified at trial, assessed Mr. Ranseth prior to his report of November 27, 2023. He diagnosed Mr. Ranseth with:

- a) somatic symptom disorder;
- b) post-traumatic stress disorder ("PTSD") (mild);
- c) generalized anxiety disorder (mild to moderate); and
- d) difficulties with cognitive function, particularly memory.

[152] Dr. Ganesan, who was called to testify by the plaintiff, said these were all aggravations by the MVA of conditions Mr. Ranseth suffered before the MVA. There is no dispute between the parties that both the WPI and MVA were causal contributors to these diagnoses.

[28] Given these injuries, at his examination for discovery in this action, the Defendant sought to question the plaintiff on his memory issues:

Q. 266: Do you believe, Mr. Ranseth, that your ability to recall what happened in that August 21, 2018, meeting was affected by the injury you suffered in the workplace incident?

[29] That question was objected to.

Q. 267 Is your ability to recall what happened in that August 21, 2018, meeting impacted by the workplace injury that you suffered?

[30] That question was objected to.

Q. 290: Are you aware of any holes in that memory or things that you cannot recall from that time?

[31] That question was objected to.

[32] In *Biehl*, the plaintiff's memory of events was a central issue. The defendant in *Biehl* sought production of documents regarding use of drugs that would cause unreliable memory. The court distinguished credibility and reliability, noting that while credibility is a collateral issue and one that is not subject to discovery, reliability is a separate and distinct issue, stating as follows:

[27] In my view, the error in the plaintiff's position is conflating reliability and credibility when the former is but part of the latter. The ability of the plaintiff to remember is, in my opinion, relevant to proof of a material fact, namely the existence of a contract based on oral terms.

[28] Frequently courts take into account factual considerations, such as the ability of a witness to see or hear what occurred, in determining whether evidence is reliable and should be accepted. Surely, if an individual has suffered damage to his cognitive or memory functions, that is equally a relevant fact.

[29] I am satisfied that, if otherwise admissible, the requested production is relevant and could prove or disprove a material fact. Rule 7-1 does not restrict production to documents that in themselves prove a material fact. It includes evidence that can assist in proving or disproving a material fact.

[33] The Defendant argues that the plaintiff's evidence as to the discussions he had with the broker will have to be tested at trial and the importance of what was and was not said may ultimately be determinative of liability in this case. Thus, the reliability of that evidence will feature prominently at trial. The Defendant points to evidence given by the plaintiff at his discovery which they will argue shows inconsistencies, perhaps suspiciously so, as to his recollection in some respects being clear, but very vague in others, for example, the plaintiff remembering clearly that advised the agent that he wanted "full coverage" but not remembering the details such discussing the time period covered by the policy itself.

[34] The meeting at which the policy was purchased took place approximately eight years ago. And while there are some broker's notes in evidence which will surely be tendered at trial, oral testimony from the parties themselves as to the meeting will likely be central to the presider's analysis and findings on liability. Reliability of the witnesses testimony is likely to be an important consideration.

[35] I agree that on the face of the pleadings and issues in dispute, questions and documents that go to the reliability of the plaintiff's evidence are therefore relevant.

[36] That may not, however, end the analysis.

[37] The plaintiff makes a secondary argument that the court must also consider the probative value of any such evidence in determining its production today. On that basis, the plaintiff argues that medical records that go to the plaintiff's cognitive status are not probative to the issue of reliability absent an expert opinion that he is, in fact, an unreliable witness. The plaintiff referenced *Henbury v. Egilson*, 2019 BCSC 215 as authority for the need for neuropsychological opinion evidence as to cognitive deficits. However, the referenced para. 113 did not say specifically that opinion evidence would be needed in the context of determining the reliability of a witness:

[113] Simply put, the plaintiff has not proven that he sustained a brain injury. I base this finding in large part on the fact that there was no neuropsychological testing conducted to determine what, if any, cognitive deficits he has and whether they are organically or psychologically based.

[38] Ultimately, the issue as to reliability of a witness is determined by the trier of fact at trial. I cannot find for the purpose of today's application that there is no relevance or probative value to documentary evidence such as medical reports or discovery evidence that goes to the plaintiff's cognitive abilities or deficits when he met with the brokers in 2018, i.e., the ongoing effects of the medical condition arising from the WPI.

[39] It may be that the court cannot find the necessary elements without an expert opinion as to the reliability of the plaintiff's evidence. However, at this application and at this stage, it is not for me to foreclose discovery of documents or lines of inquiry that *may* assist in proving or disproving a material fact. Whether they do, and whether they are admissible, is for the trier of fact to decide.

Discoverability for Limitation Act Purposes

[40] Turning, then, to the second question regarding when the claim was discovered for the purposes of the limitation defence, as noted, there is a live dispute as to when the claim was, in fact, discovered or discoverable.

[41] The leading case on discoverability in a tort context is *Grant Thornton LLP v. New Brunswick*, [2021] 2 SCR 704, where the court set out the proper approach for analysis of discoverability:

[42] ... a claim is discovered when a plaintiff has knowledge, actual or constructive, of the material facts upon which a plausible inference of liability on the defendant's part can be drawn. This approach, in my view, remains faithful to the common law rule of discoverability set out in *Rafuse* and accords with s. 5 of the LAA.

[43] By way of explanation, the material facts that must be actually or constructively known are generally set out in the limitation statute. Here, they are listed in s. 5(2)(a) to (c). Pursuant to s. 5(2), a claim is discovered when the plaintiff has actual or constructive knowledge that: (a) the injury, loss or damage occurred; (b) the injury loss or damage was caused by or contributed to by an act or omission; and (c) the act or omission was that of the defendant. This list is cumulative, not disjunctive. For instance, knowledge of a loss, without more, is insufficient to trigger the limitation period.

[44] In assessing the plaintiff's state of knowledge, both direct and circumstantial evidence can be used. Moreover, a plaintiff will have constructive knowledge when the evidence shows that the plaintiff ought to have discovered the material facts by exercising reasonable diligence. Suspicion may trigger that exercise (*Crombie Property Holdings Ltd. v. McColl-Frontenac Inc.*, 2017 ONCA 16, 406 D.L.R. (4th) 252, at para. 42).

[45] Finally, the governing standard requires the plaintiff to be able to draw a plausible inference of liability on the part of the defendant from the material facts that are actually or constructively known. In this particular context, determining whether a plausible inference of liability can be drawn from the material facts that are known is the same assessment as determining whether a plaintiff "had all of the material facts necessary to determine that [it] had *prima facie* grounds for inferring [liability on the part of the defendant]" (*Brown v. Wahl*, 2015 ONCA 778, 128 O.R. (3d) 583, at para. 7; see also para. 8, quoting *Lawless v. Anderson*, 2011 ONCA 102, 276 O.A.C. 75, at para. 30). Although the question in both circumstances is whether the plaintiff's knowledge of the material facts gives rise to an inference that the defendant is liable, I prefer to use the term plausible inference because in civil litigation, there does not appear to be a universal definition of what qualifies as *prima facie* grounds. As the British Columbia Court of Appeal observed in *Insurance Corporation of British Columbia v. Mehat*, 2018 BCCA 242, 11 B.C.L.R. (6th) 217, at para. 77:

As noted in *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, some cases equate *prima facie* proof to a situation where the evidence gives rise to a permissible fact inference; others equate *prima facie* proof to a case where the evidence gives rise to a compelled fact determination, absent evidence to the contrary. [Citation omitted.]

Since the term *prima facie* can carry different meanings, using plausible inference in the present context ensures consistency. A plausible inference is one which gives rise to a “permissible fact inference”.

[42] In response, the plaintiff raises the preliminary issue as to whether a limitation defence has, in fact, been sufficiently particularized in this case. As noted, the notice of civil claim pleads and relies on the *Limitation Act*, S.B.C. 2012, c. 13 in what could be best described as a pro forma manner.

[43] Notably, the plaintiff sought particulars of that pleading, and in response, the defendant advised in writing that it was not subject to such particulars as “the lapse of the applicable limitation period is a legal issue.” No further inquiries were made. No application was made by the plaintiff to compel such further particulars in that respect.

[44] At the examination for discovery inquiries were made, and a discussion took place on record between counsel, as to some of the factors that may go to discoverability, including when the plaintiff realized he would not be able to return to work, questions as to how the claim was being quantified, for example, in mediation with a request for the mediation brief being made, all of which were objected to. The only answers that were not objected to were those relating to the specific findings set out in the Trial Reasons.

[45] This was consistent with the plaintiff’s position that the claim was only discoverable when the Trial Reasons were released and the claim quantified at an amount higher than the policy limits, relying on *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, at para. 96:

96. The limitation period for negligent investigation begins to run when the cause of action is complete. This requires proof of a duty of care, breach of the standard of care, compensable damage, and causation. A cause of action in negligence arises not when the negligent act is committed, but rather when

the harmful consequences of the negligence result. (See G. Mew, *The Law of Limitations* (2nd ed. 2004), at p. 148, citing L. N. Klar et al., *Remedies in Tort* (loose-leaf), ed. by L. D. Rainaldi, vol. 4 (release 5), c. 27, at para. 217, n. 23.) The plaintiff sought to distinguish *Grant Thornton, supra*, or limit its application in this case, relying on a decision such as *Everding v. Skrijel*, 2010 ONCA 437, at para. 11, and *407 ETR Concession Company Limited v. Day*, 2016 ONCA 709, at para. 48, in support of its argument that not all elements of the claim were known until the trial judgment itself was rendered. The plaintiff specifically noted this court's comments in *Wawanesa Mutual Insurance Company v. Insurance Corporation of British Columbia*, 2021 BCSC 595, that "barring an unequivocal denial of coverage, the cause of action would not arise until judgment had been rendered or a settlement reached," essentially saying that the same can be said here: "Barring an unequivocal determination of quantum over the limits, the cause of action could not arise until judgment had been rendered."

[46] The Defendant took the court to a recent decision, *Lau v. Insurance Corporation of British Columbia*, 2026 BCSC 574, where the court considered the issue of a limitation defence in a similar factual circumstance, namely, a solicitor's negligence case regarding ICBC limits in a motor vehicle claim given the alleged failure of defence counsel to accept a settlement prior to trial to the defendant's prejudice given an eventual outcome above his policy limits, the defendant then being the plaintiff in the negligence action.

[47] In considering the limitation defence, the court looked at the timing of the tactical decisions being made by the original defence counsel and found the claim to be barred with respect to some of the claims under the *Limitation Act*, noting:

[200] However, Lau's argument on limitation requires, in order to make his discoverability date plausible, an acceptance that, in August of 2017, and in possession of vastly more information regarding Cole's injuries, his prognosis, costs of care and the issues of liability and contributory negligence, it was reasonable for him to think that there was a possibility that damages awarded at trial may come below policy limits. This possibility was so unlikely that I find that Lau's damages in his cause of action against Wright and ICBC, although not the exact quantum of them, were apparent to Lau by, at the latest, August 31, 2017.

[48] The court found that although the exact quantum of the claim was not known until the trial judgment, the likelihood of the limits being exceeded, which although gave rise to different issues in *Lau* than this one, was well known in advance of that date and triggered the discoverability.

[49] I agree with the Defendant that the plaintiff's objections to the line of inquiry that was made at the examination for discovery have the effect of limiting the Defendant's discovery to the plaintiff's own theory of the limitation defence, namely, that it was only discoverable once the Trial Reasons released and judgment rendered.

[50] The plaintiff argued during his submissions that in order to determine the relevance of that line of questioning, I should make a finding that there is no merit to the *Limitation Act* defence, and that the Defendant's argument is bound to fail. I cannot find on this application that the Defendant's theory of the limitation defence, or discoverability, is without any merit, and bound to fail.

[51] There is a live question in issue in this action as to when the plaintiff reasonably expected, or ought to have reasonably expected, that his claim was above his policy limits, such that there was a plausible inference of liability on the part of the Defendant.

[52] Further, while it is the pleadings that define the issue, I do not agree that the *pro forma* nature of the pleading or the refusal to provide particulars limits that issue, as also suggested by the plaintiff. When the claim was discovered is a primary determining factor of a limitation defence, and as such, even with the *pro forma* nature of the pleading, the issue as to discoverability is before the court. Questions that go to the discoverability of the potential claim are, therefore, relevant. Again, the trial court may agree with the plaintiff that internal assessments of quantum were not sufficient to give rise to discoverability given the issues as to liability and causation. However, it is not for this court at this application to predetermine that issue prior to trial and limit the Defendant's discovery.

Have the demands been properly made

[53] The court recently considered the types of flaws that can arise in document demand cases in *Montaigne Group Ltd. v. St. Alcuin College for the Liberal Arts Society*, 2026 BCSC 588, and specifically the caution that has been given in various decisions against the court redrafting a document production order that is overly

broad to cure shortcomings in this respect. As such, it is important to look and turn to the specific requests for documents in this application.

[54] As to the application for document discovery, the documents being sought are:

- a) clinical records and chart notes relating to the plaintiff's traumatic brain injury, concussion, or cognitive impairment arising from the workplace injury preceding the 2018 insurance transaction;
- b) all medical-legal reports, expert reports, neuropsychological reports, or functional capacity reports relating to that injury;
- c) all expert reports relied upon by the plaintiff in the MVA Trial and litigation that address cognitive functioning, memory impairment, neuropsychological functioning, and any economist reports; and
- d) all clinical records and chart notes from physician or specialist who treated the Plaintiff for concussion, traumatic brain injury, or memory impairment between 2016 and the present.

[55] The broadness of these document demands is, to some degree, a result of the plaintiff's refusal to answer any questions on discovery that would have enabled the defendant to narrow the focus. During submissions with counsel I canvassed whether, given the broadness of some of these requests, it may be appropriate to allow the examination for discovery to proceed as contemplated in the first notice of application and adjourn the application for production of documents until they could be narrowed on a further discovery with these questions being answered.

[56] However, in the circumstances, the requests as framed are sufficiently particularized given the specific limitations that the Defendant has as a result of the limited information provided to date. They are not so broad as to constitute an impermissible fishing expedition as they are specific to the issues and particulars known regarding the underlying basis on which relevance can be assessed.

[57] As to the examination for discovery questions, the application seeks that the plaintiff attend a further examination for discovery to answer the questions set out in Schedule A. The questions are sufficiently worded to understand the question and to answer accordingly, and appropriate in scope having regard to the largely “hands off” approach to be encouraged except in the clearest of circumstances.

Conclusion and Orders Made

[58] As to the document demand applications, I make the orders as sought in para. 1. Turning then to the examination for discovery, I make the order as sought in the notice of application, specifically I made the orders sought in paras. 1 and 2.

[59] I am not sure about the timing, and I will hear counsel on whether we can tighten up the timing for that. The relief being sought in para. 3 of that application was that the answers be provided within 14 days and a discovery within 30 days thereafter. I know we have time constraints with the trial coming up. Is there a date we can agree on or should it just be as sought in para. 3? And I can add "or as the parties otherwise agree" to give you a little bit more wiggle room to accommodate schedules.

[DISCUSSIONS AS TO TIMING]

[60] THE COURT: Thank you, I will make the order as sought in para. 3 of the examination for discovery notice of application as well. So that leaves to costs. Submissions on costs?

[SUBMISSIONS ON COSTS]

[61] THE COURT: I agree with the plaintiff that there are some unique features to this. It was not as straightforward as the defendant suggests. It is an appropriate matter that costs for both applications be in the cause.

“Associate Judge Robertson”

SCHEDULE “A”

REFUSED QUESTIONS & TOPICS

A. Workplace Incident/ Pre-Accident Condition Question 49

Q49: Can you give me a short description of what happened in that workplace incident?

Objection: Relevance-No pleading connection to workplace accident

B. Mild Traumatic Brain Injury / Memory (Workplace Injury)

Question 52

Q52: How long following the November 2016 accident did the injuries you sustained affect your short-term memory?

Instruction not to answer: Vague / insufficient specificity

C. Memory and Ability to Recall 2018 Meeting Question 266

Q266: Do you believe your ability to recall the August 21, 2018 meeting was affected by the workplace injury?

Instruction not to answer: Belief not relevant

Question 267

Q267: Is your ability to recall that meeting impacted by the workplace injury?

Instruction not to answer: Requires expert evidence

Question 268

Q268: Did you suffer an injury to your memory in the 2016 workplace injury?

Instruction not to answer: Expert evidence required

Question 269

Q269: Did you express to anyone shortcomings in your memory related to the workplace incident (2016-2018)?

Instruction not to answer: Relevance limited to August 2018 only

Question 270 (Partially resisted)

Q270: What injury did you suffer to your short-term memory? Objection: Relevance depends on time period (2016 vs 2018)

D. Additional Brain Injury/ Memory (Post-Accident)

Question 344

Q344: Since the December 2018 accident, have you suffered any other head injury, concussion, or brain injury?

Instruction not to answer: Relevance denied

E. General Theme Objection

Counsel's repeated position:

- Only **August 2018 meeting** is relevant
- Pre- and post-cognitive condition is irrelevant
- Memory impairment is "expert issue only"

LIST OF REFUSED QUESTIONS

Core Refusals

Q49 - Workplace incident description

Q52 - Duration of short-term memory impairment Q266 - Belief re memory impact on recall

Q267 - Whether recall was impacted Q268 - Existence of memory injury

Q269 -Reporting memory issues to others Q344 - Subsequent brain injuries

Partial / Contested Line

Q270 - Nature of memory impairment (limited objection)