

2005 BCSC 249  
British Columbia Supreme Court

**Mann v. Pavkovic**

2005 CarswellBC 414, 2005 BCSC 249, [2005] B.C.W.L.D. 1971,  
[2005] B.C.W.L.D. 2014, [2005] B.C.J. No. 371, 137 A.C.W.S. (3d) 1110

**Tejinderpal (Paul) Mann (Plaintiff) and Bojan Pavkovic (Defendant)**

Crawford J.

Heard:

Judgment: February 24, 2005  
Docket: New Westminster S71756

Counsel: P. Snelling for Plaintiff  
M.V.C. Virgin, J.M. Young for Defendant

**Related Abridgment Classifications**

Civil practice and procedure

XXIV Costs

XXIV.4 Offers to settle or payment into court

XXIV.4.a Offers to settle

XXIV.4.a.ii Discretion of court

Remedies

I Damages

I.15 Practice and procedure

I.15.i Miscellaneous

**Headnote**

Civil practice and procedure --- Costs — Offers to settle or payment into court — Offers to settle — Discretion of court

Damages --- Practice — General

**Table of Authorities**

**Cases considered by Crawford J.:**

*B. (R.A.R.) v. British Columbia* (2001), 2001 BCSC 917, 2001 CarswellBC 1781, 14 C.P.C. (5th) 357 (B.C. S.C.) — considered

*Griffith v. Gilchrist* (June 25, 1987), Trainor J. (B.C. S.C.) — considered

*Rorison v. Hutt* (2003), 2003 BCCA 10, 2003 CarswellBC 24, 10 B.C.L.R. (4th) 8, 33 M.V.R. (4th) 194, 180 B.C.A.C. 14, 297 W.A.C. 14 (B.C. C.A.) — referred to

*Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201, [1995] 4 W.W.R. 524, 27 C.R.R. (2d) 77, 55 B.C.A.C. 191, 90 W.A.C. 191, 35 C.P.C. (3d) 28, 122 D.L.R. (4th) 330, 1995 CarswellBC 23 (B.C. C.A.) — considered

**Rules considered:**

*Rules of Court, 1990*, B.C. Reg. 221/90

R. 37(6) — referred to

R. 37(7) — referred to

R. 37(8) — referred to

R. 37(9) — referred to

R. 37(13) — referred to

**Crawford J.:**

**Reasons re Costs**

1 On 25 January 2005, a New Westminster jury returned the following answers regarding Mr. Mann's claims for damages arising from a motor vehicle accident that occurred on 15 October 2000, namely:

Non-pecuniary Damages	\$ 122,151
Special Damages	\$ 1,500
Past Wage Loss	\$ 0
Future Lost Earning Capacity	\$ 30,425
Future Care Costs	\$ 37,186
	\$ 191,262

2 Counsel advised they could settle the tax effect on the future care award.

3 Counsel for the defendant then advised he wished to speak to costs, as an offer to settle had been made mid-week before trial for \$375,000. Given the late hour, I asked counsel to provide brief written submissions, which they have now supplied.

4 Given the offer to settle was made less than seven days before trial, the court may exercise its discretion as to costs, taking into consideration the offer and the date it was delivered; Rule 37(7). Trainor J. in *Griffith v. Gilchrist*, [1987] B.C.J. No. 1398 (B.C. S.C.), noted a litigant should have a reasonable time to take the advice of counsel and decide whether or not to accept. Reasonableness may depend on the circumstances. He also considered the course of the litigation, the complexity of it, and the number of issues requiring resolution. In not dissimilar circumstances, Trainor J. allowed the plaintiffs their costs.

5 In *B. (R.A.R.) v. British Columbia*, 2001 BCSC 917 (B.C. S.C.), the plaintiff made an offer six weeks before trial, which was lengthy (four weeks) and complex, involving an allegation of institutional assault. The Crown made its offer on the Friday before trial. After the four week trial, the court awarded damages of \$25,000. Factors there included late disclosure of documents in the month before trial and ongoing examinations going to the Friday before trial. The court allowed the plaintiff his costs.

6 Counsel for Mr. Pavkovic submitted in this case on the basis of Rule 37(7) and (9), the defendant was entitled to costs from the date the offer was delivered. The defendant also sought the costs of the motion heard on the morning of trial where the plaintiff sought to question the jury for cause, i.e., to make a challenge for cause, which motion I refused, but reserved on costs. As to that, on further consideration, the defendant is entitled to its costs for preparation and the hearing of the application for one-half day.

7 It appears Mr. Mann's counsel made an offer of settlement for \$1 million on the 20 December 2004. The defendant made its offer, after 4 p.m. on 5 January 2005. The plaintiff noted in the week before trial the defendant provided an addendum medical report; the same doctor was deposed as he was not available for trial; the defendant advised they would be calling an economist and a witness regarding loss of future caring capacity; the economist's report was delivered 7 January 2005; there was ongoing discussions of evidential issues including an objection to admissibility of one of the plaintiff's experts; and there was some discussion of possible further offers.

8 The offer may be made at any time before trial: Rule 37(6); and it may be withdrawn: Rule 37(8). Ordinarily, the offer to settle expires at commencement of trial: Rule 37(13).

9 In this case, the defendant extended the offer on January 8 to 10:00 a.m. on Wednesday, 12 January and then further extended the offer on 11 January to 10:00 a.m. on 13 January 2005, the morning of the fourth day of trial.

10 The trial ran for 10 days. The plaintiff called four doctors and the defendant called four doctors. The issues for the jury included the nature and extent of the plaintiff's alleged knee injury, namely, damage to the posterior cruciate ligament, and alleged shoulder and arm injury, including diagnosis of thoracic outlet syndrome. None of the medical opinions called for surgery. The jury had to find the nature and extent of the injuries and what then would be appropriate compensation for the plaintiff in terms of non-pecuniary and pecuniary loss.

11 The defendant points to the additional time the plaintiff was provided to consider responding to the defendant's offer. He had by Thursday, 13 January, given his own evidence and heard his family doctor give his evidence. As well, the defendant relies on the Court of Appeal's decision in *Rorison v. Hutt*, 2003 BCCA 10 (B.C. C.A.), where the court found the defendant entitled to its cost of trial where the offer had been made six days before trial and in the context of several offers between the parties, the court found the plaintiff was unlikely to give serious consideration to the defendant's offer.

12 As the Court of Appeal noted in *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 (B.C. C.A.), costs serve many functions including indemnity of successful litigants, deterrence of frivolous proceedings and defences, encouraging parties to deliver reasonable offers to settle, and to discourage improper or unnecessary steps in the litigation. In this case, the diversity of medical opinion was considerable and it is evident that both sides were still accumulating evidence and witnesses to the date of trial. While the jury award was significant, it was also significantly less than the offer.

13 The defendant kept its offer "on the table" until 10:00 a.m. 13 January. After consideration of all the factors, I find the plaintiff entitled to his costs to the end of the fifth day of trial, and the defendant entitled to his costs of trial thereafter.