

Entitlement of Plaintiff to Reasonable and Proper Costs

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Under Rule 10.31 of the Alberta Rules of Court, a Plaintiff is entitled to the “reasonable and proper costs” that are incurred in filing an application, taking proceedings, or carrying on an action. The question of what constitutes “reasonable and proper costs” in the context of charges for expert medical reports was addressed in the recent decision of *Lee v. Lepage* [2010] A.J. No. 765, involving a Plaintiff who was injured in a motor vehicle accident. The Plaintiff obtained six expert opinions from medical professionals over the course of the lawsuit and sought reimbursement for the cost of the reports from the Defendant. Four of the reports, totalling \$12,899.00, were disputed by the Defendant as unreasonable.

In reaching her decision on reimbursement, Master J.B. Hanebury noted that the law on Rule 600 (the equivalent of Rule 10.31 under the old Rules of Court) is well settled, and that reasonableness is determined according to the state of knowledge then existing and not whether a cost is reasonable in hindsight. Factors in assessing reimbursement include complexity, degree of contest as to evidentiary matters and credibility of witnesses, nature and number of defences, requirement for and use of experts, nature and amount of damages, and overlap between subject matter of opinions. Hanebury recognized that through litigation fatigue, plaintiffs may settle for less than their actual damages, and that a more important consideration than settlement amounts may be the nature of the claim at the time the reports are sought. She also recognized that seeking expert opinions while settlement offers are pending is not fatal to a costs claim, as the reasonableness of an offer may be difficult to assess otherwise. Hanebury allowed a reduction in the cost of three reports, noting that reports had not been shared between experts and that the result was significant overlap in subject matter.

Though the reasonableness of an expert report will turn on the individual facts of each case, *Lee v. Lepage* stands for the proposition that maximum recovery for costs of medical reports is best achieved if repetitiveness is reduced through adequate disclosure to all professionals consulted.