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“ORDINARILY RESIDENT”

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David Hay

We recently appeared at a Summary Trial whose sole issue was whether or not our client, a cyclist injured at the hands of an unidentified driver, was at the time of the accident, “ordinarily resident” within BC. Defence Counsel suggested she was not because of her ties to the United States, including Alaska and Pennsylvania, which they characterized as stronger than her ties to British Columbia.

The determination of the issue was critical to our client’s ability to recover under the *Insurance (Vehicle) Act*. Claimants who ordinarily reside outside British Columbia are limited in their recovery. They can recover no more than a British Columbian resident could for a hit and run claim brought in the claimant’s home jurisdiction. Limits on recovery are often less in other North American Jurisdictions. Some, like Alaska, offer no remedy at all. Therefore, it was critical that we establish that our client was ordinarily resident in British Columbia.

We put before the Supreme Court various indicia of ordinary residence, including the fact that our client was a student here pursuing a Masters Thesis, that she was a member of several clubs and organizations in BC, had a BC physician, MSP coverage, filed Canadian tax returns for income earned while here, and was involved in the community in several other ways.

At the time of our request for a determination our client was working in Alaska on a one year contract as a geologist.

After a full review of the law, including that which concerns the difference between what has become known as the “real home” test and the “settled purpose” test, the Court accepted our submissions that based on the latter test, our client was ordinarily resident within BC and was entitled to recovery pursuant to BC law. The residing Judge emphasised the importance of not equating ordinary residence with a domicile of choice, based on the subjective considerations of the individual at issue. Rather, the test involves objective criteria as to the settled routine of the individual’s life.

The Judge was careful to point out that the test of ordinary residence is different than citizenship, indicating



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that clearly residency means a class of people which includes non-citizens. It was sufficient in our case that the Plaintiff maintained continuous residence in BC for a settled purpose, that is, to pursue her education. Based on the law as it has stood for sometime, the Judge had no difficulty concluding that our client was ordinarily resident at the time of the accident.

The Judge also accepted our submission that an award of costs ought to guide counsel in the strategic choices they make. In the result, the Judge ordered the Defendant to pay costs of the Summary Trial regardless of the ultimate outcome of the action.

David Hay is a litigation lawyer and partner at Richards Buell Sutton, LLP. He has a special interest in bike injury and can be contacted directly at 604.661.9250 or by email.



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