

**HARPER GREY LLP**

3200 – 650 West Georgia Street  
Vancouver, British Columbia, V6B  
4P7  
Canada

Tel: 604 687 0411  
Fax: 604 669 9385

## **CASE SUMMARY: THE TORT OF INTRUSION UPON SECLUSION IS NOT ACCIDENTAL**

Liability insurer did not have a duty to defend a nurse alleged to have committed the tort of intrusion upon seclusion, as the alleged injuries were intentional and not caused by an occurrence.

**Insurance law – Liability insurance – Occurrence – Derivative claims – Interpretation of policy – Exclusions – Duty to defend – Intentional torts – Practice – Summary judgments**

*Demme v. Healthcare Insurance Reciprocal of Canada*, [2021] O.J. No. 1413, 2021 ONSC 2095, Ontario Superior Court of Justice, March 10, 2021, W.S. Chalmers J.

The insured was a former registered nurse who was sued by a group of plaintiffs. The claims alleged that she accessed patient records without authorization so she could misuse her hospital employer's automatic dispensing unit ("ADU") to obtain Percocet tablets. The insurer denied coverage and the insured applied for a declaration that the duty to defend was triggered by the claim.

The court found that the true nature of the claims against the insured was the allegation that the plaintiffs sustained injury as a result of the insured's intrusion upon seclusion. The negligence allegations against the insured were found to be entirely derivative in nature, because if the plaintiffs did not succeed in proving the tort of intrusion upon seclusion, their negligence actions would have no chance of success.

The policy was an occurrence-based policy. Occurrence was defined as "an accident...which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured." One of the elements of the tort of intrusion upon seclusion is intentionality. The claim can arise only for deliberate invasions of personal privacy. Chalmers J. held that the claims of intrusion upon seclusion did not result in injuries that could be said to have been unexpected or unintended on the part of the insured. Therefore, the alleged injuries were not caused by an "occurrence", the claims did not fall within the insuring agreement and there was no duty by the insurer to defend the insured. In the alternative, had the duty to defend been triggered, the court found that the policy's intentional act and the criminal exclusion would have excluded the claims from coverage.

This case was digested by [Kora V. Paciorek](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Kora V. Paciorek at [kpaciorek@harpergrey.com](mailto:kpaciorek@harpergrey.com).