

RETAIL CASE UPDATE



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What Constitutes an Unreasonable Amount of Surveillance?

In the recent case *Williams v. Sekhon*, 2019 BCSC 1511, the court considered the issue of whether the defendant's efforts to complete surveillance of the plaintiff were unreasonable.

In this case, the plaintiff sustained disabling injuries as a result of a motor vehicle accident that occurred in 2013. This case is a little unusual in that in addition to damages for various physical and psychological injuries, the plaintiff sought special costs on account of the nature and extent of the various investigative and surveillance activities undertaken by the defendant, the Insurance Corporation of British Columbia ("ICBC"). ICBC retained four investigation firms between 2015 to 2019 with 17 total investigators who performed surveillance on the plaintiff. Ultimately, ICBC produced nearly 200 pages of surveillance records and reports throughout the course of the litigation.

The plaintiff argued that ICBC's extensive use of surveillance "grossly exceeded" the legitimate interests of an insured defendant to investigate the validity of a personal injury claim.

Further, the plaintiff argued the multitude of investigations increased his depression, anxiety, feelings of shame, and embarrassment.

While the court did not go so far as to award special costs, Mr. Justice Voith devoted a large portion of his decision to his critique of the surveillance used and some guidance to litigants moving forward. The court held surveillance is useful as investigators are often called as witnesses at trial. These witnesses can add content and texture to the plaintiff's claim and provide the court with insight into the plaintiff's daily life, both before and after their accident.

It was held that ICBC was well within their right to investigate the activities of a plaintiff that are relevant to the claim being advanced; however, a balance must be struck such that the following limitations must be kept in mind: (i) the object or purpose of an investigation, (ii) the degree of investigation that is appropriate, and (iii) the manner in which that investigation is conducted. To the extent it had that effect, that consequence was inadvertent.

While this case involves a motor vehicle accident, there are important take aways for retailers who are using surveillance in the course of defending personal injury actions. Retailers should keep in mind that investigations should be proportionate to the magnitude and nature of the claim being advanced.

We hope you found this update useful.

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