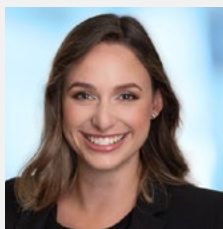


## RETAIL CASE UPDATE



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#### How far is too far when conducting witness interviews?

In the recent case *Williams v. Sekhon*, 2019 BCSC 1511, the plaintiff sustained injuries as a result of a motor vehicle accident that occurred in 2013. In addition to seeking 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").

In his reasons, Mr. Justice Voith provided guidance regarding what is a proper and what constitutes an unreasonable and intrusive level of investigation when conducting witness interviews. The take-aways from this decision are as follows:

- It is not appropriate to repeatedly speak to an employer or to an unreasonable number of a plaintiff's co-workers, family members, friends, or even acquaintances. This can be seen as intimidation. This could also cast the plaintiff in a poor light with others, as someone who is not honest or who is malingering.

- It is appropriate for there to be investigation through witness interviews. This is the form of investigation the "most fraught with risk." The plaintiff will likely learn that friends and colleagues are being contacted about them. Such interviews can affect a third-party's perception of a plaintiff. A plaintiff's awareness that they are being investigated, particularly where that plaintiff is emotionally fragile or anxious or depressed can be particularly distressing.

- A witness should be free to decline to speak to the investigator and not be harassed in any way.

- If information between two to three witnesses is generally consistent, it is probably unnecessary to contact further witnesses on that issue.

- Attending unannounced at a witness' home is more intrusive and more invasive than an attempt to reach them first by phone.

While this case involves a motor vehicle accident, these are important take-aways for retailers who are using investigators to speak with witnesses in the course of defending personal injury actions. Conducting witness interviews can be a very helpful step in terms of investigating the plaintiff's claim and can provide an opportunity to test the evidence of witnesses that the plaintiff may call at trial. However, there are of course limits to this with respect to the object or purpose of an investigation, the degree of investigation that is appropriate, and the manner in which that investigation is conducted. Witness interviews should be done in the least obtrusive way possible, and discretion and judgement should always be used during the process.

We hope you found this update useful.

If you would like more details about the issues covered, to provide general comments, or to suggest topics or cases of interest please email the author(s).

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