Facebook Photos Used To Contradict Plaintiff In Injury Lawsuit

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Last week I posted on a recent BC case which ordered that a computer hard-drive be produced to permit a Defendant to examine the amount of time an allegedly brain injured Plaintiff spent on Facebook.

As evidenced in reasons for judgment released today by the BC Supreme Court Facebook's role in the realm of BC personal injury litigation is becoming more prevalent.

In today's case (Bagasbas v. Atwal) the Plaintiff was injured in a 2006 car crash in Surrey, BC. From the submissions of the defence lawyer it seems that this case was defended on the basis of ICBC's LVI program. The Plaintiff sued for damages claiming $40,000 for her pain and suffering due to a whiplash injury and other soft tissue injuries.

In the course of the trial she testified that as a result of her injuries "*she could no longer kayak, hike or bicycle*". The defence lawyer contradicted this by producing to the Plaintiff "*photographs posted on her Facebook page that showed her doing these activities*".

In assessing the Plaintiff's pain and suffering at $3,500 Madam Justice Satanove made the following comments:

*[7] The medical evidence before me was rather vague. Combining this evidence with the plaintiff's subjective evidence of her complaints, I find that on a balance of probabilities the plaintiff suffered a mild whiplash to her right neck, shoulder and upper back in the accident of June 1, 2006. I further find that the whiplash had probably substantially resolved itself within three months. Any further complaint of pain in the fall of 2006 is not supported by the objective evidence of the plaintiff's rather strenuous activities. The photographs of the plaintiff dancing illustrate arm, neck and back movements, executed in approximately two inch heels, that contradict any claims of restricted range of motion or significant pain in these areas. It has been said many times in many cases that the court must be careful in awarding compensation where there is little or no objective evidence of continuing injuries, or in the absence of convincing evidence that is consistent with the surrounding circumstances (**Butler v. Blaylock**, [1981] B.C.J. No. 31 (S.C.); **Price v. Kostryba** (1982), 70 B.C.L.R. 397 (S.C.)).*

[8] Unfortunately, because of the inflated view the plaintiff took of her injuries, none of the cases cited by her counsel were of assistance in fixing non-pecuniary damages. Similarly, because the defendant refused to recognize any damages, his counsel provided no case law on an appropriate range of compensation.

*[9] On my own research, this case is in line with the damage awards made in **Bonneville v. Mawhood**, 2005 BCPC 422; **Siddoo v. Michael**, 2006 BCPC 12; and particularly, **Saluja v. Wise**, 2007 BCSC 706, which are in the range of $1,500 to $6,500. Taking the whole of the evidence into account, which reflected some injury and pain, but not much loss of enjoyment of life, I award the plaintiff $3,500 for non-pecuniary compensation.*

This case along with last week's decision show that the use of information contained on social media sites such as Twitter and Facebook is alive and well in BC Injury Litigation. Lawyers and clients alike need to be aware of the potential uses such information can be put to in their claims.