

A Tip About Surveillance: Mary Car Accident Lawsuits Come Down to the Plaintiff's Credibility

The Issue

Unhelpful surveillance of the plaintiff, hurt in a 2007 car accident, resulted in a lower damage award at her Trial.

The plaintiff claimed the car accident left her unable, due to chronic pain, to perform “normal” tasks like grocery shopping, cleaning her house and dealing with other household tasks.

Mr. Justice Hackland found in [Dahrouj v. Aduvala, 2012 ONSC 4090 \(CanLII\)](#) that the plaintiff did not meet the threshold for pain and suffering damages, partially based on the surveillance:

[12] The plaintiff's credibility was a key issue at trial. For the most part the belief of some doctors and therapists that she continues to suffer from on-going disabling pain symptoms was based on the plaintiff's self reporting of these limitations. The defendant arranged for surveillance of the plaintiff which, in my view, was particularly devastating to her credibility and showed her to be capable of vigorous and sustained activity, including stretching and lifting – the very activities which allegedly restricted her functioning as a homemaker. The surveillance films documented the plaintiff chopping ice and snow off her car the morning after an ice storm, pumping gas, reaching for

groceries on the upper shelf of a food store and carrying plates of juice containers and bags of groceries up her steps into her home, unassisted.

Why This Matters

Many people hurt in car accidents struggle afterwards. They return to work, either part-time or full-time, but they do so with difficulty.

These people often wish to bring a lawsuit for their pain and suffering damages, while also claiming some future economic loss and also anticipated future expenses for help that they will require, such as future medical treatment (i.e. physiotherapy) and housekeeping assistance to maintain their home.

As a result, many people face a stiff challenge, from the insurance company defending against their lawsuit, as to whether their injuries meet the “threshold” – in this case called the Bill 198 threshold – for pain and suffering damages. Essentially, the insurance company argues that these people, despite their injury, do not qualify for any pain and suffering damages, as a result of Ontario’s legislation governing qualification for those damages at Trial.

The Take Away

- always be aware of potential surveillance when you start a personal injury lawsuit – i.e. car accident, slip and fall, etc.

- in your personal injury lawsuit, your lawyer will build your case on a number of issues, including:
 - your past income loss;
 - your anticipated future income loss;
 - your future medical care needs – i.e. physiotherapy, massage therapy, etc
 - your pain and suffering damages;
 - your future needs around the home – housekeeping, home maintenance (indoor and outdoor); and
 - your out of pocket expenses incurred to date.

- always give your lawyer full disclosure about your past medical history and activities, as well as your current status, so that your lawyer can anticipate and protect you against attacks by insurance companies

- challenges by insurance companies on the threshold for pain and suffering damages can be tricky, but your lawyer should anticipated those problems in advance. A history of our prior blogs on the issue includes:
 - [Bill 198 Threshold Case > Housekeeping Not Subject to Threshold](#)
 - [Lawsuit Damages for Pain and Suffering Injuries from Car Accidents – Bill 198 Threshold](#)
 - [First Case to deal with Bill 198 Threshold](#)

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