

ICBC Claims And Recording 'Independent' Medical Exams

Reasons for judgement were released today dealing with several motions before the BC Supreme Court in a motor vehicle accident claim.

The Plaintiff was self represented in this Supreme Court action. (This case is worth reviewing on this point alone as the judgment illustrates some of the challenges courts sometimes face when dealing with unrepresented parties in Supreme Court actions).

One of the motions before the court was to compel the Plaintiff to attend an independent medical examination with a doctor of ICBC's choosing. While the Plaintiff did not object to being examined, she wished for several conditions to be set including the right to record the examination.

In not granting this condition Master Young reviewed several authorities dealing with the issue of recording independent medical exams. Master Young concluded that in this case there were no cogent reasons to permit audio recording. She referred to the leading BC Court of Appeal case on this topic of *Wong v. Wong*, 2006 BCCA 540 which discussed the factors BC Courts should consider when hearing such applications, namely:

- (a) *the absence of evidence that an audio tape recording would inhibit or impair the examination;*
- (b) *evidence that the plaintiff had a poor memory or was forgetful;*
- (c) *the absence of evidence that the examining doctor objected to the use of a tape recorder;*
- (d) *evidence that the plaintiff had difficulty communicating and understanding, perhaps related to lack of fluency in English or the language of the examining doctor;*
- (e) *the likelihood that a tape recording might lead to settlement short of trial; and*
- (f) *the likelihood that an audio tape recording would contribute to the fairness of the trial.*

In the same case the Court of Appeal noted the following about recording independent medical exams:

While I am of the view that a master or judge has a discretion under Rule 30 to permit the use by a plaintiff of an audio tape recorder on an independent medical examination, it is in my opinion a discretion that should be exercised rarely and with restraint, and only in circumstances where there is cogent evidence that the use of an audio tape recording will advance the interests of justice.