

YOU AND THE LAW

VIDEO SURVEILLANCE MAY IMPACT YOUR INJURY CLAIM

Did you know that if you're hurt in a car crash, the defence (i.e., ICBC) may use secret video surveillance of your activities after the accident to try and discredit you or reduce your claim?

Car crashes often lead to whiplash and other types of soft tissue injuries to the neck and back. These types of injuries and the pain they cause are very real and sometimes persist for years. Unfortunately, they're notoriously hard to pin down objectively by medical tests. Courts must therefore rely on your own evidence, clinical records of your complaints to your doctor or therapists, and expert opinions.

To counter this evidence, ICBC may secretly videotape some of your day-to-day activities in the months and years after the accident. The defence may then show this footage in court to try and prove that you aren't a reliable and credible witness and that your claims of ongoing pain or limitation of movement or function are exaggerated.

A recent 2011 case in our Supreme Court offers an illustration. The plaintiff's car was hit by another vehicle going through the intersection against a red stop light. At trial, four years later, a key issue was how much the plaintiff's ongoing back problems (caused by the accident) still hurt her and limited her functioning.

The court was shown footage of surveillance videotape surreptitiously filmed on several different dates over the years. Some of these tapes, particularly the 2009 and 2010 ones, showed the plaintiff walking stiffly but normally (rather than with the limp or waddle she said she had developed) and loading and unloading a cart full of groceries, loading a three or four foot house plant into her car, and squatting, getting up and moving around a garden centre, all without apparent difficulty or limitation.

"The impression left by the videotape evidence is of an

individual less limited than [the plaintiff's evidence] would lead one to conclude," said the court (which noted that other evidence also supported this conclusion).

Still, while less than the \$75,000 claimed for pain and suffering, the BC Supreme Court awarded the plaintiff \$40,000 in damages for her pain and suffering (in addition to other damages).

In another 2010 case, the plaintiff injured his shoulder in a rear-end collision. The court was shown videotape surveillance evidence showing him grocery shopping and unloading objects into his car. In this case, however, the BC Supreme Court decided the video footage didn't contradict or cast serious doubt on the plaintiff's credibility. The plaintiff had been told by his doctors to continue to use his left arm and shoulder; the footage simply confirmed that when lifting heavy objects, he was "careful to use both arms" and often used his body to support the object. His main complaint was that he had pain when using his left arm and shoulder, and "a videotape cannot capture all pain," said the court. He received \$45,000 for his pain and suffering (and more than \$86,000 in total damages).

If you have a personal injury claim, you should be mindful that you may be the subject of video surveillance after the car accident - perhaps even years later, when the accident has faded from memory and you are going about your daily activities. And if hurt in an accident of any type, you should consult a lawyer who can advise you, protect your legal rights and help you recover fair compensation.

This column has been written with the assistance of Stephen W. Turner. The column provides information only and must not be relied on for legal advice. Please call (250) 868-8801 for your free, no obligation, initial consultation.

Lawyer Janice Mucalov, author of this column, has written several popular books and writes about legal affairs for a variety of publications. "You and the Law" is a registered trademark. © Janice Mucalov.



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