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Credibility Important in Injury Cases

If you've been hurt in a car crash, your credibility is extremely important in proving your claim for damages – especially if your injury is a “whiplash” or soft tissue injury. With a whiplash, there may be no objective evidence. Your subjective reports of pain and limited movement may be the only “proof” of your injury. It's essential that you are honest and don't exaggerate or inflate the effects of the accident.

The defence (i.e., ICBC) may challenge your credibility. Darryl D. faced such a challenge in a recent court case.

He provided lawn maintenance services. As a result of a motor vehicle accident, he suffered soft tissue injuries to his neck, right shoulder and back, which affected his ability to work and his enjoyment of life.

He called four witnesses – himself, his wife and two men who had worked for him. He also relied on the written reports of a family doctor who saw him at a walk-in clinic, a specialist in physical medicine and rehabilitation, and an occupational therapist. The defence relied mainly on 10 hours' of surveillance videotapes of Darryl, arguing that his injuries were less severe than he reported, based on what the videotapes showed.

The court cited an earlier case as a reminder of how to assess injuries that depend on subjective reports of pain. The judge in that case said: “The assessment of damages in a moderate or moderately severe whiplash injury is always difficult because plaintiffs, as in this case, are usually genuine, decent people who honestly try to be as objective and as factual as they can.” But, added the judge, courts “should be exceedingly careful when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery.”

In Darryl's case, the court said that his testimony and evidence was “generally reliable.” Even though he often overstated the facts, this was due to a tendency to speak in extreme statements, not because he was trying to mislead the court.

For his pain and suffering, Darryl received \$55,000 (the defence argued he should only get between \$10,000 to \$20,000). For his past loss of income, he received \$30,000 (the defence position was that this amount should be between \$5,000 to \$10,000). He also received \$60,000 for future lost income (the defence claimed he wasn't entitled to anything for this).

However, in another recent case, a young woman's credibility was tripped up by her own Facebook pictures. She claimed \$40,000 in pain and suffering for a whiplash injury, testifying at trial that she could no longer kayak, hike or bicycle. The defence contradicted this by producing photos posted on her Facebook page showing her doing these exact activities. The court assessed her damages at \$3,500.

Consult a lawyer if you've been injured in an accident. He or she may recommend that you keep a diary of your pain and how the injury affects your daily life, as a daily record can be helpful in supporting your claim. Be truthful throughout the legal proceedings, and it's likely you'll be viewed as a credible witness who should be believed. This will help significantly in advancing your claim.

This article was written by Janice Mucalov, LL.B. with contribution by Lawrence Coulter of MILNE SELKIRK. A version of this was previously published in the Langley Times. Copyright by Janice Mucalov. "You and the Law" is a registered trade-mark. Please call Lawrence Coulter (604-882-5015) if you have any questions or for legal advice.