



## MILLER THOMSON LEGAL NOTES

### FACEBOOK: A Defence Lawyer's Perspective

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The uncovering of fraudulent claimants by exposure through Facebook and other online social networking sites has become a key ingredient in a defence lawyer's arsenal. The outpouring of highly personal information on such sites, freely volunteered, is unprecedented in the course of history. Never before have people revealed incredibly intimate details about themselves to perfect strangers. When properly used, information gathered from such sites can go a long way towards identifying and defeating fraudulent claims.

The Insurance Bureau of Canada reports a study of insurance fraud which involved an investigation of 4,000 files. The study concluded that just over a quarter of all files involved some degree of fraud. Ontario had the highest rate. Some of the fraud involved bogus claims, but most of it involved some degree of exaggeration. A claimant alleging to have been injured as a result of an accident is the most common way for this exaggeration to occur.

Social networking sites can offer a glimpse of the true state of a claimant's recovery from an injury. This is based on the theory that a claimant may have posted video clips, pictures or texts which truthfully reveal the claimant's life. Such information may present a very different picture than the evidence obtained in medical reports or through the formal discovery processes.

I recently had a file where the injured claimant complained of disabling neck and back problems. He alleged that he could not work and was required to take a grocery list of medications to treat his ongoing problems. He complained that he was not getting any better and that his sitting, standing and walking tolerances were minimal. The claimant was a young fellow, alleging that he was unable to return to any of his pre-accident recreational activities. These included biking, playing hockey, working out and dancing. Surveillance of the claimant proved to be unsuccessful. He lived in a rural setting and the investigator had a hard time tracking the claimant.

I arranged for a search to be done of various social networking sites. We began with Facebook. Luckily, the claimant had a public site. During the course of our Facebook search, we came across a photograph of the claimant sitting on a large All-Terrain-Vehicle with the following caption above his picture "My New Toy". We

also found photographs of the claimant on some of his listed Friends' sites showing the claimant sitting on and driving "His New Toy" along bumpy dirt roads. These photographs were dated between 3 to 6 months after the accident, being the period of time he was allegedly completely disabled. We printed off these pictures and sent them to the claimant's lawyer. The claim was quickly dismissed.

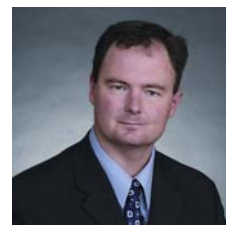
Examples of success stories like the above are not likely to last much longer. Many plaintiff lawyers are already coaching their clients to take down their Facebook pages. It is also conceivable that some claimant's will begin to create Facebook pages solely for litigation purposes. Inaccurate information may start to get posted that would coincide with the self serving evidence some claimant's give during the discovery process.

Some tricks of the trade we have uncovered in utilizing this defence strategy include looking for dates on photographs, following through with links, and looking for Friends with public sites. Often times, you can learn a lot more about a claimant by going onto to one of their listed Friends' websites or profiles. You may even get lucky enough that the friend's website contains pictures or video clips of the claimant.

A few words of caution: one should never attempt to obtain access to a claimant's Facebook profile by contacting the claimant directly. Applying to be a claimant's new Friend so as to be able to access a private site is unethical and inappropriate.

For the immediate future, exploring social networking sites will remain a key defence tactic. How long this will continue to be a useful defence tactic remains to be seen.

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