

Insurance & Reinsurance - Canada

The risk of having too many 'friends' - social media and the collection of evidence

Contributed by **McMillan LLP**

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With the rise in the use of social media, people are often advised to be careful about what they post online - and for good reason. A recent case in British Columbia demonstrated to an insured the potential perils of being careless about what was posted about her online. This car accident victim could have lost her claim because of what others posted online.

On September 20 2006 college student and a part-time cashier Mirae Mayenburg was in a car that was struck from behind. Over the next year she had trouble attending class and holding down a job due to severe back pain. When she was in one position for an extended period of time (eg, while sitting in class or standing as a cashier), she became sore and stiff. She also experienced severe back pain after taking part in physical activities that she enjoyed, such as hiking, biking, running and dancing.

The driver of the car that struck Mayenburg admitted liability, but there was a dispute about the extent of her injuries. As part of the driver's evidence casting doubt on Mayenburg's injuries, various photographs from the social networking site Facebook were presented in court.

Nearly 70 photographs showed Mayenburg doing things that allegedly caused her pain, such as hiking, dancing or bending. These photographs were all obtained from the Facebook 'walls' of Mayenburg's friends. These friends took or acquired the pictures themselves, then posted them on Facebook for all to see, occasionally identifying Mayenburg in the photographs.

The court found that the Facebook photographs were essentially irrelevant. Mayenburg did not claim that she could not partake in activities such as hiking, dancing or bending, but rather that she felt pain after taking part in these activities. Had she claimed an inability to do any of these things, the Facebook photographs would have been very damaging - perhaps fatal - to her case.

This case makes it clear that publicly available information is often fair for use as evidence, particularly in the insurance context.

Insureds are advised to:

- review their online presence to consider whether they are comfortable with the information and photographs that are available; and
- consider the access that they want online 'friends' to have to their profile, including the ability to 'tag' them in photographs.

Insurers are advised to:

- consider all options when faced with a claim by another party, noting that publicly available information that does not breach privacy laws is generally permitted;
- ensure that the evidence that they are using addresses the claim made by the opposing party; and
- consult with legal counsel if in doubt about any of the above or about their rights in general.

For further information on this topic please contact [Hartley Lefton](#) at McMillan LLP by telephone (+1 416 865 7000), fax (+1 416 865 7048) or email (hartley.lefton@mcmillan.ca).

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