Memo To: Doble & Doble LLP, Daniel Diamond
File: TEST
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Jurisdiction: British Columbia, Canada
Date: November 5, 2020
Regarding: B.C. - Production of Social Media Photos

Issue

How have B.C. courts treated the issue of relevance on a Defendant's motion for production of a Plaintiff's social media photographs, and specifically of a request to produce all of the Plaintiff's photographs from Instagram?

Facts

Defence Counsel is bringing a motion for production of Plaintiff's social media photographs, claiming relevance.

Conclusion

The *Supreme Court Civil Rules*, BC Reg 168/2009 governs the production of documents in the trial courts of British Columbia. While the old Rules, (which were repealed in 2010,) required the court to consider whether the documents were relevant, the test now set out in the *Supreme Court Civil Rules* 7-1(1)(a)(i) is whether or not the documents can prove or disprove a material fact. (*Dosanjh v. Leblanc and St. Paul's Hospital*; *Mackinnon v. Rabeco Holdings)*

When physical impairment is alleged, photographs showing the plaintiff engaged in activities that require some physical effort are likely to be producible. However, when the request for disclosure is overly broad, the request will be denied or modified. (*Fric v. Gershman*; *Wilder v.*

Munro; Dosanjh v. Leblanc and St. Paul's Hospital).

Proportionality should be taken into consideration when assessing a request for production of documents. When the requesting party already has similar documents, the number of documents that will be included in a production order may be limited. (*Cui v. Metcalfe*)

Law

The *Supreme Court Civil Rules* (the "*Rules*"), BC Reg 168/2009 governs the production of documents in the trial courts of British Columbia. Part 7 of the *Rules* states that the production of documents is limited to documents that could be used to prove or disprove a material fact:

> List of documents
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> (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
>
> (a)prepare a list of documents in Form 22 that lists
>
> (i)all documents that are or have been in the party's possession or control and that could, if available, be used by any party of record at trial to prove or disprove a material fact, and
> (ii)all other documents to which the party intends to refer at trial, and
>
> (b)serve the list on all parties of record.
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> [...]
>
> Party may demand additional documents
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> (11) If a party who has received a list of documents believes that the list should include documents or classes of documents that
>
> (a)are within the listing party's possession, power or control,

(b)relate to any or all matters in question in the action, and

(c)are additional to the documents or classes of documents required under subrule (1) (a) or (9), the party, by written demand that identifies the additional documents or classes of documents with reasonable specificity and that indicates the reason why such additional documents or classes of documents should be disclosed, may require the listing party to

(d)amend the list of documents,

(e)serve on the demanding party the amended list of documents, and

(f)make the originals of the newly listed documents available for inspection and copying in accordance with subrules (15) and (16).

[...]

Inspection of documents

(15) A party who has served a list of documents on any other party must allow the other party to inspect and copy, during normal business hours and at the location specified in the list of documents, the listed documents except those documents that the listing party objects to producing.

Copies of documents

(16) If a party is entitled to inspect listed documents under subrule (15), the listing party must, on the request of the party entitled to inspection and on receiving payment in advance of the cost of reproduction and service, serve on the requesting party copies of the documents, if reproducible, for which a request has been made.

As noted in *Dosanjh v. Leblanc and St. Paul's Hospital*, 2011 BCSC 1660 (CanLII), under the new *Rules,* relevance is no longer the primary factor in determining whether documents should be produced:

> [21] It is evident from the reasons in *Crowe* that Master Bouck determined that the new Rules as revealed by Rule 7-1, rather than Rule 26(11) of the old Rules, has a new test for the production of a document. Whereas the old Rules required the court to consider whether the documents had relevancy, the test now as set out in 7-1(1)(a)(i) is whether or not the documents can prove or disprove a material fact.

This was further confirmed in *Mackinnon v. Rabeco Holdings (1989) Ltd.*, 2014 BCSC 1703 (CanLII) where Master Harper stated:

> [15] The test for production of records from a third party is different under Rule 7-1(18) than it was under the former rule, therefore, care must be taken not to import caselaw decided under the old rule into an application under the current rule.
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> [16] As Master Taylor put it in *Dosanjh v. Leblanc and St. Paul's Hospital*, 2011 BCSC 1660 at para. 21: "Whereas the old rules required the court to consider whether the documents had relevance, the test now as set out in Rule 7-1(1)(a)(i) is whether or not the documents can prove or disprove a material fact."

In *Fric v. Gershman*, 2012 BCSC 614 (CanLII), the plaintiff sued for damages arising from a motor vehicle accident that occurred when she was in law school. At her examination for discovery, she testified that she participated in her law school's social and sport event ''Law Games" in December 2008 and that her participation was limited due to injuries from the accident. She also admitted to ownership of a Facebook account where she posted photographs, including those taken during her participation in the Law Games shortly after the accident. The defendant asked the Court to order the production of:

> 1. the plaintiff's Facebook profile , including all photographs and information relating to those photographs such as the dates on which each photograph was added and all comments related to the photographs;
>
> 2. copies of all photographs in her possession or control, taken on vacation or otherwise, from after the accident; and,
>
> 3. the metadata associated with any digital photographs in her possession or control

taken after the accident.

Master Bouck conducted an in-depth examination of the case law on related matters from other jurisdictions. He ruled that because the plaintiff had put in issue her ability to participate in certain sports or recreational activities, the photographs of the plaintiff's activities at the Law Games posted on the private portion of her Facebook profile were relevant to her claim of physical impairment and social withdrawal. The Court ordered the plaintiff to disclose the photographs, but not of the comments attached to the photographs:

> The Parties' Positions
>
> [13] The defendants submit that the Facebook profile and various photographs are relevant to the plaintiff's claim for both ongoing physical impairment and also the plea of loss of amenities of life. Photographs taken of the plaintiff at the Law Games might reveal a level of activity belying Ms. Fric's complaints of pain, discomfort and social withdrawal immediately following the accident. Photographs from the vacations might also disclose a level of physical activity belying the limiting or modification of these activities.
>
> [14] Further, by refusing to disclose the precise nature of individual photographs and written content on the Facebook profile, the plaintiff compels the defence to ask for all of the digital material on that site. The request for the metadata will ensure that the defendants can identify the date and time of the photographs.
>
> [15] The plaintiff says that the defence's request for disclosure is overly broad and not substantiated by the evidence. The plaintiff has continued to function at school, work and socially, albeit with pain and fatigue. None of the photographs will assist the defence in refuting the plaintiff's claim of pain as this complaint is entirely subjective. The plaintiff says that the photographs will only reveal snapshots in time and without a proper context.
>
> [16] Moreover, the plaintiff's right to privacy (and those of others who may be included in the photographs or connected with the Facebook profile) outweighs the probative value of the information sought.

The Law

[17] This application requires an analysis of two main issues:

a. the type of document or evidence that might be material and relevant to the plaintiff's claim; and

b. whether the plaintiff's right to privacy might override disclosure obligations.

[...]

[26] These conflicting decisions can be reconciled. As discussed in *Desgagne v. Yuen*, the court draws a distinction between personal photographs that might assist the defence in refuting the plaintiff's claim to physical as opposed to cognitive impairment. When physical impairment is alleged, the relevancy of photographs showing the plaintiff engaged in activities that require some physical effort seems rather clear.

[...]

54] After considering all of these authorities, I have concluded that some of the plaintiff's photographs, including those held on the private Facebook profile, ought to be disclosed.

[55] The pleadings define the issues between the parties. Here, there is also evidence on which the court can exercise its discretion to allow for broader document discovery under Rule 7-1(14).

[56] In her pleadings, the plaintiff alleges that the accident led to not only loss of amenities of life, but also loss of mobility and diminished earning capacity.

[57] The diminished capacity is said to be the result of pain and fatigue. Ms. Fric claims that the injuries effected her academic achievements and thus ability to secure employment after her second year of law school. The ongoing symptoms continue to impact Ms. Fric's working capacity.

[58] How this diminished capacity is measured is yet to be determined. However, the defence fairly argues that a damage award for a young professional's diminished earning capacity can be very significant. Although plaintiff's counsel downplays this aspect of the claim, there is no suggestion that the plea is to be withdrawn.

[59] Ms. Fric has also testified that the accident-related injuries have negatively impacted her social life and ability to perform certain sports or recreational activities, either pain-free or at all. While Ms. Fric has remained an active individual, the symptoms from the accident-related injuries are allegedly unresolved. Obviously, the ongoing complaints will influence the award claimed for pain and suffering.

[60] Photographs which show the plaintiff engaging in a sporting or physical recreational activity -- from hiking to scuba diving to curling to dancing -- are relevant in discovering the plaintiff's physical capacity since the accident.

[61] I do not agree with the plaintiff's submission that such information is only relevant when there is a claim or evidence of total disability.

[62] In terms of proportionality and ensuring a fair trial on the merits, the defence should be given an opportunity to discover the plaintiff on all aspects of her physical functioning and activity level since the accident.

[63] Allowing such discovery does not preclude the plaintiff from arguing that some of the produced photographs are inadmissible at trial. The trial judge may accept that the prejudicial effect of a particular photograph outweighs any probative value.

[64] Nonetheless, the order sought by the defendants is too broad.

[65] The relief sought in paragraph 1 of the notice of application amounts to the "search of the filing cabinet" frowned upon in *Desgagne v. Yuen*, supra.

[66] The defence is somewhat hampered in identifying relevant photographs since

the plaintiff declined to answer questions regarding the Facebook content at her examination for discovery. The affidavit filed by the plaintiff does not offer any assistance in this regard.

[67] One option open to the court is to order that the plaintiff re-attend an examination to answer questions about the photographs. However, that step might simply add a layer of unnecessary costs when the kind of photographs to be produced can be determined from evidence already gathered. Furthermore, the defendants did not request this relief in their notice of application.

[68] Photographs of Ms. Fric's activities at the Law Games are relevant to the claim of physical impairment and social withdrawal.

[69] Ms. Fric says that she participated in some activities while on vacations in the last several years but also that these activities were at times restricted or abandoned. Again, the defence should be given an opportunity to discover whether the claim for reduced physical capacity is accurate.

[70] In my view, the appropriate relief is to order Ms. Fric to produce an amended list of documents which identifies the photographs and video in her possession and control in which in which she is featured:

1. participating in the December 2008 Law Games; and

2. on a vacation taken since November 18, 2008.

[...]

[75] The plaintiff is not obliged to include commentary from the Facebook web-site. If such commentary exists, the probative value of this information is outweighed by the competing interest of protecting the private thoughts of the plaintiff and third parties: *Dosanjh v. Leblanc*.

In *Cui v. Metcalfe*, 2015 BCSC 1195 (CanLII), the plaintiff was injured in a motor vehicle accident where the defendant admitted liability. The plaintiff claimed that injuries to her neck

and back had affected her ability to engage in the highly-athletic lifestyle that she was involved in prior to the accident. The defendant asked that the plaintiff be required to produce a variety of photos and videos including "all relevant documents, all relevant photographs, comments and status updates from her Facebook account". The plaintiff opposed production on the basis of proportionality, probative value, potential prejudice, and her privacy concerns. Master MacNaughton of the BCSC required the plaintiff to disclose some, but not all, of the photographs from her Facebook account and ordered that she provide one photograph from each athletic event that the plaintiff participated in following the accident:

> [4] Among the continuing injuries the plaintiff claims are injuries to her neck and back, which have resulted in chronic intermittent pain, particularly in her lower back. She says those injuries have affected her ability to engage in the highly-athletic lifestyle she was involved in prior to the accident.
>
> [5] Many of her social connections were associated with her athletics, and she alleges reduced enjoyment of life. In addition, she says that her continuing problems have affected her employment capacity, including restricting her from pursuing employment opportunities she would have pursued but for her injuries. She also claims for reduced housekeeping capacity.
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> [6] For many years prior to the accident, the plaintiff had been actively involved in circus training in which she used aerial silks, aerial hoops and poles for dancing and various other circus equipment for acrobatic moves. I would describe the pictures put in evidence by the defendant as showing the plaintiff engaged in the type of vigorous acrobatic and dance activities often seen in Cirque du Soleil shows.
>
> [7] In this application, relying on Rules 1-3, 7-1(10), 7-1(11), 7-1(14), the defendant seeks an order that the plaintiff be required to produce all photographs and videos of her participating in the following activities from August 15, 2011, until present:
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> > a) pole dancing, silk dancing, aerial dancing, Tough Mudder competitions and circus activities;

b) all videos of the plaintiff participating in pole dancing, aerial dancing, silk dancing and circus activities from August 15, 2009, until August 15, 2011,

c) all relevant documents, all relevant photographs, comments and status updates from her Facebook account; and finally

d) all relevant photographs from photography shoots from August 15, 2011, until present.

[8] If the plaintiff is ordered to produce the records, the defendant also seeks to examine her about them at a further examination for discovery. The plaintiff has already agreed that she will attend a further examination for discovery to answer questions outstanding from her last discovery and with respect to documents produced since then.

[9] The plaintiff opposes production and says that, on the bases of proportionality, probative value, potential prejudice, and her privacy concerns, she should not be required to produce the documents requested.

[10] I propose to first deal with the defendant's application for photographs and videos. In support of his application, the defendant relies on a number of photographs and a video his counsel located on the internet which appear to depict the plaintiff, after the accident, engaging in difficult physical activities, including silk dancing, aerial dancing, skydiving, Tough Mudder obstacle course racing, and pole dancing.

[11] The defendant says that the plaintiff did not disclose these photographs prior to her examination for discovery and had an obligation to do so because they are documents which assist in proving or disproving a material fact, that being the extent of the plaintiff's post-accident capacity.

[...]

[23] On the issue of proportionality, the plaintiff says that she has more than 3,600 photographs posted on her personal Facebook account to which she has restricted public access through her privacy setting. She also says that she has hundreds, or possibly thousands, of additional photographs on her phone and computer hard drive. She does not say how many of these photographs were taken after the accident, nor how many of them depict her engaged in physical activity.

[24] In this case, the photographs and video already obtained by the defendant from the internet do not contradict the plaintiff's examination for discovery evidence. That is because the plaintiff does not say that she can no longer participate in her earlier activities, just that she does so with less intensity and less frequency. Further, although some of the commentary suggests that the photographs were posted recently, they were not necessarily taken recently.

[25] As evidence of a potential contradiction in the plaintiff's position, the defendant relies on statements the plaintiff made to her expert physical medicine and rehabilitation specialist on February 19, 2015. According to the expert's report, the plaintiff said that she had not returned to circus training on a regular basis. She keeps to pole dancing once a week, at a basic level, and does not do heavy, strenuous movements, such as inversions or lifting. She rarely if ever does cardio fitness classes due to a concern about increasing her pain.

[26] In addition, the defendant relies on statements made by the plaintiff during her functional capacity evaluation on February 25, 2015. In the history and interview findings portion of the evaluation report, the plaintiff reported pain, stiffness and reduced movement of her lower back, stiffness around her shoulder blades, stiffness of her neck, stiffness and reduced movement of her left hip flexor, and pain and reduced movement in her knees, more so on the left, over the prior three weeks.

[27] The plaintiff also reported that she had a significant flare-up of her back pain in February of 2015 which lasted over two weeks and other flare-ups about every six to eight weeks, which usually improved over one or two days.

[28] The plaintiff reported that she was unable to do aerial hoops, was severely limited in her ability to participate in dance and acrobatics with silk and hoops, and had other moderate and slight limitations in her daily activities. She described being significantly curtailed in her recreational activities, which resulted in less enjoyment of life and less involvement with her circle of friends.

[29] The functional capacity evaluator concluded that the plaintiff showed weakness for heavier lifting activities and was significantly deconditioned compared to her pre-accident high level of athletic function and regular participation in a demanding exercise program.

[...]

[31] The defendant submits that if the photographs and videos he obtained from the internet were taken after the accident, they depict the plaintiff doing inversions and lifting or balancing other dancers in formation. In response to a notice to admit, the plaintiff has refused to admit that the photographs were taken after the accident or their authenticity.

[32] I agree with plaintiff's counsel that I should consider proportionality in determining this application. He makes the point that the defendant already has more than 40 photographs and that requiring the plaintiff to review approximately 4,600 photographs and produce what are potentially large numbers is not warranted in this case. He submits that another 100, 200 or more does not advance the defendant's argument and is not proportional.

[33] If the plaintiff had responded to the request to admit acknowledging that the photographs were of her and dating them, I might have been more persuaded by that position. Not having done so, I have concluded that the plaintiff should be required to disclose some of the photographs from her Facebook account or stored on her phone or computer.

[34] In the interest of proportionality, I limit the order to photographs or videos of the plaintiff engaged in pole, aerial, silk or hoop dancing, circus acrobatics and

> Tough Mudder competitions taken after the accident. There is no need for her to duplicate pictures taken at the same event. One picture from each event is sufficient.
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> [...]
>
> [37] In the exercise of my discretion, I decline to order the plaintiff to produce photographs and videos prior to the accident. Her pre-accident athletic activities are well documented in her evidence, and I conclude that no meaningful comparison can be made from point-in-time photographs of pre- and post-accident activities.
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> [...]
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> [41] Counsel, any clarification required or any further submissions that you wish to make?
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> [...]
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> [46] MR. FEARON: Your Honour, is it at the plaintiff's complete discretion which photograph of an event is produced? My only concern is that there could be a whole gamut of photographs showing very little activity, a lot of activity. Perhaps it could be -- I do not know if this is possible-- but the photograph showing the most strenuous physical activity. I appreciate, you know, at some point you are going to be splitting hairs to figure out which one that is, but I want to make sure that if there is photographs of an event, we are getting the most relevant photograph that exists that the plaintiff has.
>
> [47] THE COURT: The plaintiff is going to have to exercise some judgment with her counsel, but the photographs that I have ordered produced are the ones that show strenuous physical activity.

In *Wilder v. Munro*, 2015 BCSC 1983 (CanLII), the 17-year old plaintiff was involved in a motor vehicle accident. She claimed that as a result of the accident she suffered from soft tissue injuries, bruising, anxiety, lost appetite and depression. The defendants requested the production of photos and videos, including those in the plaintiff's social media accounts, in which the plaintiff was depicted participating in dance training, rehearsals, auditions or competitions,

attending music festivals, socializing, or on vacation following the accident. The plaintiff opposed the order on the basis that the disclosure sought was overly broad, disproportionate to the issues to be determined at trial, invasive to the privacy of the plaintiff and third parties, and unnecessary to the defence of the claim. Master Bouck dismissed the defendant's application and refused to order that the requested documents be produced:

> [5] The plaintiff's claim arises from a motor vehicle accident which occurred on July 29, 2010. Ms. Wilder was a passenger in the Paddock vehicle. Liability for the accident itself is admitted by the Munro defendants.
>
> [6] Ms. Wilder was 17-years-old on the date of the accident and about to enter her last year of high school. The injuries pled in the notice of civil claim include soft tissue injuries to the plaintiff's neck, shoulders, back, hip and legs, bruising, anxiety, lost appetite and depression.
>
> [7] Both before and since the accident, Ms. Wilder has pursued a passion for dance. She has trained in and publicly performed various styles of dance. At her examination for discovery held in March of this year, Ms. Wilder described her pre-accident "dream" of moving to Los Angeles and becoming a professional dancer. That dream has not been pursued as Ms. Wilder says that the accident-related injuries have negatively impacted her dancing abilities. She claims to have not danced at all for the first eighteen months following the accident and is now able to perform hip hop only. During those eighteen months, Ms. Wilder reduced, but did not altogether eliminate, social interactions. In her own words, the plaintiff became a different person when unable to dance. Ms. Wilder has been able to teach dance since the accident, but claims to be restricted in moves and styles because of her injuries.
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> [...]
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> [9] Like most of her peers, Ms. Wilder maintains a wide variety of social media accounts. The accounts were discovered by the defence prior to Ms. Wilder's examination for discovery and information was gathered from the publicly

accessible content of those sites. That information includes ten separate videos of the plaintiff dancing in rehearsals or shows in 2013, 2014 and 2015, photographs of the plaintiff performing dance moves, Facebook status posts discussing upcoming dance shows and auditions in 2011, photographs and posts about Ms. Wilder's attendance at music festivals in 2014, travel related to the home based business and socializing with friends. Approximately 100 photographs or postings taken from the plaintiff's social media accounts are not identified by a specific date or time period. The undated content shows the plaintiff socializing, dancing or engaged in some other form of physical activity such as hiking.

[10] The information obtained from the plaintiff's social media platforms was disclosed by the defendants in their list of documents dated February 27, 2015. However, the defendants asserted a claim of litigation privilege over the information.

[11] At her examination for discovery, the plaintiff was questioned about her use and the content of the social media platforms but only in general terms. She was not questioned specifically about the photographs, videos or postings then in the defendants' possession. Ms. Wilder was asked at the examination to preserve the content of her social media platforms and produce much of the information sought on this application.

[12] The defendants' access to the various social media platforms was curtailed following the examination for discovery as the plaintiff changed her privacy settings. This past September, the defendants waived the claim of privilege over the social media content in their possession.

[...]

[15] Ms. Wilder estimates that there are more than 3,000 photographs posted on her social media platforms in relation to the period of disclosure sought in the notice of application. She denies ever being completely unable to take vacations, go to music festivals or socialize since the accident. Ms. Wilder simply acknowledges that she was less socially active in the 18 months following the accident because of physical

pain and discomfort and the limitation on her dance abilities. She also acknowledges experiencing some ongoing discomfort impacting her enjoyment of one music festival.

[...]

Discussion

[16] A party's obligation to disclose social media content has been addressed in a number of decisions under the *Supreme Court Civil Rules*, including *Fric v. Gershman*, 2012 BCSC 614; *Cui v. Metcalfe*, 2015 BCSC 1195; and *Dosanjh v. Leblanc*, 2011 BCSC 1660. Generally speaking, the considerations for the court on this type of application include the probative value of the information sought, privacy concerns, potential prejudice to the plaintiff and proportionality: *Cui* at para. 9.

[17] All three of the noted cases were personal injury actions. In all three, the plaintiff's post-accident physical capabilities were in issue as was the impact of alleged injuries on the particular plaintiff's social life. In the first two cases, disclosure of the plaintiff's social media content was ordered; in Dosanjh it was not. While the plaintiff's circumstances as described in Cui bear some resemblance to the case at bar, the result can be distinguished. Like the case at bar, the defence had obtained photographs, postings, and the like from the plaintiff's social media platforms. However, unlike here, the defence was unable to identify the dates of the photographs or videos and thus correlate the content to either the pre or post-accident period. The court ordered the plaintiff to disclose additional social media content and identify the date or time frame of content's creation. Of note is that this additional disclosure may not have been ordered had Ms. Cui provided the dates of the videos, photographs pursuant to the defendants' notice to admit: para. 33. Instead, the plaintiff declined to make any such admissions thus necessitating the chambers application.

[18] In terms of the proportionality factors, the plaintiff's claim is not complex.

> There is no debate that this action will proceed to trial under Rule 15-1. The defendants filed the fast track notice and the plaintiff has no intention of having the action removed from the rule's operation. The parties appear to agree that the trial can be completed in three days. While the plaintiff's damages are not limited to $100,000, the evidence on this application suggests that the claim will not greatly exceed that figure, if at all.
>
> [19] The plaintiff is employed with no limitations on her ability to function at that job. It will be up to the trial judge to decide what compensation, if any, Ms. Wilder deserves for an overall reduced earning capacity. However, the defendants' submissions on this application presume that a career in dance is financially lucrative and thus the potential award for this capital asset loss justifies the breadth of the order sought. If this theory was reasonably accurate, it would be expected that one or both of the parties would wish to remove the proceeding from fast track.
>
> [20] On the question of probative value, the defendants already have in their possession dozens of photographs and more than ten videos which show the plaintiff's physical abilities and social activities in the years following the accident. I am not persuaded that adding to this collection is necessary to disprove the plaintiff's claims. Moreover, the defendants have other evidence in the form of Dr. Winston's report to also disprove the plaintiff's claim of a lost dancing career.
>
> [21] Finally, I agree with the plaintiff that the defendants have failed to demonstrate the probative value of any photographs or videos depicting the plaintiff socializing or on vacation. If I am wrong on the question of probative value, then I find that the production of this information, including all that would be entailed in protecting the privacy rights of third parties, is not proportionate to the issues to be determined at trial.

In *Dosanjh v. Leblanc and St. Paul's Hospital*, 2011 BCSC 1660 (CanLII) the plaintiff had been undergoing open-heart surgery when an air embolism entered her bloodstream and caused her to have a stroke. The plaintiff alleged that the stroke caused significant cognitive impairments and affected her social life. The defendant requested broad disclosure including:

> 1. complete Facebook and Twitter profiles, including any and all restricted and unrestricted wall posts, news feeds, profile information, friends lists, and photo album contents since the inception of her account to the present date;
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> 2. all resumes and cover letters, including associated metadata, authored by the plaintiff on her personal computer;
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> 3. delivery of her computer to TCS Forensics, so that TCS forensics may perform a forensic examination be conducted [sic] of the plaintiff's personal computer hard drive; and,
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> 4. delivery of her iPhone to TCS Forensics, so that TCS Forensics may perform a forensic examination be conducted [sic] of the plaintiff's personal iPhone.

Master Taylor dismissed the majority of the defendant's application for disclosure, including Facebook and Twitter profiles and associated photographs, but ordered the plaintiff to provide the defendant with resumes and cover letters the plaintiff had created or written on her computer:

> [33] I am satisfied that the defendant's application is entirely too broad and lacks the focus required by Rule 7-1(1)(a)(i). In fact, I am more inclined to call this application a classic fishing expedition, but without the appropriate bait. I observe as well that the order made by the court in *Bishop*, supra, was focussed on the times the plaintiff spent on his Facebook account on his computer, and did not give the defendant cart blanche to troll through the plaintiff's correspondence as is sought in the application before me.
>
> [34] Thus, in relation to the application that the plaintiff produce her Facebook and Twitter profiles and all related posts and photographs as set out in paragraph 5 of the application, the defendant's application is dismissed. It follows that paragraphs 7, 8 and 9 are also dismissed.

Authorities

Supreme Court Civil Rules, BC Reg 168/2009

Dosanjh v. Leblanc and St. Paul's Hospital, 2011 BCSC 1660 (CanLII)

Mackinnon v. Rabeco Holdings (1989) Ltd., 2014 BCSC 1703 (CanLII)

Fric v. Gershman, 2012 BCSC 614 (CanLII)

Cui v. Metcalfe, 2015 BCSC 1195 (CanLII)

Wilder v. Munro, 2015 BCSC 1983 (CanLII)