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## COURT CHASTISES ICBC FOR JURY SNOOPING



ICBC's intrusion into the privacy of jurors has put it in hot water with BC Supreme Court Justice Malcolm Macaulay. He ruled that ICBC breached British Columbia's privacy laws when one of its lawyers asked an adjuster for the claims histories of jurors in a recent civil court case. Upon further investigation, it was revealed that ICBC also ignored privacy laws in connection with two other cases in 2000 and 2006.

The breach has resulted in BC's Privacy Commissioner undertaking an audit to understand how, when and why personal information of individuals involved in ICBC jury trials may have been inappropriately accessed, and to provide recommendations on how ICBC can enhance privacy protection.

Consumers are entitled to complete fairness, especially when dealing with a monopoly such as ICBC.

Although ICBC claims that checking histories of jurors is not an accepted practice and insists that these breaches were made in error, lawyers representing claimants want to know that safeguards are in place to ensure complete fairness and that information is accessed only in compliance with freedom of information and privacy laws.

Consumers are entitled to complete fairness, especially when dealing with a monopoly such as ICBC. This must include assurances that what has been promised in ICBC's insurance policies will be delivered and that claimants are allowed access to the court system in a fair and equitable manner.

ICBC has virtually unlimited resources at its disposal. It is important that legitimately injured persons are properly represented by a team of people working on their behalf. At Klein Lyons, we've leveled the playing field by fighting for our clients' rights to fair compensation.

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Car Accident?**

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Consultation**  
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## WHAT IS A CLASS ACTION?



A class action is a type of lawsuit in which a group of people with similar legal claims band together to form a single lawsuit. The group may be made up of as many as several thousand people or as few as half a dozen. The idea is that combining claims makes it more efficient for all parties involved to pursue them. Put another way, if a dozen people all make the same allegations against a defendant, why have 12 individual trials, all about the same thing, when one class action trial will do? A class action permits key legal questions, common to the group, to be decided once. This saves the parties and the courts time and money.

Class actions have other benefits as well. Sometimes, the loss to an individual is too small on its own to be taken to court. If a large institution cheats a consumer out of \$100, it would not make financial sense for that consumer to hire a lawyer to get that money back. But if that corporation has done the same thing to thousands of other consumers, combining these claims into a class action makes it financially feasible to pursue these claims. As well, the possibility that a class action might be brought is an incentive for large institutions to be more respectful of consumers. It is sometimes said that the best class action is one that never has to be brought because the defendant did the right thing in the first place.

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A lawsuit does not become a class action until the court grants it that status. This is called certification. Certification is a critical step in any class action, and defendants will fight hard to avoid it. If certification is granted, sometimes the case will settle. If not, the case will proceed to trial.

Class actions can often take a long time to resolve, but not always. The duration of the lawsuit may depend upon the attitude of the defendant. The recent class action against Maple Leaf Foods, for example, was settled in only a few months. The company was quick to accept responsibility for listeria contamination of its food products and to make amends so that it could put the tragedy behind it. In other cases, a determined defendant may adopt a siege mentality and seek to drag the litigation out for as long as possible. Whatever strategy the defendant adopts, it is our job at Klein Lyons to push the case forward as quickly as the court system will allow so that we can get compensation for our clients.

## ARRIVE ALIVE – SAFEGUARDING YOUR MOST PRECIOUS CARGO

**Don't Miss  
The Klein Lyons  
Guide To An  
ICBC Settlement ▶**



Drivers have a responsibility to ensure the safety of all their passengers, but their most precious cargo is children in their care. The consequences of not ensuring safety can be horrendous and heartbreaking.

### Infant and Child Car Seats

Correctly installed and properly used child safety seats can reduce the likelihood of death or serious injury by as much as 75 percent. Laws governing the transport of children in vehicles state that drivers must ensure that all children in their vehicle are restrained in age- and weight-appropriate seats as follows:

- Babies younger than one year of age have larger, heavier heads and smaller, weaker necks than older children and adults. Therefore they must be placed in a rear-facing car seat that protects their head, neck and spine in a crash or sudden stop. That way, the impact is spread across the baby's back, the strongest part of its body.
- Children under the age of 13 are safest in the back seat. Never place a rear-facing child car seat in a front passenger seat with an active airbag because death or serious injury can occur if the airbag is deployed during a collision. Always check for the "SRS" or "airbag" marking on the dash, which indicates that an airbag is installed.
- If the vehicle has only front seats, such as a sports car or a truck, and the airbag cannot be disabled, the owner must seek written permission from Transport Canada to disable the system. Many mechanics, however, are reluctant to disable airbag systems due to liability issues.
- Forward-facing car seats are designed to protect children who are over one year of age and whose weight is between nine and 18 kilograms. In a crash or sudden stop, the harness straps of a forward-facing car seat spread the impact over the strongest parts of the child's body.
- Children under the age of nine who weigh more than 18 kilograms can be placed in a booster seat until they reach a height of 145 centimetres, at which time they may graduate to a seat-belt restraint.

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### More Driver Safety Tips for Parents and Caregivers

- Never leave a child unattended in or around vehicles — not even for a minute.
- Keep vehicles locked at all times — even in the driveway or garage — and always set the parking brake.
- Keep the car keys and remote openers out of the reach of children.
- Always engage the power window lockout mechanism so that children can't play with the windows.
- Teach your children to never play in, around or behind a vehicle.

## RESOLUTION THROUGH MEDIATION

### Here are the basic steps involved in mediation:

1. Mediator talks to the plaintiff and plaintiff's counsel in private and explains the role of mediation.
2. All involved meet to discuss the case.
3. Plaintiff's counsel provides a summary of the plaintiff's case.
4. Plaintiff talks about the



There's more than one way to reach a settlement in a claim involving a motor vehicle accident. Mediation, for example, is a method to achieve a settlement without going through the court. In mediation, an impartial negotiator, who is usually a lawyer trained in civil litigation disputes, facilitates a discussion among the parties involved. These parties include the plaintiff and his or her lawyer, and the insurance company and its lawyer.

The main role of the mediator is to make sure that both sides have the opportunity to present their views in the case. "Often, one thing is a sticking point, and people spend a lot of time on it," says Klein Lyons lawyer Paul Warnett. "In those cases, the mediator diverts attention from that particular issue and helps those involved see eye to eye on other issues."

Mediation takes place in a non-confrontational setting — usually an office in which everyone sits around a table — and lasts only a few hours. There is

The main role of the

- effects of his or her injury.
- 5. Defence puts forth its position.
- 6. Parties break apart into separate rooms.
- 7. Offers are exchanged.
- 8. If an offer is accepted, the insurance company requires that a release be signed. The settlement cheque is delivered shortly after.

no court clerk recording the discussion, and everything that is said is kept confidential and on a without-prejudice basis. What this means is that nothing that is said during mediation can be used later as evidence in examination for discovery or trial, should the case end up having to go through the court system.

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Another advantage to mediation is that it gives the adjuster the opportunity to meet the plaintiff for the first time. This way, the adjuster knows that the plaintiff is an honest person who would present well at trial, says Warnett, which may make the adjuster more open to settling out of court.

How successful is mediation? According to a [bulletin](#) published by the Ministry of the Attorney General, "in 1997, more than 3,000 motor vehicle actions were referred to voluntary mediation, and there was an 84 percent success rate in the approximately 1,500 mediations that took place."

For more information on mediation, visit the website of the [Ministry of the Attorney General](#).

## CAR MAINTENANCE FOR SAFETY



Keeping your car in tip-top condition is not only financially prudent, it may also save your life and the lives of your passengers. Regular maintenance checks will put you ahead of the game and ease the pain in your wallet.

### Create a Plan and Make it Work

Start by creating an annual maintenance log, broken down into checklists for three, six and twelve months.

Perform the following checks and procedures every three months or every 8,000 kilometres. If fluid levels are low, top them up.

- Check coolant level.
- Check oil level.
- Check windshield washer fluid.
- Check power steering fluid.
- Check brake fluid.
- Check lug bolts to ensure they are tight enough.
- Check tire pressure to ensure tires are filled to their optimum capacity.

Every six months, or 16,000 kilometres, perform all of the above three-month checks and procedures plus:

- Check depth of tire tread to ensure that you have enough traction.
- Check brakes for wear.
- Check spark-plug wires to ensure that there are no cracks or splits.
- Check battery for corrosion, and clean if necessary.
- Replace air filter.

At 12 months, or 24,000 kilometres, repeat the three-month and six-month checks and procedures, and perform the following:

- Check fuel regulator pressure.
- Check timing belt for wear.
- Replace spark plugs.
- Replace fuel filter.
- Check brake pads for wear, and replace if necessary.
- Flush radiator.

### Your Mechanic Can Be Your Best Friend

Although most routine safety checks and procedures can be quite simple and inexpensive, you may wish to delegate these tasks to an auto mechanic. Trustworthy mechanics are worth their weight in gold, so ask friends, co-workers or family members for recommendations. Once you've made your choice, make sure you schedule regular visits for maintenance inspections and repairs.

Besides carrying your cell phone, make sure you have a tire jack, tire gauge, blanket, flashlight, and first aid kit, as well as booster cables, road flares, and water.

### Always Be Prepared for Emergencies

You never know what you might encounter on the road, so always be

prepared for emergencies. Besides carrying your cell phone, make sure you have a tire jack, tire gauge, blanket, flashlight, and first aid kit, as well as booster cables, road flares, and water.

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