

ACCIDENT INJURY CLAIMS

The 'Yeah, but' puts victim unfairly on defensive

"Yeah, but." A response sometimes attributed to teenagers? Roughly translated it means: "Yes, I did that, but here are all the reasons why it wasn't my fault or I'm not responsible."

"Yeah, but" comes up a lot in ICBC claims.

An absentminded offending driver plows into the back of a stopped vehicle driven by your 63-year-old mother who was patiently waiting for a red light to change to green.

It's the most common collision I deal with in our world of inattentive driving.

Your mother had been an active woman. She kept a spotless house, enjoyed long walks and gardening, and would set the pace if you took her on a hike.

She saw a chiropractor from time to time when her neck or back felt uncomfortable, but those intermittent symptoms never held her back.

She was looking forward to an active, healthy retirement.

A headache comes on that evening. The next morning, your mother's neck and back are so seized up she has trouble

Achieving Justice

PAUL HERGOTT



reasons why your mother was one of the unlucky ones whose injuries resulted in chronic pain.

They are looking for the "Yeah, but."

The most common "Yeah, but" is the x-ray that shows wear and tear degeneration of the spine.

Yeah, your mother was injured in the collision, but if it wasn't for that pre-existing though asymptomatic (without symptoms) condition, your mother would have fully recovered.

Another common "Yeah, but" is the comparatively minor and intermittent neck and back condition she periodically sought chiropractor care for.

Yeah, but if it wasn't for that pre-existing condition, your mother would have fully recovered.

Orthopaedic surgeons who have gone to the "dark side" to earn hundreds of thousands of dollars per year pumping out medical reports for ICBC give opinions like: "The injury in the collision would have been expected to resolve within

six weeks, therefore the ongoing pain is caused by the pre-existing condition."

Fortunately, the law is on the side of fairness. It doesn't matter why your mother might have been particularly vulnerable to suffering chronic pain following a senseless rear-end collision.

What matters is whether or not she would have continued to enjoy a pain-free, active lifestyle had the collision not occurred.

ICBC doesn't get to "blame the victim" for being vulnerable. If the vulnerabilities would have otherwise remained asymptomatic, or at a lower level of symptoms, had the collision not occurred, the law squarely and unequivocally requires ICBC to provide full, fair compensation

for those symptoms that would not have occurred absent the collision.

This column is intended to provide general

information about injury claims. It is not a substitute for retaining a lawyer to provide legal advice specifically

pertaining to your case. Paul Hergott is a personal injury lawyer at Hergott Law in West Kelowna. paul@hlaw.ca

getting out of bed.

With pain and anti-inflammatory medication, and courses of massage therapy, chiropractic care and physiotherapy, she is able to fully recover her mobility. But the pain and headaches continue to linger.

Many people recover fully from the neck and back injuries caused in rear-end collisions.

Your mother, however, pursues and follows every stitch of medical advice and direction, but never gets there. She is never able to recover her pain-free, active lifestyle.

The offending driver doesn't come up with the "Yeah, but." The claim for fair financial compensation is handed over to his or her liability insurance company, ICBC.

The "Yeah, but" comes from the insurance adjuster who defends the claim.

The adjuster and defence medical specialists hired for this purpose, look to find

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"A cure would mean no more needles, blood work, pump sites ripping out, and pain from insulin injections..."

Brothers Nicholas, 11 years old & Cameron, 9 years old
Diagnosed with type 1 diabetes at 17 & 22 months