

# No need to hide unreported income for injury claim

"If you pay cash, I won't have to charge you the tax."

I bought a used walker for my mother a few weeks back. All I had was plastic.

The price was \$90, so I paid the extra \$10.80 for a total of \$100.80.

Of course, the business owner wasn't trying to be generous.

A cash sale wouldn't have been recorded in his records nor reported to the Canada Revenue Agency.

## Achieving Justice

**PAUL HERGOTT**



Yes, it's illegal. And it happens all the time, though.

Avoiding tax by paying cash is a broadly accepted practice.

Absolutely, it is a form of cheating, but it has become (or always has been) socially acceptable

to cheat the tax man.

I would like for that to change, with everyone paying their fair share of tax, but I participate in the cash society just like everyone else.

I would have saved the \$10.80 if I had been carrying cash.

I wonder how long it would take for government debt to be paid off if we did away with cash? Before we

knew it, tax rates would be going down instead of up.

Some deal in cash more than others.

The service industry is particularly cash intensive. Restaurants and spas pay their servers and spa practitioners a pittance, a large portion of their income being in tips, much of which is unreported cash.

For many, a majority of earned income is unreported. Some report zero income.

Put yourself in the shoes of one of those workers who report only a portion of their incomes to the Canada Revenue Agency.

You are sitting at a complete stop at a traffic light and some bonehead crashes their car into the back of yours.

You have injuries that disable you from working for a period of time.

If only a portion of your pre-crash income was reported on your tax returns, is it only

that portion that you are entitled to recover from ICBC (the offending driver's liability insurance company) as lost income?

No. You are entitled to full and fair compensation for all of your income loss, whether or not that income found its way onto your income tax returns.

In the words of Mr. Justice Gibbs of the British Columbia Court of Appeal in the 1992 case of *Iannone v. Hoogenraad*: "It is not, in my opinion, open to the defendant to avoid compensating for that loss (the income loss) on the ground that unreported income was taken into account in computing it."

The problem is proving it. How do you go back and piece together the cash you earned before the crash when you have avoided keeping any record of that cash so as to avoid the tax man?

It can be a challenge, but it can certainly be done.

On that point, Justice Gibbs put it this way: "This plaintiff, like others in similar circumstances, had the burden of leading evidence of past accident wages losses. That will be a difficult burden to discharge where there is no corroborating evidence such as income tax returns, but it is not an impossible burden to discharge."

One way of proving unreported income is by calling on others in same business to testify about what their earnings are.

This was the approach taken in the 2001 case of *Fiorino v. O'Neil*.

The income loss of the

male stripper in that case was assessed through the testimony of other exotic dancers.

There are many other ways to prove unreported income, a challenge that I have faced time and time again in my practice because of the pervasiveness of unreported income.

By proving your unreported income in a personal injury case, are you handing your head over to the tax man on a silver platter?

You certainly face a risk of having to pay back taxes on the unreported income you are working hard to prove was earned, but by voluntarily "coming clean" you are likely to avoid more serious consequences.

Pursuing a personal injury claim requires the utmost of honesty and forthrightness.

Past indiscretions, like unreported income, will largely be forgiven as long as you come to the fair compensation table with squeaky clean honesty.

Be honest and forthright, and ICBC won't be able to skirt their responsibility of fairly compensating your losses, even if those losses are built on previously unreported income.

*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.*

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