

**Lies + Videotape**

**Claims Management of Evidence**

**Presented by**

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**Gjorgovska v AFM Cleaning Services P/L & Anor [2006] VSCA 104**

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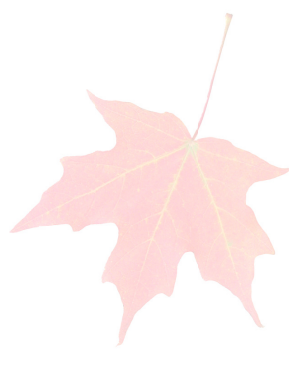
- Credibility of worker in the witness box
- Bulk of medical evidence able to be rejected by the trial judge as it had been tainted by the worker's exaggeration of her symptoms
- Use of walking stick discredited during cross examination – abandoned physical injuries component of her claim
- Failure to co-operate at medical examinations – refusing to speak English except to treating General Practitioner
- Open to the Court to disregard certain medical evidence on the basis that the worker had not been fully frank as to the extent of her condition



**Dordev v Norman and Anne Cowan & VWA [2006] VSCA 254**

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- Varying reports provided to different General Practitioners
- Issue over whether or not the worker returned to work after her injury
- History provided to General Practitioners differed between a specific event and gradual development of symptoms over time
- Presentation at Court as an invalid with morphine addiction issues
- Radiological and Clinical evidence inconsistent with her description of symptoms
- Video surveillance showed the worker moving without her claimed restrictions
- Inability of worker to provide a consistent history and properly recall events led to the medical evidence being considered by the Court to be compromised



**Yakup Sumbul v Melbourne All Toya Wreakers P/L [2006] VSCA 292**

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- Worker underwent a laminectomy and discectomy as a result of a disc prolapse – common ground between the parties that the worker had a permanent impairment of body function
- In the witness box the worker described his limitations as being extensive
- Video surveillance showed the worker undertaking a wide variety of activities without restriction
- The medical evidence provided at the hearing showed that the vast majority of doctors believed that the worker was capable of returning to work on restricted duties. The surveillance footage reiterated the doctor’s opinions with respect to his capabilities
- On the totality of the evidence, medical reports, the worker’s own evidence and surveillance the Court rejected his application for a serious injury certificate



**Evidence - 1 ... 2 ... 3...**

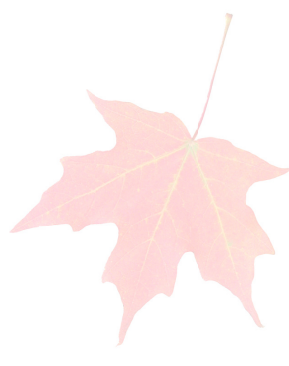


## **Step 1 – Gather the Facts**

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Gather as much information as possible:

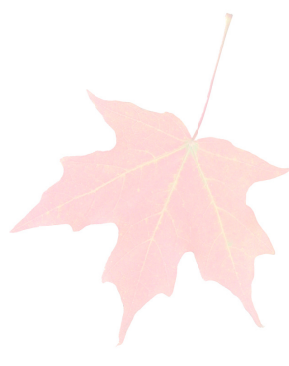
- Provided by the worker
- Provided by the medical practitioners
- Provided by the service providers
- Provided by the employer
- Generated by the self insurer



**Step 1 – Gather the Facts** (cont'd)

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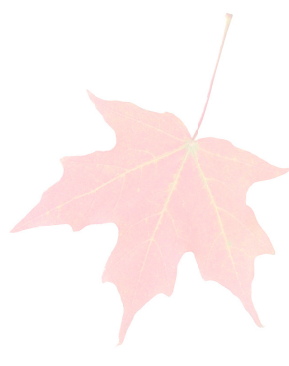
- Open and regular verbal communication with all parties (injured worker, employer, RTW Co-Ord, treating practitioners) – eg gather additional facts not available from the written documentation
- Other – prior and subsequent employers, VWA / Self Insurers, Civil Courts, TAC, Land Titles Office, Police, Criminal Courts, Centrelink etc



## **Step 2 – Analyse the Data**

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- Consistent history of circumstances giving rise to the injury – eg any discrepancies
- Consistent presentation to medical practitioners – eg compare findings on examination, symptoms / signs, doctor shopping
- Presentation on surveillance footage consistent with alleged injury / incapacity



## **Step 3 – Developing and Implementing a Strategy**

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- Case by case basis – every claim is unique in terms of a worker's credibility
- Timing, timing, timing! ... understand the long term strategy of the file
- Caution – provision of surveillance to third parties – eg doctors
- Section 107A requests – remember to preserve legal professional privilege – request surveillance and circumstance reports through your legal representatives

