

Anti-Fraud Advertising**ICBC's anti-fraud advertising: purely educational or jury interference? | Sandra Kovacs**By **Sandra Kovacs**

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(May 25, 2017, 10:03 AM EDT) -- Earlier this year British Columbia's public auto insurer, the Insurance Corporation of British Columbia, released a new "anti-fraud" TV commercial featuring an adorable ginger-haired little boy wearing his dad's hard hat, standing at the front of his elementary school classroom, delivering his presentation on Career Day:

"My dad's a carpenter. He builds houses. But he's not working right now, because he got hurt in a car crash. So now, we go mountain biking together almost every day! And he says he's going to make a whole bunch of money, too. And now, he's building a tree house in our backyard!"

The clip ends with the crowd of parents and teachers awkwardly clapping and rolling their eyes, with an ominous-sounding voiceover informing viewers: *"Exaggerating a claim for financial gain is fraud. And fraud is costing British Columbians up to \$600 million a year, adding an extra \$100 to your car insurance."*

ICBC's website suggests this campaign naturally follows its December 2016 announcement of its first results from a new high-tech tool to help identify and target fraudulent claims, reminding British Columbians that " ... fraud is far from victimless and increases the amount that we all have to pay."

However, the referenced new technology does little if anything to assist ICBC with detection of exaggerated claims: BAE Systems is fraud analytics software that uses statistical methods, algorithms and gathered data from claims histories, addresses, driver licensing and vehicle registrations to flag possible cases of fraud. BAE Systems' own advertisement opens with the statement that "Insurance companies constantly face a growing risk from opportunistic, premeditated and organized financial crime ... [who use] false identities, exploit product lines and work in collusion with employees ..."

The fraud that is costing British Columbians up to \$100 each on their car insurance — and the kind of fraud that BAE Systems' technology assists in identifying — is not the kind committed by the working-class carpenter dad who exaggerates his back pain to get a few extra dollars out of ICBC (while missing work for years until his claim is finally resolved, and losing the income he needs to support his family in the meantime).

So why has ICBC focused its anti-fraud campaign on exaggerated claims?

Because the advertisement has a collateral benefit: it has the potential to influence the jury pool.

In British Columbia, motor vehicle injury claims make up approximately 30 per cent of all civil filings, and in 2016, 39 per cent of all the trials run in B.C. Supreme Court were civil (from *2016 British Columbia Supreme Court Annual Report*). The plaintiff or defendant in a motor vehicle action may elect a jury instead of a judge-alone trial and, of late, it seems ICBC is electing more juries.

Advertisements by their very nature are intended to influence a target demographic (in this case, all British Columbians who are required to pay into public auto insurance), and in B.C. prospective jurors are empanelled directly from that same target demographic. Studies have long shown that

advertisements appealing to people's emotions are likely to influence them, and this research has been extended to hypothesize that such advertising similarly impacts a juror's ability to carefully consider the evidence (Trager, Robert et al, *Selling Influence: Using Advertising to Prejudice the Jury Pool*).

The impartiality of a trier of fact is fundamental to trial fairness and, ultimately, the public's confidence in the rule of law. ICBC's most recent anti-fraud commercial, disguised as a mission to educate and guard against the incidence of fraud, provides the general public with only the partial truth about the prevalence of fraud in B.C. But the result is to influence British Columbians into believing there is an epidemic of claim exaggeration that is costing them personally. It is a classic fear-mongering tactic, no different than the political fear mongering we witnessed in the last U.S. election.

While ICBC's and BAE Systems' efforts at detecting and preventing organized fraud should be encouraged and commended, with respect to guarding against exaggerated claims there is already an effective system in place: trial. ICBC has a full and fair opportunity to challenge — and the trier of fact has a full and fair opportunity to judge — the plaintiff's credibility based on the admissible evidence presented at trial. The fairness of the trial process must be safeguarded; it cannot and should not be eroded, even subtly, by outside influences or biases.

ICBC's most recent anti-fraud campaign is, in summary, inappropriate — particularly from a Crown Corporation. It is a veiled attempt to interfere with the fairness of our justice system and it should not be sanctioned by our MLAs, the legal community, or the premium-paying public.

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