

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Taylor v. Brar*,
2026 BCSC 960

Date: 20260526
Docket: M240039
Registry: Vancouver

Between:

Thomas William Taylor

Plaintiff

And:

Malinder Singh Brar, First West Leasing Ltd., and Jasr Homes Ltd.

Defendants

Before: The Honourable Mr. Justice Funt

Reasons for Ruling – Settlement Negotiation Privilege

Counsel for the Plaintiff:

D. O'Neill
R. Mollema

Counsel for the Defendants:

N. Mulholland

Place and Date of Hearing:

Vancouver, B.C.
May 25, 2026

Place and Date of Judgment:

Vancouver, B.C.
May 26, 2026

1.0 Introduction

[1] In this action, the parties arranged for a mediation with the view to settling this action. For the mediation, the plaintiff prepared a mediation brief and provided a copy to defendants' counsel.

[2] After agreeing to the mediation with an agreed upon date, defendants' counsel told plaintiff's counsel that the defendants would not be participating in the scheduled mediation.

[3] Two days later, defendants' counsel forwarded various materials to a corporation that undertakes video surveillance. The materials included the plaintiff's mediation brief.

[4] The video surveillance corporation subsequently surveilled the plaintiff.

[5] The plaintiff objects to the admission of the subject video surveillance because it is founded, in part, on the breach of settlement negotiation privilege.

[6] The plaintiff asks that the subject video surveillance, and any related testimony, not be admitted as evidence at trial.

[7] For the reasons that follow, the subject video surveillance, and any related testimony, will not be admitted as evidence at this trial.

2.0 The Law of Settlement Negotiation Privilege

[8] In David M. Paciocco, Palma Paciocco, and Lee Stuesser, *The Law of Evidence*, 8th ed. (Toronto: Irwin Law, 2020) the authors state at p. 325:

There exists a "class" privilege to protect settlement discussions. The discussions must take place in the course of settlement negotiations for the purpose of settlement, with the intention that they not be disclosed or used against the parties should the negotiations fail. The fundamental purpose underlying the privilege is to encourage settlement. The privilege applies to both civil settlement discussions and criminal resolution discussions. The privilege applies to the parties involved in the negotiations, and it also protects communications from being disclosed to third parties.

The privilege is subject to exceptions. The starting point is that settlement discussions are privileged. Where the existence of an agreement

or the terms of a settlement are at issue, or the negotiation discussions give rise to a cause of action, the privilege may be overridden. The privilege may also be overridden where there exists a compelling public interest to do so.

[9] As the authors in *The Law of Evidence* further describe:

The law of evidence has long accepted a “privilege” for “without prejudice communications” or “settlement discussions.” It is a “common law rule of evidence that protects communications exchanged by parties as they try to settle a dispute.”

The privilege is in place primarily as a matter of public policy to encourage litigants to settle their disputes without the need to go to trial. Protecting communications made for the purpose of settlement from disclosure encourages honest and frank discussions between the parties; without such protection, few parties would engage in forthright settlement discussions, for fear that any concessions or statements made could be used against them if no settlement were reached. A second rationale for the rule—occasionally cited—is the express or implied agreement of the parties themselves that communications in the course of their negotiations should not be admissible in evidence.

[Footnotes omitted]

3.0 Chronology

[10] On January 2, 2025, the plaintiff issued a notice to mediate.

[11] The parties subsequently set the mediation for May 28, 2025.

[12] On May 4, 2025, plaintiff’s counsel provided the plaintiff’s mediation brief to the defence.

[13] On May 20, 2025, defence counsel told plaintiff’s counsel that they would not be participating in the scheduled mediation.

[14] On May 22, 2025, defence counsel wrote Lodge & Associates Investigations Ltd. to retain it for “private investigation/surveillance service concerning” the plaintiff. In defence counsel’s letter, background information was provided, including a “Copy of the Plaintiff’s Mediation Brief”.

[15] Lodge & Associates Investigations Ltd. subsequently surveilled (including video surveillance) the plaintiff.

4.0 Analysis

[16] As described above, settlement negotiation privilege, “is in place primarily as a matter of public policy to encourage litigants to settle without the need to go to trial”. Protecting settlement discussions from disclosure “encourages honest and frank discussions”, and without protection from disclosure, “few parties would engage in forthright settlement discussions”.

[17] Where there is an inadvertent or accidental disclosure of privileged information, the Court would readily enjoin the recipient from further use or disclosure.

[18] I agree with plaintiff counsel’s submission:

The remedy, however, cannot stop at striking the Mediation Brief. The investigators who conducted the surveillance the Defendant now seeks to tender did so after having been provided with the Plaintiff’s full case theory, his discovery testimony, and his Mediation Brief. They were not a neutral pair of eyes observing the Plaintiff. They were a directed pair of eyes, briefed on what the Plaintiff was expected to say, what his asserted limitations were, and which head of damage was most heavily contested. The product of that targeted observation is the surveillance now before the Court.

[19] Moreover, I have a general policy concern that parties considering mediation may sense that there is a possibility of sensitive information being shared “outside the walls of the mediation room”, which may make them less willing to engage in mediation.

[20] Mediations are undertaken in almost all areas of the law and may engage sensitive financial information, technological advances, and personal health matters (including psychological and psychiatric matters).

[21] As noted, settlement negotiation privilege is “primarily a matter of public policy”. The privilege may “be overridden where there is a compelling interest to do so”.

[22] Sharing the opposing party’s mediation brief with a private investigator does not engage “a compelling public interest” to override settlement negotiation privilege.

[23] Private investigations, including video surveillance, may be readily undertaken without an opposing party's mediation brief.

[24] The Court will not admit evidence from the private investigation, including video surveillance, undertaken by Lodge & Associates Investigations Ltd. for the case at bar. To do otherwise, in my view, would discourage litigants in engaging in freewheeling settlement negotiations for the fear of disclosure.

[25] In sum, there is not an overriding "compelling public interest".

5.0 Conclusion

[26] The subject video evidence and any related testimony will not be admitted as evidence at this trial.

"Funt J."