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Defence Psychiatric IMEs may not be subject to videotaping: Teresa Powanda and Zehlon Powanda, a minor by his Next Friend Teresa Powanda v. Suzanne Langston, 2013 ABQB

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The sole issue for determination by the Court in this application was whether the Plaintiffs should be required to attend a psychological IME without a third-party observer and absent any electronic recording device.

The Plaintiffs and Defendant were involved in a motor vehicle accident on January 27, 2006. Some 7 years later, the Plaintiffs continued to allege that their injuries included psychological damage, for which they were receiving ongoing treatment. As such, the Defendant brought an application to Court pursuant to Rule 5.42 of the *Alberta Rules of Court* seeking an order that permitted a psychological independent medical examination (“IME”) of both Plaintiffs, free of any restrictions or conditions. Specifically, the Defendant sought to compel the Plaintiffs to undergo a psychological IME without the presence of a third-party observer or any electronic recording device.

Numerous arguments were raised for and against ordering the Plaintiffs to attend a psychological IME free of any conditions and restrictions. On one hand, the Plaintiffs argued that the absence of a third-party observer or electronic recording device during the IME would foster stress and anxiety, thereby yielding inaccurate IME results. Conversely, the Defendant’s argument against allowing the presence of a third-party observer or electronic recording devices was two-fold: first, and at complete odds with the Plaintiffs’ position, the Defendant contended that the presence of a third-party observer or electronic recording device would in fact prejudicially impact the accuracy and reliability of the empirical data collected from the IME; second, the Defendant argued that permitting the presence of a third-party observer or electronic recording device is contrary to the ethical standards of the practice.

Given the polarity of the competing parties’ positions, no realistic balance could be reached that both parties would be reasonably content with. As such, after assessing the relative risks and benefits of the parties’ arguments, **the Court concluded that the psychological IME should occur without the presence of a third-party observer or electronic recording device**; the Court was satisfied that the Defendant had demonstrated that the potential dangers of permitting the IME to occur in the presence of a third-party observer or electronic recording device outweighed any benefits. In coming to this conclusion, the Court accredited the findings of multiple independent studies that illustrated the potential for empirical data that was obtained during IMEs to be impacted by third-party observers and electronic recording devices. Further, the Court stressed the importance of being able to obtain and rely upon the most accurate

empirical data in determining whether to settle or proceed to trial on a given issue. Lastly, and in addition to the foregoing, the Court noted their reluctance to impose orders that would direct a professional to act in a manner inconsistent with their governing ethical standards.