

disclosure

Your quarterly source of personal injury news

SMITIUCH INJURY LAW

PROFESSIONAL CORPORATION

Changes To Auto Insurance Benefits

The Ontario government has approved sweeping changes to the accident benefits (“no-fault”) insurance regulations, effective September 1, 2010. These changes will result in significant reductions in both the types and amounts of benefits that individuals are entitled to receive when they are injured in a motor vehicle accident. Some of these changes will also affect individuals who are already receiving accident benefits from an accident between November 1, 1996 and August 31, 2010.

One of the most drastic measures is the establishment of a “minor injury” classification. Individuals who sustain whiplash-type injuries, defined as a “sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and any clinically associated sequelae”, with no significant history of medical issues prior to the accident, will only be eligible for a maximum of \$3,500.00 in medical and rehabilitation benefits and will not be entitled to housekeeping, attendant care, or caregiver benefits.

Unless optional benefits have been purchased, housekeeping and home maintenance benefits will not be available for non-catastrophically injured clients.

The amount of medical rehabilitation benefits for individuals who have not suffered a minor injury or a catastrophic injury are also reduced to a maximum limit of \$50,000.00; half of what it has been under the current legislation. Assessments, which were previously not capped, will now be included in the medical and rehabilitation benefit limits.

Another major change is the addition of a definition of what is an “incurred” benefit. Presently, when an individual is not capable of performing their pre-accident housekeeping, home maintenance, or caregiver tasks, or if they are incapable of taking care of themselves (attendant care), they are entitled to be reimbursed by the insurer for services provided by others (professionals, family members, friends) whether they pay or promise to pay for those services. Under the new regulations these services must either be performed by a professional (someone who normally performs that service for a living) or by an individual who sustains



an “economic loss” as the result of providing that service. In other words, an injured individual will either have to hire a professional house cleaner, babysitter, or an attendant (and the amount of reimbursement available is significantly below the amounts charged by most of these professionals), or family and friends can perform these services but they will only be reimbursed by the insurer, up to the limits, if they have lost money from other sources (for example, employment) to perform that service.

Attendant care limits for non-catastrophically injured individuals will be reduced from a maximum of \$72,000.00 to \$36,000.00, with the maximum monthly amount remaining at \$3,000.00.

Income replacement benefits will now be calculated based on 70% of the insured's pre-accident gross income, versus the current 80% of net income. Additionally, insured individuals will have the right to have an accountant's report paid for, up to \$2,500.00, to assist in the determination of their entitlement amount.

One of the very few positive changes in the regulations will be that the definition of catastrophic injuries will include individuals who have lost one limb in a motor vehicle accident.

We at Smitiuch Injury Law encourage everyone to be aware of the reductions in your basic accident benefits coverage at the time of the renewal of your automobile insurance policy and to carefully consider the purchase of additional premiums.

7 Important Time Limits

- 1 If you have been injured in an accident involving a motor vehicle, you have 120 days from the date of the accident to notify a potential at-fault driver that you intend to start a lawsuit
- 2 If you have been injured in a motor vehicle accident, you have 10 days from the date of the accident to provide written notice of claim to a municipality if non-repair of the road contributed to the accident
- 3 If you have been injured in an accident involving a motor vehicle, including a pedestrian or cyclist, you have 2 years from the date of the accident to have a lawyer start a lawsuit on your behalf

Social Networkers Beware!



Social networking has become a part of many people's everyday lives. The breadth of information that can be exposed through the posting of information, photos and videos on popular websites, such as Facebook, MySpace and Twitter, can pose a serious risk to injury claimants.

Injury victims often assert that their lives have changed following the accident. Their daily activities can be limited due to suffering from constant pain, fatigue, depression and anxiety, causing a loss of enjoyment in many of these tasks.

Insurance companies involved in ongoing surveillance of accident victims and investigation of these claims will utilize social networking websites in order to confirm and verify the credibility of

an accident victim's case. Insurance adjusters are now being trained to search social networking sites to extract all of the information they can on an accident claimant.

In a recent Ontario court decision, *Leduc v. Roman*, the judge found that, "[i]t is reasonable to infer that his social networking likely contains some content relevant to the issue of how Mr. Leduc [the plaintiff] has been able to lead his life since the accident." The judge therefore ordered that the plaintiff be cross-examined about the content posted on his Facebook site.

If you have been injured in an accident, it is of utmost importance that you carefully monitor the content you post on these websites and not neglect their impact on your case.

Profile Of Chris Jackson Accident Benefits Manager



Chris Jackson, or "Action Jackson" (which he has been affectionately named by the firm), joined Smitiuch Injury Law in April 2010. Since then, he has proven to be a valuable asset to the firm as it continues to grow and expand. As the Accident Benefits Manager, he is responsible for managing all accident benefit matters for the firm and provides guidance and direction to rehabilitation professionals. He is also responsible for communication with the Managing Partner and other departments within the firm.

Before joining the staff of Smitiuch Injury Law, Chris held a variety of positions across Canada; each position giving him an area of expertise that he now brings to the firm. Chris was educated at King's University College at the University of Western Ontario. He holds a Bachelor of Arts degree in Philosophy and a Master of Divinity degree. Building on his Master of Divinity degree and counselling

background, Chris became a rehabilitation counsellor, which led to him becoming a rehabilitation case manager, with a specialty in paediatric brain injury rehabilitation. Chris spent some time working as a case manager in London. He moved to Vancouver when he was asked by the national rehabilitation company that he worked for to manage all of its operations in British Columbia. He returned to Ontario to work for the same firm where he was assigned to manage the Southwestern Ontario operations.

After discovering a keen interest in the legal aspects of the profession, Chris joined a plaintiff law firm in London. In 2007, he began work for an insurance company as a Senior Accident Benefits Examiner and ADR Coordinator. His previous experience working for an insurance company gives him a unique insight into the industry, which greatly assists our firm's clients with their cases.

Chris' favourite part about his job is knowing that he has made a positive difference in the lives of our clients. According to Chris, "Most of the battles I have with insurance companies take place behind the scenes, which is how it should be. A client should feel confident that their case is in good hands."

When he is not assisting clients Chris enjoys taking ballroom dance classes and gourmet cooking. He is a member of the Ontario Trial Lawyers Association and a member of the Environmental Advisory Committee for the City of Woodstock, where he resides.

Chris is located in both the Brantford and Toronto offices and can be reached directly at, cjackson@smitiuchinjurylaw.com, 519-754-1558 or 416-621-1551, Ext. 202

- 4 If you have been injured in an accident involving a motor vehicle, you must notify your insurer within 7 days that you intend to apply for accident benefits and you must send a completed application within 30 days of getting the forms
- 5 If your insurance company denies the payment of an accident benefit, such as therapy or prescription expenses, you generally have 2 years from the date of the denial to start a lawsuit or arbitration proceeding
- 6 If a loved one has been killed due to the negligence of another (e.g. slip and fall), close family members may bring a claim for damages, including a loss of companionship & loss of income, under the *Family Law Act*
- 7 If a life insurance or short/long term disability claim has been denied by an insurance company, you have 2 years from the date of the denial to have a lawyer start a lawsuit on your behalf

Supporting Early Learning and Literacy

The employees of Smitiuch Injury Law are always pleased when they are able to support organizations and programs that benefit children. What better organization to support than “Kids Can Fly”.

“Kids Can Fly” is an independent initiative based in Brantford and Brant County. The focus of the organization is twofold; to promote the importance of early childhood development from the prenatal stage to six years of age and to promote the importance of parenting. Their vision is 'to help every child reach their full potential'. Their approach is based on the research of the 1999 Early Years Study, Mustard-McCarin & The Early Years-Three Years Later. Mustard-McCain.

Their current goals include implementing the Roots of Empathy Program, raising awareness on the significance of the developmental years of life and supporting both literacy and parenting. Roots of Empathy is a program that seeks to develop emotional literacy, to nurture tolerance and to help children understand differences.

Smitiuch Injury Law is a proud sponsor of the annual Kids Can Fly “Storybook Breakfast”. Children, parents, grandparents and friends enjoy a magical experience eating breakfast with well known Disney and cartoon characters. Being a sponsor allows children who would normally not be able to attend the breakfast an opportunity to attend and eat breakfast with some of their favourite cartoon characters. “It's great to see the smiles on kids faces

when they meet one of their favourite cartoon characters”, says Michael Smitiuch, Principal at Smitiuch Injury Law. “I am pleased our firm can be a small part of such a wonderful event”.

We invite you to learn more about Kids Can Fly by visiting www.kidscanfly.ca or contacting Sharon Brooks, Executive Director at, sharon.brooks@sympatico.ca,



Going Green

Smitiuch Injury Law is committed to 'Going Green'. Our firm continues to search for new opportunities to adopt eco-friendly alternatives that will help the environment as well as increase productivity in the workplace.

Our Toronto and Brantford offices recently participated in the Ontario Power Authority's Power Savings Blitz program. By upgrading all our lighting to energy-efficient lighting we will help reduce electrical consumption and provide electricity savings of up to \$400 per year.

Smitiuch Injury Law has also taken steps to increase our efficiency in case management through the use of eco-friendly alternatives. In our efforts to become a paperless law firm we use a case management software system from Sandcat Software Inc. of Toronto called Primafact. This software allows for law firms to store, view, edit, export and manage all forms of documents without printing a single sheet of paper. With Primafact all correspondence and paperwork for each individual client is stored and immediately accessible. On average, a single case file may contain as many as 3,000 documents, which may need to be duplicated several times. The use of this software has allowed Smitiuch Injury Law to save hours of photocopying and countless amounts of paper. Primafact not only reduces the amount of paper in our offices but it also reduces paper in other law firms that we have cases with. Reports and records that we provide to other firms do not have to be printed but instead can be copied to a DVD or CD using Primafact.

Michael Smitiuch was featured in the February 2005 issue of Canadian Lawyer Magazine describing the benefits of Primafact.



Smitiuch Injury Law Event Calendar

August 18, 2010 - 4th Annual Victim Services of Brant Golf Tournament & F.A.I.D (Fight Against Impaired Driving Memorial Hole)

Smitiuch Injury Law is pleased to be a sponsor of this event.
Paris Grand Country Club, Paris, ON

September 15, 2010 - Ontario Automobile Insurance Changes: The Impact on Health Care Professionals

This seminar, presented by Smitiuch Injury Law, will help attendees understand the changes to the no-fault auto insurance regulations taking effect September 1, 2010.
Brantford Golf and Country Club, Brantford, ON

September 23, 2010 - Personal Injury Rights Seminar

Hosted in conjunction with the Korean Law Student's Association (KLSA) of Osgoode Hall Law School and the Korean Canadian Women's Association (KCWA), this seminar will review the rights of an injured individual.
Galleria Cultural Room, Thornhill, ON

September 28, 2010 - Law Society of Upper Canada - New Lawyer Practice Series- Plaintiff's Personal Injury Law 2010

This program offers a hands-on primer on the essentials of a plaintiff's personal injury file. Michael Smitiuch will be co-chairing.
The Law Society of Upper Canada - Donald Lamont Learning Centre, Toronto, ON

October 3, 2010 - Word in the Square – A Family Literacy Festival

Hear Craig Keilburger, author of "Me to We" and enjoy a variety of fun, family oriented activities to celebrate literacy. Smitiuch Injury Law is pleased to be a sponsor of this event.
Harmony Square and The Sanderson Centre, Brantford, ON



For further information or to discuss how we can help you
please contact Michael Smitiuch at:
416.621.1551 or msmitiuch@smitiuchinjurylaw.com

"...helping those who need it the most."

SMITIUCH INJURY LAW

PROFESSIONAL CORPORATION

Toronto: 21 Four Seasons Place, Suite 600 / Toronto, Ontario M9B 6J8 / **T** 416.621.1551 **F** 416.621.1558 1.866.621.1551
Brantford: 330 West Street, Unit 6 / Brantford, Ontario N3R 7V5 / **T** 519.754.1558 **F** 519.754.1580

www.smitiuchinjurylaw.com

