

disclosure

Your quarterly source of personal injury news



SMITIUCH INJURY LAW

The Long & Winding Road To Justice: Ontario Court Of Appeal Upholds Jury Verdict

Fourteen and half years after their pursuit for justice began, Lanny and Mickey Stilwell's journey is finally over. On November 4, 2014, the Ontario Court of Appeal upheld the trial verdict reached by a jury in London, Ontario in 2013. The ruling by the appeal court marked the end of one of the longest running individual lawsuits in Ontario history.

This legal odyssey began on September 11, 2000, when the Visions Dutch Oven that Mr. Stilwell was rinsing shattered into four pieces and severed the nerves, tendons and arteries in his right wrist.

The road to justice was a bumpy one. Along the way, the Stilwells had to overcome a Defendant's bankruptcy, a discarded pot, the death of a key witness, a summary judgment motion, countless delays, a six week trial and relentless opponents who had never before lost a case like this in North America. Even after they were victorious at trial, they faced a reversal of the jury verdict when the case went before three judges at the Ontario Court of Appeal. Despite all of this, the Stilwells never wavered in their belief that they would prevail, and they did.

Without having the actual pot at trial, it was necessary to prove that the entire Visions cookware product line posed a danger to those using it. At the trial, Dr. Doug Perovic, an engineering professor from the University of Toronto, testified that the cookware could form cracks not visible to the human eye and then suddenly fracture. Evidence at the trial also revealed that the manufacturers and distributors of the cookware, Corning Inc. and World Kitchen, knew that there had been over 2000 other incidents where individuals had been injured in the past.

The jury found the manufacturers liable for Mr. Stilwell's injuries and concluded that there were deficient warnings on the product. The jury's verdict sent a clear message that manufacturers ought to be held accountable for the safety of their products and they must make full disclosure as to the dangers inherent with a product.

The Ontario Court of Appeal reviewed the jury's decision and concluded that a jury verdict should be set aside only where it is plainly unreasonable and unjust that no jury reviewing the evidence as a whole and acting judicially could have arrived at the verdict.

The Court of Appeal noted that there was evidence from Mrs. Stilwell that she was extremely careful in using the Dutch Oven and never used it in a manner contrary to the instructions. The Court also noted that she immediately stopped using the entire set of cookware after the incident and kept the set at home due to fear it would be used by someone else. It was also noted that the Dutch Oven was used in a manner in accordance with its instructions at the time of the incident.

The Court of Appeal's decision is significant because it recognizes that a jury's verdict should be respected and not interfered with except in limited circumstances.

Smitiuch Injury Law would like to thank all those who participated and contributed to this case. For additional information and video coverage please search online at Global News, CBC, and other news websites as well as our blog and Twitter feed.



Most Dangerous Intersections In The GTA

- 1 Lake Shore Boulevard & Lower Jarvis Street
- 2 Lake Shore Boulevard & Don Roadway
- 3 Ellesmere Road & Bellamy Road

I was injured in a single motor vehicle accident – Do I have a case?

What happens if you are injured in a motor vehicle accident and the only vehicle involved is your own?

It is important to remember that even if you are at fault for such an accident, you are still entitled to accident benefits through your own insurance company.

Some of the benefits you may be entitled to include medical and rehabilitation benefits, attendant care benefits, income replacement benefits, non-earner benefits, caregiver benefits and housekeeping benefits. However, if you are convicted of a criminal offence as a result (ex. impaired driving), then the available accident benefits are reduced to medical and rehabilitation benefits and attendant care benefits only.

In addition to accident benefits, you could also have a claim against someone else who may be responsible for the accident.

As a passenger, you may have a claim against the driver.

As a driver, you may have a claim against the municipality responsible for the road maintenance, if the road conditions caused, or contributed to, the accident. This applies in cases of slippery road conditions and cases of non-repair.

If you intend to pursue an action against a municipality, you have ten

days from the date of the accident to provide the municipality with written notice of your claim.

With regard to cases involving municipalities, Kelly v Perth (County) confirmed the following:

“The Municipal Act requires each municipality to keep highways under its jurisdiction 'in a state of repair that is reasonable in all the circumstances' and provides that a municipality that fails to do so 'is, subject to the Negligence Act [and] liable for all damages any person sustains because of the default.'”

In the above case, on April 6, 2009, Stefanie Kelly was travelling along County Road 37, in Perth County, Ontario. Unfortunately, the road was both icy and snow covered. Stefanie lost control of her vehicle, left the road and struck a tree. She suffered a serious brain injury and sustained multiple fractures.

The Court held that the County failed to keep County Road 37 in reasonable repair and that this accident would not have occurred if they had. As such, the County was liable for Stefanie's injuries and damages.

It is important to keep in mind that if you are involved in a single motor vehicle accident, you may still have a claim against another at fault party.

Profile Of Afsoun Amirsolaimani *Student-at-law*



Smitiuch Injury Law is pleased to introduce Afsoun Amirsolaimani, a Student-at-law who has been with the firm since February 2015.

Afsoun was born in Tehran, Iran and raised in Canada. With a strong interest in bringing forth change and learning about the framework of our judicial system, Afsoun attended York University where she obtained an Honours Bachelor of Arts degree in Political Science. In hopes of one day becoming a successful litigator, she continued her academic path and earned her law degree (J.D.) from the University of Ottawa's Faculty of Law with a Specialization in Law and Technology.

While in law school, Afsoun was actively involved in giving back to her community by becoming the President of the Iranian Law Student Society as well as being a Pro Bono volunteer for the Canadian Legal Development Network. She has completed two internships with the Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) where she was involved in doing legal research on cutting edge copyright and privacy issues. She has also travelled to San Juan, Puerto Rico to complete an intensive course in Art, Technology and Law at the University of Puerto Rico.

Recently, Afsoun successfully passed both her Barrister and Solicitor Licensing Examinations and acquired a Second

Language Certificate for French from the University of Ottawa. She is bilingual and can speak conversational Farsi.

With the support of the firm, Afsoun has been able to develop the skills that she will rely upon throughout her career as a lawyer. Her journey as a Student-at-law with Smitiuch Injury Law may be recent but her experience has been nothing but rewarding thus far.

In Afsoun's spare time, she enjoys painting, photography, travelling, and spending time with her family and friends.

Afsoun can be reached directly at afsoun@sil.lawyer or 416-621-1551, ext. 214

4

Lawrence Avenue East
&
Midland Avenue

5

St. Clair Avenue West
&
Old Weston Road

6

Sheppard Avenue East
&
Morningside Avenue

7

Weston Road
&
Lawrence Avenue West

Source: City of Toronto's Transportation Services Division (2009 – 2013)

Supporting World Vision Child – Stephen

On December 16, 2010, Smitiuch Injury Law made an important decision to sponsor a little boy named Stephen through World Vision. World Vision is a non-profit charitable organization that is dedicated to working with children, families and communities to overcome poverty and injustice, in nearly 100 countries.

By sponsoring Stephen, Smitiuch Injury Law is able to partner with World Vision in order to help provide the basics of life for Stephen and his family.

At the young age of three, Stephen was helping his family in Zambia with everyday chores. In doing this, Stephen was not able to go to school or enjoy his childhood. Having Smitiuch Injury Law sponsor Stephen, has given Stephen the support to receive access to essentials like, quality education, health & nutrition, agricultural training, clean water and income generation.

It is a great day at Smitiuch Injury Law when we receive an update on Stephen! Both Stephen and the staff of Smitiuch Injury Law

enjoy sending letters, pictures, and crafts back and forth. In the four years of sponsoring Stephen, Smitiuch Injury Law has witnessed Stephen grow tremendously. He can now participate in errands, draw detailed pictures and write heartfelt letters.

Since sponsoring Stephen, his community has also reaped the benefits that World

Vision provides. In 2014 alone, 2 schools received supplies, 24 health care workers were trained, 30 farmers diversified their crops, 164 mothers have a new business, 5 wells were drilled/repared and 544 people were tested for HIV.

Please visit <http://www.worldvision.ca/> for further information.

A Call For Change: The Tragic Story of Prashant Tiwari

Prashant Tiwari was like any twenty year old. He was a hardworking student, a musician, a writer and “everybody’s big brother”. But in early 2014, his personality started to change; he became withdrawn, self-critical and depressed. On June 16, 2014, everything came crashing down, after harming himself, he told his father, “I need help”. His father, Rakesh, rushed him to Brampton Civic Hospital where Prashant was immediately admitted to the psychiatric unit and placed under suicide watch.

This is where Prashant's story could end with hope but tragically it takes a turn for the worst.

Rakesh felt his son was now safely in hospital care, but ten days later, on June 26, 2014, Prashant took his own life, while he was supposed to be under close staff supervision in the psychiatric unit of Brampton Civic Hospital. Although he was to be checked by staff every fifteen minutes, Prashant was left unattended for over two and a half hours. His body was found later in the hospital washroom. The hospital had left a chair in the shower area and Prashant used his hospital gown and a weight bearing vent to take his life.

“Hospitals are considered safe havens for those at risk,” said Michael Smitiuch, Principal of Smitiuch Injury Law. “This family is raising questions and awareness about obvious short comings in the care of high risk patients. This is a tragic case that puts the focus on a much wider problem,” added Smitiuch, “far more attention needs to be given to protecting vulnerable people, like Prashant, whose lives depend on a higher standard of hospital care.”

A CTV News W5 investigation discovered that as many as three-hundred deaths have occurred in Canadian hospitals over the past decade by patients who were supposed to be on strict suicide watch. According to W5, ninety-eight of those cases took place in Ontario.

It is hoped that through greater awareness and a change in the way hospitals supervise psychiatric patients that no one has to die again.

Please visit <http://www.smitiuchinjurylaw.com/Latest-News.shtml> for further information and to view the W5 segment.



Prashant Tiwari

Smitiuch Injury Law Event Calendar

February 7, 2015 - Kids Can Fly - 8th Annual Storybook Breakfast

Children and their parents enjoy breakfast with well known Disney and cartoon characters. Proceeds from this event are used to support early child development and parenting. Smitiuch Injury Law is pleased to be a participant and donor of this event.
New Covenant Christian Fellowship Church, Brantford, ON

May 14, 2015 - Hamilton Health Sciences Centre - 2015 ABI Conference

22nd Annual Conference on Neurobehavioural Rehabilitation in Acquired Brain Injury. Smitiuch Injury Law is pleased to be a gold sponsor and exhibitor of this conference.
Hamilton Convention Centre, Hamilton, ON

May 21, 2015 - Ontario Trial Lawyers Association Spring Conference - Driving to Success: Maximizing Your Auto Case

Chris Jackson, Smitiuch Injury Law Accident Benefits Manager, will be co-chairing the Law Clerks Concurrent Program.
Metro Toronto Convention Centre, North Building, Toronto, ON

June 20, 2015 - Fore The Kids Charity Golf Tournament

FORE the Kids Charity Golf Tournament is in support of the Kitchener Rangers Clarky's Kids. A charity that supports children and their families that have been touched by cancer. Smitiuch Injury Law is pleased to be a participant and donor of this event.
Granite Ridge Golf Club, Milton, ON



For further information or to discuss how we can help you
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