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Your quarterly source of personal injury news

SMITIUCH INJURY LAW

PROFESSIONAL CORPORATION

Hot Coffee and Personal Injury Lawsuits: Dispelling the Myth

It has been used on many occasions as an example of a frivolous lawsuit: In 1994 a woman in the United States was awarded \$2.7 million in punitive damages against McDonald's Corporation because of hot coffee spilled in her lap that she had purchased at a drive-thru.

At first glance, it seems reasonable to question how someone would not be aware of the risks of drinking hot coffee in a car and how such a staggering amount of money could be awarded to someone because of an apparently silly mistake.

However, when we look at the facts of this case in detail, a different perspective emerges:

- The woman, Stella Liebeck, was 79 years old on the date of the incident.
- She was not driving the vehicle. Her grandson was driving and she was sitting in the passenger seat.
- The car was not in motion at the time of the spill. Her grandson had pulled into a parking space at McDonald's after obtaining their order so that she could add cream and sugar to her coffee.
- Ms. Liebeck was removing the lid from her coffee cup when it spilled on her lap.
- The spill caused third degree (the most severe) burns to her thighs, buttocks and groin area. She required skin grafts and her medical bill was over \$10,000.00.
- Previous to this incident McDonald's had over 700 complaints about the temperature of their coffee involving serious injuries and they did nothing about it, despite already having objective information that the temperature of their coffee could cause severe burns. In essence, they ignored all the warnings that their coffee could cause serious damage and proof that it had already done so.
- Ms. Liebeck had simply asked McDonald's to reimburse her for her medical expenses (\$10,000.00). They offered to pay only \$800.00. She then retained a lawyer to recover all of her medical costs.
- In the jury's decision they found Ms. Liebeck 20% at fault and McDonald's Corporation 80% at fault.



- In order to punish McDonald's for so flagrantly ignoring warnings (and to make sure that they learned their lesson) the jury felt that the equivalent of two days' worth of coffee sales for McDonald's Corporation would be fair. That amount was \$2.7 million.

Many corporate entities have touted this lawsuit as the perfect example of the abuses in personal injury litigation. In the U.S., it has led to a movement (comprised of big business) for "tort reform" where caps are placed on damages that an injured person can obtain in a personal injury lawsuit. Many of these tort reforms include caps on the amount an individual can obtain for future medical expenses, attendant care and so forth.

A civil lawsuit is an important part of our justice system. It allows an individual who has been injured by a wrong caused by another person or company a means to obtain compensation for their needs due to their injuries. Unfortunately, it often takes a successful lawsuit to alter the dangerous practices of corporations who regularly put profits ahead of the safety of consumers.

Stages in a Lawsuit

- 1 Initial Interview** – Review the incident details, injuries suffered and discuss lawsuit plan of attack.
- 2 Obtain Liability & Medical Evidence to Support Lawsuit** – Request evidence such as police records, property damage photos, medical records, income tax and employment information.
- 3 Start a Lawsuit by Issuing a Statement of Claim** – All potentially responsible parties are named in the Claim as Defendants and compensation for injuries is sought.
- 4 Examinations for Discovery** – Under oath, the Defendant & Plaintiff are asked questions relevant to the lawsuit by the opposing lawyer. Areas covered include the incident details & injuries suffered.

“Economic Loss” and Accident Benefits Claims

In September 2010 the regulations applicable to motor vehicle accidents (called the “SABS”) were changed significantly. One of the newer terms introduced into the new regulations is that of an “economic loss”.

Under the old regulations, family and friends who provided attendant care or housekeeping and home maintenance for individuals who were injured in a motor vehicle accident were entitled to compensation. Now the insurer only has to pay for these services if they were provided by a professional (for instance, a personal support worker or a housekeeper or home maintenance person), or to other individuals, such as family and friends, if they have incurred an “economic loss”.

The term “economic loss” is not defined within the Statutory Accident Benefits Schedule regulations.

Barron's Insurance Dictionary defines “economic loss” very broadly as follows: “Total estimated cost incurred by a person or persons, a family, or a business resulting from the death or disability of a wage earner (key employee), damage or destruction of property, and/or a

liability suit (negligent acts or omissions by a person result in property damage or bodily injury to a third party). Factors included in the total cost are loss of earnings, medical expenses, funeral expenses, property damage restoration expenses, and legal expenses.” Non-pecuniary expenses, such as pain and suffering, are not considered an economic loss for legal purposes.

Based on our experience to date insurers are interpreting the definition quite narrowly. As an example, one insurer brazenly responded to our client's application by stating that, “...a loss of income does not necessarily mean an economic loss.”

Unfortunately there has not yet been any case law established by Courts or Arbitrators to elaborate on how this term will be interpreted. We take the position that any expenses incurred by a loved one to take care of the needs of an individual or their house/property, including mileage/gas, time away from the labour market or job, a missed opportunity for career advancement, loss of classes in school and so forth, would fall within a reasonable definition as an “economic loss”.

Profile of Peter Cho Associate Lawyer



Smitiuch Injury Law is proud to introduce Peter Cho who is an Associate Lawyer with the firm. Peter has been a member of the Smitiuch Injury Law team since 2009 when he began his legal career as a summer student under the tutelage of Michael Smitiuch, Principal of Smitiuch Injury Law. Since then, Peter has served the firm as an articling student in 2010 and now as an Associate.

Before joining Smitiuch Injury Law, Peter studied at the University of Toronto, St. Michael's College where he graduated with an Honours Bachelor of Arts degree specializing in Economics and Political Science. After completing his undergraduate education, Peter began his pursuit of a career in law by enrolling at the Osgoode Hall Law School.

As a student at Osgoode, Peter served his local community by volunteering at the Rexdale Community Legal Clinic where he assisted staff lawyers with social assistance, landlord & tenant and immigration matters. Thereafter, Peter assisted the Parkdale community as a Student Caseworker in the Social Assistance, Violence and Health Division. Peter successfully completed the Ontario Bar admission requirements and became a member of the Law Society of Upper Canada in June 2011.

Peter attributes his decision to become a lawyer, and to specifically practice tort law, to his experience assisting individuals in need in Rexdale and Parkdale and to his desire to help those who have suffered an injury or injustice. In his experience thus

far, Peter has appeared before many judicial bodies including the Criminal Injuries Compensation Board and the Ontario Superior Court of Justice.

When he is not practising law, Peter enjoys spending time participating in a variety of sporting activities and travelling with his wife. Peter is a member of the Ontario Trial Lawyers Association and the Korean Canadian Lawyers Association.

Peter can be reached directly at pcho@smitiuchinjurylaw.com, 416-621-1551, Ext. 204.

5 Obtain Expert Liability, Medical & Income Loss Reports – Obtain reports from experts such as engineers, physicians and accountants that support the basis of the lawsuit.

6 Mediation – Attempt to settle the lawsuit using a third party mediator who works to find points of agreement and encourages the parties involved to agree on a fair settlement.

7 Pre-Trial Conference – Conducted before a judge but in a less formal setting than a trial. A final attempt is made to settle the lawsuit before a formal trial occurs.

8 Trial – Conducted in a courtroom before a judge and a jury. A final verdict is rendered by the jury. 95% of cases settle before a trial is conducted.

Ontario Trial Lawyers Association - Helmets on Kids

On June 11, 2011, the staff of Smitiuch Injury Law and their families had the pleasure at attending The Children's Safety Village of Brant Street Festival, in Brantford, Ontario. They were there to support the distribution of bicycle helmets to children attending the festival.

Smitiuch Injury Law donated 250 bicycle helmets to the Children's Safety Village of Brant this summer as a member of the Ontario Trial Lawyers Association's Helmets on Kids campaign. This year, OTLA's Helmets on Kids campaign will distribute approximately 4,000 bicycle helmets to school-aged children in cities and regions across Ontario. Helmets in Brantford were distributed, free of charge, by the Safety Village during the Street Festival, school trips and summer camps.

“Wearing a helmet prevents injuries” says Michael Smitiuch, Principal of Smitiuch Injury Law and a member of OTLA's Helmets on Kids campaign task group. “This Summer and Fall, with all the opportunities for outdoor activities throughout Ontario, we want to help ensure that children are wearing their helmets when participating in activities such as cycling and skateboarding.”

According to the Canadian Institute for Health Information, cycling-related head injuries in children and youth account for 60% of hospitalizations in this age group.

Wearing a bicycle helmet when involved in a cycling accident can reduce the risk of a brain injury by up to 88%.

We invite you to learn more about the Ontario Trial Lawyers Association and the Helmets on Kids campaign by visiting www.otla.com.



Constable Emmons, Brantford Police, accepts a bicycle helmet from Michael Smitiuch and members of his staff and their families.

Concussions: The Hard Facts

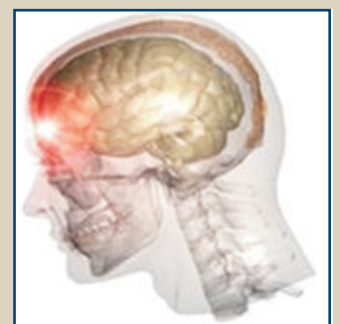
Concussions have been in the media spotlight recently. Sidney Crosby's problems associated with concussions are being followed closer than the GDP of most countries.

Concussions and motor vehicle accidents have co-existed since people began to drive. A concussion is a very common brain injury which results when there is a shift of the brain inside the skull. This can occur in a number of direct and indirect ways and to varying degrees of severity. A common misconception is that the threat of a concussion can only arise if there is a direct blow to the head. However, concussions can arise from the violent shaking of the head or from the force of a whiplash type of injury from a motor vehicle accident. It is important to note that it is often the case with a concussion that there is usually no visible injury to the structure of the brain. Therefore it is crucial to be aware of and monitor the common symptoms from a concussion which are: headaches, neck pain, vomiting, nausea, dizziness and blurred vision. These symptoms may not appear immediately. It is often the case where these symptoms arise 24 hours after the initial injury.

Many professional sports organizations including the NHL, NBA and NFL have begun to recognize the severity of concussions and the impact on their players and are now taking preventative steps. Improvements to equipment and changes to rules are examples of steps being taken. Lawyers practicing personal injury law, like Smitiuch Injury Law, have long understood that concussions can occur quite often and in a variety of scenarios.

If you have noticed someone experiencing concussion symptoms, it is of utmost importance to closely monitor the person for several hours and up to a few days. The person should immediately rest and refrain from any form of physical strain and a doctor should then be consulted for further examination.

Improvements in automobile safety and sports equipment will continue however the potential of a concussion can never be eliminated. The legal community is now finally realizing the long term impact that concussions can have on individuals.



Smitiuch Injury Law Event Calendar

August 17, 2011 - 5th 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 and participant of this event.
The Paris Grand Country Club, Paris, ON

September 22, 2011 - The "New" Accident Benefits: Practical Issues for Health Care Professionals - One Year Later

This seminar, presented by Smitiuch Injury Law, is intended for health-care professionals who wish to hear the latest Accident Benefits issues and how they pertain to their practice since the SABS limits changed substantially in September 2010.
Brantford Golf & Country Club, Brantford, ON

September 27, 2011 - Ontario Trial Lawyers Association Law Clerks Conference – Back to the Basics: SABS from Start to Finish

Chris Jackson, Accident Benefits Manager, will be speaking on "Review of Initial Applications and Forms".
Metro Toronto Convention Centre, Toronto, ON

October 2, 2011 - Word in the Square – A Family Literacy Festival

Enjoy a variety of fun events such as author readings, Jeopardy, Scrabble, a Spelling Bee, Puppet Shows and other live entertainment.
Smitiuch Injury Law is pleased to be a sponsor of this event.
Harmony Square, Brantford, ON

November 10 - 11, 2011 - Ontario Trial Lawyers Association 2011 Fall Conference

Chris Jackson, Accident Benefits Manager, will be speaking on "Tracking the Benefits Post September 1, 2011 - Helpful Hints to Ensure Clients Keep Track".
Metro Toronto Convention Centre, Toronto, ON



For further information or to discuss how we can help you
please contact Michael Smitiuch at:
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"Helping those who need it the most."

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