

# disclosure

Your quarterly source of personal injury news

SMITIUCH INJURY LAW

PROFESSIONAL CORPORATION

## Drinking and Driving Takes Lives

Government bodies and private organizations alike have been relentless in their fight against drinking and driving over the years, and for good reason. Drinking and driving takes lives. It is astonishing to think that despite widespread awareness initiatives on behalf of these organizations that drinking and driving continues to pose an imminent danger on our roads. This continued danger has given impetus to the recent development of a local organization in support of the fight against drinking and driving and the passing of tougher drinking and driving legislation by the Ontario government.

### A Family's Tragedy

Following a drinking and driving accident in Brantford, Ontario, on September 26, 2009, which resulted in the untimely death of their 17 year old son Ciaran, Carol and Eugene Fagan and their family decided to take an active role in the fight against drinking and driving. Carol spearheaded the development of an organization called Fight Against Impaired Driving (FAID). FAID was developed in order to promote awareness of the dangers of drinking and driving and the devastating impact it has on families and communities. The organization held its first annual walk on September 26, 2010, in Brantford, to raise money to support its initiatives. The support from the community was outstanding and the walk generated donations which nearly tripled its target of \$5,000.00. Carol's message to the community is clear, "Everybody has to learn what the emotional effects of drinking and driving are on families. You are always trying to pick up your life but you are never the same because there is someone missing" she said. Carol also stresses that "while drunk drivers may be charged and may face jail time, it is ultimately the families of those hurt or killed in drinking and driving accidents that are given a life sentence".

### New Tougher Laws

The Ontario government has recently passed legislation which has both decreased the legal allowable blood alcohol concentration



The 1st Annual FAID Memorial Walk took place in Brantford, Ontario, on September 26, 2010. L-R: Eugene Fagan, FAID Co-founder, Carol Fagan, FAID Co-founder, Dave Levac, MPP of Brant, Penny McVicar, Executive Director of Victim Services of Brant and Vince Bucci, Brantford Ward 2 Councillor.

level and has imposed a zero-tolerance policy for drivers 21 years of age and younger. Effective May 1, 2009, drivers whose blood alcohol concentration reads between 0.05% and 0.08% face a roadside license suspension for periods of either 3, 7, or 30 days. Effective August 1, 2010, fully licensed drivers under the age of 21 years who are caught with any alcohol in their blood will receive an immediate 24 hour roadside license suspension and, if convicted, will face a fine of \$60.00 - \$500.00 along with a 30 day license suspension. Furthermore, novice drivers (G1, G2, M1 or M2 class licence) who are caught with any alcohol in their blood will face a similar fine and a suspension based on the Novice Driver Escalating Sanction. Ontario is the fourth province to implement zero tolerance legislation for young and new drivers, after Manitoba, Nova Scotia and New Brunswick.

Organizations such as FAID and the Ontario government have done their part to ensure that their message has been loud and clear: don't drink and drive. The responsibility now lies with each of us to make sound decisions to protect our families and communities.

# 7 Questions To Help Choose An Injury Lawyer

- 1 Does the lawyer specialize in handling personal injury cases?** It is crucial that the lawyer be extremely familiar with the law and procedures involved with your case as they can be very complex.
- 2 Does the lawyer have experience handling cases involving injuries like mine?** In order to properly advocate for you, the lawyer should understand the nature, extent and complexity of your injuries.
- 3 Will the lawyer stay personally involved in my case after he/she is retained?** Constant and direct involvement by your lawyer is essential to ensure that your case gets the attention that it deserves.

## Homeowners Beware - The Winter Season Is Upon Us

With the Winter season quickly approaching, homeowners should be vigilant with removing snow and ice from their property, or risk being sued.

In 1991, the Supreme Court of Canada explained in *Waldick v. Malcolm* that the Occupiers' Liability Act was enacted "to promote, and indeed, require where circumstances warrant, positive action on the part of occupiers to make their premises reasonably safe".

This action arose from a slip and fall incident where the plaintiff, Waldick, was seriously injured when he fell on an icy parking area on the defendants', the Malcolms, rented property. Despite the fact that Waldick was aware that the laneway was slippery and acknowledged that its condition could be seen without difficulty, the Supreme Court found the Malcolms liable for Waldick's personal injuries.

The Supreme Court found that the Malcolms breached their duty of care under s. 3(1) of the Occupiers' Liability Act by doing nothing to render the parking area entrance where Waldick had fallen less slippery. The Supreme Court found that the defendants acted unreasonably and breached their duty by failing to either salt or sand the area to make it less slippery. In failing to take positive action, the

Malcolms failed to meet the standard of reasonableness. The Supreme Court stated that what constitutes reasonable is specific to each fact situation, thus the provision states "such care as in all circumstances of the case is reasonable."

In addition, the Supreme Court clarified that arguing the defence of 'willing assumption of risk' (also known as the *volenti* defence) would likely not succeed in slip and fall incidents involving icy sidewalks or driveways. The Supreme Court stated that there is a very high standard of evidence required in order to invoke this defence as it is a complete bar to recovery for the injured party. It is only in the clearest of cases, where an individual has provided an express waiver of their legal rights, where this defence may successfully be raised.

Given the above, homeowners should exercise due diligence in the removal of snow and ice on their property. In particular, extra attention should be paid to shovelling and salting following a snowfall or icy conditions.

Michael Smitiuch served as co-counsel for the damages portion of the *Waldick v. Malcolm* case.

## Profile Of Arthur Ryan Litigation Coordinator



Smitiuch Injury Law is proud to introduce you to our Litigation Coordinator, Arthur Ryan. Art Ryan, affectionately known as "Art the Irish", has been part of the Smitiuch Injury Law team since 2006.

Art was born and raised in Brantford, Ontario, where he currently resides with his wife and two young children. Art maintains his relationship with his hometown by generously volunteering in his spare time with various organizations, including the Canadian Paraplegic Association and the Catholic Youth Organization as a convener of the basketball program. Art has also contributed to his local community by

serving as a basketball referee in Brantford for the past 20 years.

After obtaining his Bachelor of Commerce degree from Ryerson University in 1997, Art began his career as an auditor with the Ontario Lottery Gaming Commission at their Brantford location. After a number of years as a professional auditor, Art joined Smitiuch Injury Law with a keen ability to assess and evaluate tort claims and most importantly, a strong desire to assist persons in need of legal assistance. "What I enjoy most about my job is assisting people in their time of need", says Art.

Art serves admirably in his role as an

ambassador for the firm, working at a personal level with all of our clients as well as with insurance adjusters to help resolve disputes and manage litigation matters. He is also responsible for assessing tort claims and reporting to the Principal of the firm to ensure matters are handled in an efficient manner.

When Art is not busy at work assisting our clients, Art enjoys reading, golfing, spending time with his family and playing with his two young children.

Art works out of both the Brantford and Toronto offices and can be reached directly at, [aryan@smitiuchinjurylaw.com](mailto:aryan@smitiuchinjurylaw.com), 519-754-1558 or 416-621-1551, Ext. 205.

- 4 **Does the lawyer have trial experience?** A lawyer who is ready and willing to take a case to trial stands a better chance of obtaining a higher settlement for their client than a lawyer who avoids or never goes to trial.
- 5 **Does the lawyer have a team of professionals supporting him/her?** In order to efficiently and properly move your case forward, a team of law clerks, paralegals, legal secretaries and SABS experts is crucial to success.
- 6 **Does the lawyer's firm embrace and use technology to their advantage?** Paperless software and scanning services are examples of technology that can give a lawyer and his/her firm an advantage in the areas of efficiency and organization.
- 7 **What is the lawyer's reputation in the legal community?** The legal world is a small one and a lawyer with a great reputation versus a bad one will generally obtain better results for their clients.

## CPA Ontario Wheelchair Relay Challenge

On October 16, 2010, employees of Smiutch Injury Law and their families participated in the 5th Annual Brantford Wheelchair Race Challenge. The race was hosted by the Hamilton regional office of the Canadian Paraplegic Association Ontario.

The employees of Smiutch Injury Law raised \$1,000.00 towards this worthwhile event and entered a team of five enthusiastic participants. "It's always a pleasure to participate in such a worthy cause", says Michael Smiutch, Principal of Smiutch Injury Law. "Participating also gives us a better appreciation of using a wheelchair, it's not easy".

The CPA Ontario's mission is to assist persons with spinal cord injuries and other physical disabilities to achieve independence, self-reliance and full community participation. The Canadian Paraplegic Association (CPA) was founded in 1945 by a group of World War II veterans with spinal cord injuries. The most frequent cause of spinal cord injuries are personal injuries sustained in a motor vehicle accident.

The first organized Wheelchair Relay Challenge was held in 1996 in Ottawa, Ontario. The inaugural event was a huge success and quickly became an annual event across the province, growing to 15 Wheelchair Relay Challenges held each year in Ontario.

The Wheelchair Relay is a major CPA Ontario fundraising initiative. Funds

raised in each community go toward supporting important CPA Ontario programs and services in that community. This year over \$400,000.00 was raised.

We invite you to learn more about CPA Ontario by visiting their website, [www.cpaont.org](http://www.cpaont.org).



## Things To Consider When Renewing Your Automobile Insurance

With the recent changes to automobile insurance in Ontario (see our Summer 2010 newsletter) many accident benefits have been reduced dramatically. Ironically, if you are catastrophically injured, your benefits will not change; but if you suffer a serious, but non-catastrophic, injury it is highly doubtful that you will have adequate coverage with the basic benefits plan.

When renewing your automobile insurance we suggest asking yourself, "If I was seriously injured in an automobile accident today, what would I need?" With that question in mind, look at the benefits listed below to help determine the appropriate options and speak with your broker about them.

**Income Replacement Benefits** – If you cannot work, the basic amount is \$400.00 per week. If you have short-term and long-term disability benefits through your employer, you may not need additional coverage. If you do not have disability benefits and you make more than \$30,000.00 per year, you should look at increasing your weekly income replacement benefit amount.

**Medical and Rehabilitation Benefits** – Most extended health (group or employer) insurance plans have very limited coverage. Unless your extended health plan is unlimited we strongly encourage everyone to purchase the optional benefit to increase medical and rehabilitation limits from \$50,000.00 to \$100,000.00.

**Caregiver Benefits** – If you are the primary caregiver to either children or disabled/elderly adults, you should seriously consider purchasing coverage for a professional to care for your dependants in the event that you are not able to, especially if you are single.

**Housekeeping and Home Maintenance** – If you live alone, or those you live with would be unable to assist you with your normal housekeeping and home maintenance tasks in the event that you are disabled, you should seriously consider purchasing coverage for a housekeeping benefit.



## Smitiuch Injury Law Event Calendar

### **October 16, 2010 - Canadian Paraplegic Association Ontario - 5th Annual Brantford Wheelchair Race Challenge**

Smitiuch Injury Law was pleased to be a participant and donor of this event to help raise funds for people with spinal cord injuries. Brantlyn Community Centre, Brantford, ON

### **October 24, 2010 – The Responsibility and Liability of Being a Lifeguard Seminar**

This seminar, presented by Smitiuch Injury Law, helped attendees better understand the legal responsibilities assumed working as a lifeguard. Victoria Park Community Centre, Ingersoll, ON

### **December 10, 2010 – BC<sup>2</sup> (Breast Cancer Benefit Concert)**

A sit down coffeehouse where local musical talent will perform. Food, coffee, raffle tickets and merchandise will be sold. Proceeds from this event will be donated to the Canadian Cancer Society. Smitiuch Injury Law is pleased to be a participant and donor of this event. St. John's College, Brantford, ON

### **February 5, 2011 – Kids Can Fly – 4th Annual Storybook Breakfast**

Children and their parents enjoy breakfast with their favourite storybook 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. Rossini Lodge, Brantford, ON



For further information or to discuss how we can help you  
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*“...helping those who need it the most.”*



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