

disclosure

Your quarterly source of personal injury news

SMITIUCH INJURY LAW

PROFESSIONAL CORPORATION

A Cycling Race Tragedy

Cycling can be a very fun, healthy and safe activity for people of all ages. However, statistics show that cycling can also be a very dangerous and potentially fatal sport. According to figures from Statistics Canada, in 2007, 65 cyclists died on Canadian roads. That is 2.3% of the total number of road fatalities, according to Transport Canada.

On average, approximately 7,500 cyclists suffer serious injuries every year. It is estimated that as many as 70,000 others are treated in hospital emergency rooms for cycling-related injuries.

Christopher Uy's Story

On April 2, 2010, Christopher Uy, a 32 year old novice cyclist, participated in the annual Good Friday Road Race in Flamborough, Ontario, which was planned, hosted and organized by the Hamilton Cycling Club in conjunction with the Ontario Cycling Association. This was the first competitive cycling race that Chris had ever entered.

Shortly after the start of the race, tragedy struck when Chris became caught in a sudden congestion of racers. Chris applied his brakes and within a split second he had crashed his bicycle and was projected over his handlebars. Chris was then struck by another rider, snapping his bicycle in two.

In an interview given to the *Hamilton Spectator*, Detective Constable Jeff Majik raised the issue of race safety and had this to say about the organization of the race, "From our point of view, the issue is the number of participants and the lack of space", he said.

The accident left Chris hospitalized for three and a half months due to severe head trauma. He was left with an acquired brain injury from which he will likely never fully recover.

A Life-Changing Event

Due to the severity of Chris' brain injury, he and his partner, Christine James, and their 5 year old son, Jesse, have experienced



Christopher Uy and his 5 year old son, Jesse, enjoy a moment together before the start of the Good Friday Road Race in Flamborough, Ontario on April 2, 2010.

a life-changing event from which they continue to struggle with on a daily basis.

Before his tragic accident, Chris was successfully pursuing a culinary career. He had worked with many highly acclaimed and award winning chefs and was employed as a chef at the luxurious Windsor Arms Hotel in Toronto. His life was about his passion for cooking and providing for his family. As a result of his brain injury, Chris has been unable to resume his career and now remains socially isolated as a result of the myriad of rehabilitation and treatment programs he must now participate in to hopefully restore his pre-accident health.

"I feel completely different in my head. I feel completely different with my family and my son...I'm scared sometimes, scared of my memory and the thoughts that I get," Chris says.

If you would like to help Chris and his family, please visit www.chris.mbrc.org.

7 Significant Accident Benefits Cases

1 Carr and TD General
(FSCO A09-003154,
July 23, 2010)
Insurers must do a “more
careful” review of their
medical reports.

2 Sinnapu and Economical
(FSCO A09-000900,
July 30, 2010)
Insurer liable for special
award for unreasonably
withholding benefits to a
vulnerable claimant.

3 Cowans and Motors
(FSCO A09-003237,
October 15, 2010)
Insurer liable to a special
award due to relying on a
vocational assessment
from an “assessment mill”.

Short Term & Long Term Disability Claims

If an individual is unable to work due to an injury or medical condition, he or she may be entitled to receive Short Term and Long Term Disability Benefits (“STD/LTD”). To qualify for STD/LTD, a person **does not** have to be injured in a car accident, they need only have a medical condition which prevents them from working. If a person qualifies, they will receive a percentage of their lost income while they remain disabled from working.

STD/LTD benefits may be available through a group plan provided by their employer or they may have purchased their own individual plan. Once a person is no longer able to fulfill their job duties, an application for benefits should be made immediately to the insurance company providing coverage. The application forms are available from the employer, the broker who sold the policy or from the insurance company directly.

At its core a STD/LTD policy is a contract between an individual and an insurance company and both sides must honour their obligations under it. For an individual, time is of the essence for submitting an application for benefits as there are always time limits for making an

application. For an insurer, they have a duty to act in “good faith” when considering and handling a person's disability claim.

Unfortunately, the insurer does not always live up to their end of the bargain and STD/LTD claims are regularly denied. Under most STD/LTD policies a person is considered “disabled” if, for the first 2 years of their claim, they are unable to perform the job that they were doing at the time when they stopped working. After the 2 year period, the disability test is whether a person can perform **any** job that they are suited for by reason of education, training or experience. It is at the 2 year mark that we typically see insurers deny claims. They take the position that since the person can work as a parking lot attendant (or some other job), they are not disabled. Under the law, this is not accurate as a person does not have to take on any job – it must be a job close in salary and stature to their previous one.

A lawsuit must be started within 2 years of the date of the denial by the insurer. Smitiuch Injury Law has significant experience prosecuting STD/LTD claims. For further information, contact us for a free copy of our STD/LTD Information & Rights Guide.

Profile of Gregg Summerhayes *Investigator*



Smitiuch Injury Law is pleased to announce that Gregg Summerhayes has joined the firm as an in-house Investigator. Gregg joins our team having served with the Ontario Provincial Police for 33 years, including the last 15 years as a Detective Constable. As one of the few law firms in Ontario who employ an in-house Investigator, Smitiuch Injury Law is uniquely positioned to assist clients with the prompt investigation into the facts and circumstances of an accident or incident that they have been involved. In many cases, a thorough investigation at the outset of the case can make the difference between winning and losing.

In addition to conducting investigations, Gregg will act as an ambassador for the firm in its many community initiatives.

Throughout Gregg's lengthy career with the O.P.P., he worked on many high profile cases, including the Victoria Stafford investigation and the London corridor truck shootings. He has been recognized for his hard work and was the recipient of a number of certificates and awards, including the O.P.P. Accolade Award (2006) for “officer's dedication to duty”, the Regional Commanders Recognition Award (2008) for “exemplary performance in an investigation” and the O.P.P. Accolade Award (2011) for “outstanding team

performance in an investigation”. Given his awards and many years of service, it is evident that Gregg has a real passion for helping and protecting those in need. It is these attributes that will serve him well working as an Investigator for the firm.

When not solving the next big case as a Detective or investigating an incident for our firm, Gregg keeps busy with his family, including his wife of 33 years and his 4 sons.

Gregg became a member of the Smitiuch Injury Law team in May 2011 and can be reached directly at, gsummerhayes@smitiuchinjurylaw.com, 416-621-1551 or 519-754-1558.

4 Bouchard and Motors
(FSCO A09-001616,
January 7, 2011)

Pocket Bikes are
automobiles under
Ontario law.

5 Prete and State Farm
(FSCO A09-002996,
January 13, 2011)

Facebook images not
admissible for income
replacement and
housekeeping benefits.

6 Buckle and MVAC
(FSCO A10-000010,
February 3, 2011)

Golf cart driving illegally on
highway without insurance is
a "motor vehicle".

7 Walker & Scottish and York
(FSCO A09-001079,
February 28, 2011)

Insured doesn't know
about policy cancellation if
registered notification is
returned unclaimed.

Ontario Trial Lawyers for Veterans

In December 2010 the Ontario Trial Lawyers Association (OTLA) began offering free legal services to help Ontario veterans of the Canadian Armed Forces who are seeking disability benefits from the Canadian government. **Trial Lawyers for Veterans** is a free service provided by members of OTLA. Michael Smitiuch, Principal at Smitiuch Injury Law, is one of those lawyers who has offered his services to our troops.

"It is my honour to participate in such a worthy cause" says Michael Smitiuch. "It is one small way that our firm can thank the men and women who serve our country so bravely".

The New Veterans Charter can be complicated especially at a time when a veteran and his or her family are coping with a long term disability. The **Trial Lawyers for Veterans** service ensures that families receive the benefits they are eligible for such as, Income Replacement Benefits, Retirement Benefits and a Disability Award.

If you are an Ontario veteran of the Canadian Armed Forces or a family member of an Ontario veteran needing assistance in a matter related to disability benefits, call us for free assistance. We would be happy to review a claim or provide you with any guidance that we can to ensure that you are being treated fairly.

We invite you to learn more about the **Trial Lawyers for Veterans** service and the Ontario Trial Lawyers Association by visiting, www.otla.com/Trial_Lawyers_for_Veterans.



Structured Settlements *Planning for the Future*

There are few things as tragic as someone who has suffered devastating injuries in an accident and then carelessly spends the badly needed settlement funds in a very short period of time. Unfortunately, this was commonplace in Canada in the 1970s and earlier.

Prior to 1979, whether a settlement was reached out of court or awarded at trial, payment was always a single lump sum. In addition to the reckless management of the funds, individuals who needed the money to last a long time were subject to tax on the income earned from the investment of the funds, inflation and a lack of stability in the investment markets.

In response to this, a new approach called a "structured settlement" was developed. In its simplest form, a structured settlement provides an individual with periodic payments for a specified length of time, **all of which is tax free**. The payment schedule and amounts are guaranteed and cannot be changed once they are set. This means that the funds cannot be rapidly and recklessly spent in a short period of time.

In many situations the law now requires that a structured settlement be put in place after a settlement or court verdict. For example, an individual who has suffered a brain injury and will require on-going care for the rest of their life will typically be required to structure their funds. Similarly, if a child has suffered serious physical or other injuries, the court will usually require that the funds be structured so that the funds are protected and will last for a long period of time.

Smitiuch Injury Law has vast experience handling serious injury cases and helping to arrange structured settlements for our clients. If you would like further information regarding structured settlements please contact us.



Smitiuch Injury Law Event Calendar

May 12 - 14, 2011 – Brantford Police Week – The Children's Safety Village of Brant

Smitiuch Injury Law is pleased to be a participant and donor. Bike safety and wearing a helmet correctly will be promoted. Smitiuch Injury Law will be donating bike helmets to this worthy cause.

The Children's Safety Village of Brant, Brantford, ON

June 11, 2011 – The Children's Safety Village of Brant – Kids Street Festival

Smitiuch Injury Law is pleased to be involved in this event. A bike rodeo will take place along with a "Helmets on Kids" bike helmet safety awareness program. Smitiuch Injury Law will be donating bike helmets to this cause.

The Children's Safety Village of Brant, Brantford, ON

June 24, 2011 – 8th Annual Smitiuch Injury Law Golf Tournament

Smitiuch Injury Law is pleased to support the SickKids Foundation.

Glencairn Golf Club, Halton Hills, ON

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.

The Paris Grand Country Club, Paris, ON

September 22, 2011 – 2nd Annual Ontario Automobile Insurance Changes: The Impact on Health Care Professionals One Year Later

This seminar, presented by Smitiuch Injury Law, will help attendees understand the changes one year later to the no-fault auto insurance regulations that took effect in September 2010. To register, please contact our office.

Brantford Golf and Country Club, 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

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"Helping those who need it the most."

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