

# disclosure

Your quarterly source of personal injury news

SMITIUCH INJURY LAW

PROFESSIONAL CORPORATION

## Our Picks: Top Legal Movies of All Time.

**The Paper Chase**  
(1973)

First-year law student, James Hart, struggles with balancing his coursework and his relationship with the daughter of his Contracts Professor. John Houseman won the Academy Award for Best Actor in a Supporting Role.

**Erin Brockovich**  
(2000)

The film is a dramatization of the story of Erin Brockovich, played by Julia Roberts, who fought against the U.S. West Coast energy corporation Pacific Gas and Electric Company. Roberts won the Academy Award, Golden Globe, Screen Actors' Guild Award and BAFTA for Best Actress.

**To Kill a Mockingbird**  
(1962)

Atticus Finch, a lawyer in the Depression-era South, defends a black man against an undeserved rape charge. This classic won three Oscars as well as a Golden Globe for Best Picture Promoting International Understanding.

**My Cousin Vinny**  
(1992)

A clumsy and amateurish New York personal injury lawyer takes on the case of his young cousin and a friend who have been charged with a murder in a small Southern town. In one of Joe Pesci's most memorable performances, he plays Vinny, a new lawyer (after six attempts to pass the bar) with no trial experience. Marisa Tomei claimed the Academy Award for Best Actress in a Supporting Role.

**Philadelphia**  
(1993)

In this drama, a lawyer sues his former firm for firing him because he has AIDS. The film stars Tom Hanks and Denzel Washington. The film won an Oscar for Best Original Song, "Streets of Philadelphia" by Bruce Springsteen and Tom Hanks won an Oscar for Best Actor in a Leading Role.

**Judgment at Nuremberg**  
(1961)

Stanley Kramer directed this searing portrayal of the Nazi war crimes trials set in 1948. The film was nominated for eleven Oscars and six golden globes. Actor Maximilian Schell won an Oscar for Best Actor in a Leading Role as well as a Golden Globe for Best Motion Picture Actor.

**The Verdict**  
(1982)

A washed-up, alcoholic lawyer gets handed a medical-malpractice case and sees it as one last chance to redeem himself. Paul Newman, Charlotte Rampling and Jack Warden star in the film. Although the film was nominated for five Oscars and five Golden Globes, it failed to win a single award. The big winner in 1982 was Gandhi.

**Kramer vs. Kramer**  
(1979)

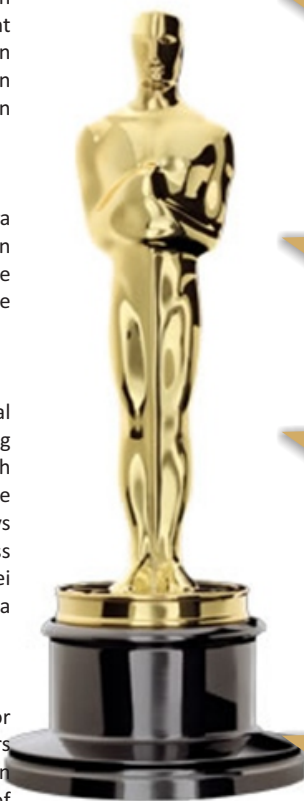
When his wife leaves him, an ad exec gets a crash course in parenting. The film was nominated for nine Oscars and eight Golden Globes. Dustin Hoffman, Meryl Streep and Jane Alexander star in this five time Oscar winning drama.

**A Few Good Men**  
(1992)

Military lawyer Lt. Daniel Kaffee (Tom Cruise) defends Marines accused of murder; they contend they were acting under orders. The line "You can't handle the truth!", spoken by Nicholson, is one of the most quoted movie lines in modern times. The film was nominated for five Academy Awards including Best Sound, Best Picture and Best Film Editing. Demi Moore and Jack Nicholson also star in the film.

**A Civil Action**  
(1998)

This courtroom drama is based on a true story and non-fiction book by Jonathan Harr. The case revolves around an incident in 1979 in East Woburn, Massachusetts, where two drinking wells supplying water to the town were found to be contaminated with industrial solvents. The film was nominated for two Oscars and won the award for Best Cinematography.



Take our Facebook Poll.

Vote for your favourite legal movie at: <http://tinyurl.com/LegalMoviePoll>

All participants will be entered into a draw for a \$150 Keg Steakhouse Gift Certificate.

The draw will take place on September 4, 2012.

2011 Totals	1 Intact	2 TD
Auto Insurance Written (Canada):	\$2,606,683,000.00	\$1,831,209,000.00
Auto Insurance Written (Ontario):	\$1,395,143,000.00	\$1,197,878,000.00
Profit / Loss:	\$615,638,000.00	\$145,116,000.00

## DiMarco and Chubb Insurance: A closer look at the definition of "Accident"

Cyclists should be aware that they might be entitled to statutory accident benefits in situations where a vehicle was the cause of an injury, regardless of whether it was in motion. A recent FSCO decision, DiMarco and Chubb Insurance Company of Canada (FSCO A10-003967, February 22, 2012), found that a cyclist, Marilena DiMarco, who was injured while avoiding a parked vehicle, was entitled to accident benefits.

Peter Cho of Smitiuch Injury Law represented Ms. DiMarco at the Arbitration.

On May 23, 2009, Ms. DiMarco was riding with a group of cyclists on a training run for the Ride to Conquer Cancer. While cycling along a municipal sidewalk, Ms. DiMarco observed a large van that had been parked halfway onto the sidewalk. As Ms. DiMarco attempted to maneuver around this parked van she lost control and crashed onto the sidewalk sustaining serious injuries.

Ms. DiMarco applied for statutory accident benefits and her insurer, Chubb Insurance Company of Canada, denied her claim on the basis that she did not meet the definition of "accident" under section 2(1) of the Statutory Accident Benefits Schedule. As a result, Ms. DiMarco was denied the payment of her auto insurance benefits to help her recover from her injuries.

In November 2011, an Arbitration proceeding was held before Arbitrator Pressman on the issue of whether Ms. DiMarco's cycling accident satisfied the definition of an "accident". In the decision, Arbitrator Pressman concluded that Ms. DiMarco was entitled to statutory accident benefits based upon (1) Ms. DiMarco's cycling accident arose from the use or operation of a motor vehicle and (2) the use or operation of the motor vehicle was a direct cause of her injuries.

Arbitrator Pressman further concluded, "Parking a vehicle was an ordinary and expected use of a vehicle" and noted that, "[the] automobile set in motion a chain of events directly resulting in Ms. DiMarco's fall from the bicycle. There was no intervening event that caused Ms. DiMarco to fall."

It is important for cyclists to be aware that statutory accident benefits are not just for those operating a motor vehicle. If you are injured as a direct result of a motor vehicle you may be entitled to accident benefits in a variety of situations. As stated by Arbitrator Pressman in the DiMarco decision, "while there could be several causes to an injury, as long as an automobile is significantly involved in the incident, an insured may still qualify under the definition of accident."

## Profile of Melanie McLean *Law Clerk*



Smitiuch Injury Law is pleased to introduce Melanie McLean, a Law Clerk and Licensed Paralegal with the firm since August 2009.

Prior to joining the firm, Melanie studied at Sheridan College and graduated with a diploma from the two-year Court and Tribunal Agent (Paralegal) program. During this program, Melanie's main areas of interest were Tort Law, Contract Law and Criminal Law. Part of her graduation requirements included a four-week placement at a Toronto personal injury law firm. After completing the program, she obtained her paralegal license from The Law Society of Upper Canada in June 2009.

As a Law Clerk, Melanie's primary responsibilities are to schedule Discoveries, Mediations and Trials, communicate with clients and opposing counsel, manage and request undertakings, maintain documents and case correspondence, and draft various letters and legal documents. She loves a challenge and enjoys the broad range of tasks assigned to her on a daily basis. Melanie has always had an interest in learning about the law and she chose to work in the specific area of personal injury law because she has a passion for helping those who need it the most.

In her free time, Melanie has volunteered with the Canadian Cancer Society and Specialty Care Woodhall Park, a long-term care facility. Melanie enjoys playing baseball, reading and spending time at her cottage. She was married last summer, and she and her husband are anxiously awaiting the arrival of their first child in the fall.

Melanie can be reached directly at [mmclean@smitiuchinjurylaw.com](mailto:mmclean@smitiuchinjurylaw.com)  
416-621-1551, Ext. 207.



3	4	5	6	7
Aviva	State Farm	RSA	Desjardins	Wawanesa
\$1,790,114,000.00	\$1,425,899,000.00	\$1,202,593,000.00	\$1,166,294,000.00	\$1,163,432,000.00
\$1,112,359,000.00	\$1,274,652,000.00	\$729,204,000.00	\$569,346,000.00	\$485,525,000.00
\$406,505,000.00	-\$241,882,000.00	\$264,789,000.00	\$179,035,000.00	\$140,151,000.00

## Children's Safety Village of Brant wins OTLA Safety Award

Smitiuch Injury Law is proud to congratulate The Children's Safety Village of Brant, recipients of the 2012 Safety Award presented annually by the Ontario Trial Lawyers Association (OTLA). This award recognizes outstanding achievement by a local group or community organization within Ontario that helps to improve safety and enhance injury prevention in the community.

To find out more about The Children's Safety Village of Brant you can visit their website at [www.csvbrant.ca](http://www.csvbrant.ca).

Image on Right: Constable Elana Emmons and Gail Chambers accept the Ontario Trial Lawyers Association Safety Award on behalf of the Children's Safety Village from Keith Smitiuch and Arthur Ryan of Smitiuch Injury Law.



The Children's Safety Village (CSV) of Brant is a non-profit organization run by members of the community for the children of the community. It provides a hands-on, interactive approach to safety education in a controlled environment for the children of Brantford, Brant County and Six Nations. It promotes quality interactive safety education with community partners in conjunction with the emergency services of Brantford and Brant County.

Some of the programs at the CSV include household safety, emergency response and bicycle safety. Mini model homes are also "rigged" with potential dangers that participating children must find and respond to, such as an electrical appliance near a bathtub or a beeping smoke alarm.

Smitiuch Injury Law nominated The Children's Safety Village for this award. Peter Cho, Associate Lawyer at Smitiuch Injury Law, accepted the award on behalf of the CSV at OTLA's spring conference in June. It was later presented to Gail Chambers, Children's Safety Village Administrator and Cst. Elana Emmons, School Safety Officer, Brantford Police Services by Keith Smitiuch and Arthur Ryan of Smitiuch Injury Law.

## Waivers - How solid are they?

We have all been asked to sign a form to enter an event or participate in an activity. This 'waiver' typically includes a provision where we agree to release the other party from liability if we become injured. What are the legal consequences of this? How solid are they?

Consider the following case. A ski resort (Sundance) was holding a promotional inner tube race down one of its steep hills. William Crocker wanted to participate. He signed an entry form which included a waiver provision. On the day of the race, William consumed several alcoholic beverages and was visibly drunk. On the way down the hill, he was thrown from his inner tube. As a result, William was rendered a quadriplegic.

The Supreme Court of Canada held in Crocker vs. Sundance that this particular waiver could not be used as a defence. The ski resort did not bring the provision to William's attention. He did not read it or even know it existed. In other words, William thought he was signing a mere entry form.

The courts have consistently found that an individual will not be prevented from bringing a claim unless certain conditions are met.

The participant/plaintiff must have knowledge of and read the waiver and voluntarily assume the risks involved. The defendant must take reasonable steps to bring it to the plaintiff's attention and it must not be unconscionable for the waiver to be enforced. Furthermore, the plaintiff must know about the waiver at, or before, the time the contract is made, not after. Finally, if the contract is a consumer agreement, the services provided must be of a reasonably acceptable quality (Consumer Protection Act, s. 9).

A waiver is not automatically ironclad. Therefore, keep in mind that if you become injured, you may still have a claim...even if you have signed a waiver.

Waiver and Release of Liability Assumption of Risk and Indemnity Agreement	
In consideration of permitting me _____	
to participate in _____ event Conducted by _____	
in the County of _____ and State of CA,	
on the Day of _____ 2001, for myself, my personal representatives, heirs and next of kin:	
<p>HEREBY acknowledge that Backcountry DRIVING IS A POTENTIALLY DANGEROUS ACTIVITY and involves the risk of serious injury and/or death and/or property damage. I FURTHER ACKNOWLEDGE that driving in the backcountry my close damage to my vehicle. I UNDERSTAND that the driving activities may be conducted at a site that is remote, either by time or distance or both, from medical facilities.</p> <p>HEREBY RELEASE, WAIVE, DISCHARGE AND AGREE NOT TO SUE _____ or any of the sponsors, land owners or volunteers, or any of its officers, instructors, agents or employees (the Releases) FROM ALL LIABILITY TO MYSELF, my personal representatives, heirs, and next of kin FOR ANY AND ALL LOSS OR DAMAGE, AND ANY CLAIM OR DEMANDS THEREFOR ON ACCOUNT OF INJURY TO MY PERSON OR PROPERTY OR RESULTING IN MY DEATH, NOW AND FOREVER, ARISING OUT OF OR RELATED TO PARTICIPATION AND/OR INSTRUCTION IN SAID ACTIVITIES, OR ANY OTHER RELATED DRIVING OPERATIONS THAT MAY OCCUR, WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE.</p> <p>HEREBY ASSUME FULL RESPONSIBILITY FOR ANY RISK OF BODILY INJURY, DEATH OR PROPERTY DAMAGE, now and forever, arising out of or related to participation and/or instruction in said activities, or any other related driving operations, whether caused by the negligence of the Releases' or otherwise.</p> <p>SEPARATELY agree to INDEMNIFY and SAVE and HOLD HARMLESS the Releases' from any loss, liability, damage or cost that they may incur, now and forever, arising out of or related to participation and/or instruction in said course, activities, or any other related driving operations, whether caused by the negligence of the Releases' or otherwise.</p> <p>HEREBY acknowledge that INJURIES RECEIVED MAY BE COMPOUNDED OR INCREASED BY NEGLIGENT RESCUE OPERATIONS OR PROCEDURES OF THE RELEASEES and agree that the Waiver and Release of Liability, Assumption of Risk and Indemnity Agreement extends to all acts of negligence by Releases' INCLUDING NEGLIGENT RESCUE OPERATIONS and is intended to be as broad and inclusive as permitted by the laws of the Province or State in which the activities are conducted and that if any portion thereof is held invalid, it is agreed that the balance shall, nevertheless, continue in full legal force and effect.</p> <p>I have read this Waiver and Release of Liability, Assumption of Risk and Indemnity Agreement, fully understand its terms, understand that I have given up substantial rights by signing it, am aware of its legal consequences, and have signed it freely and voluntarily without any influence, coercion, or guarantees being made to me and intend my signature to be a complete and unconditional release of all liability to the greatest extent allowed by law.</p>	
Driver's Name _____	_____ Date _____
Passenger's Name _____	_____ Date _____
Driver's License <input type="checkbox"/> Insurance <input type="checkbox"/> Witness _____	_____ Date _____

## Smitiuch Injury Law Event Calendar

### **May 17, 2012 – Woodstock ABI Support Group Presentation**

Chris Jackson, Accident Benefits Manager, will be speaking on “Coping with Insurance Companies”.  
Woodstock Public Library, Woodstock, ON

### **June 3, 2012 – The Responsibility and Liability of Being a Lifeguard Seminar**

This seminar, presented by Smitiuch Injury Law, will help attendees understand the responsibilities assumed as a lifeguard.  
Victoria Park Community Centre, Ingersoll, ON

### **August 15, 2012 – 6th 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 20, 2012 – 3rd Annual Accident Benefits Seminar - Practical Issues for Health Care Professionals**

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

To register, please contact our office.

Brantford Golf & 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](mailto:msmitiuch@smitiuchinjurylaw.com)

**SMITIUCH INJURY LAW**

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