

disclosure

Your quarterly source of personal injury news



Uber – Is it safe to use?

Founded in 2009, Uber is a smartphone app that connects drivers with people who need a ride. It operates in 311 cities in 58 countries and it is estimated that over one million riders use Uber worldwide each day. It is convenient, cashless and it reduces the unknown of how long you have to wait for a ride. It brings the concept of the *driver + rider* arrangement into the 21st century.

As much as Uber is positive, there has been some opposition towards it. It has put the traditional taxi industry on the defensive and cities throughout the world have gone to court to prevent Uber from opening for business. Both claim Uber is unregulated, it does not offer riders the same liability coverage as a traditional taxi, if involved in an accident, and it should follow the same bylaws and licencing process as taxi companies do.

Is Uber safe to use?

Taxi companies and cities say NO.

Taxi companies claim insurance companies may not cover an injured rider if the Uber driver failed to inform them that they were driving their car on an Uber arranged trip.

Cities claim the service poses “a serious risk to the public”, due to driver's lack of driver training, inadequate insurance coverage, and unregulated fares. There have also been cases where riders have been assaulted by Uber drivers.

Uber Canada Inc. says YES.

In a recent Ontario Superior Court of Justice case (*City of Toronto v. Uber Canada Inc. et al.*, 2015 ONSC 3572) Uber outlined some of the self-regulations they have implemented to ensure rider safety. Some of the self-regulations are:

- a) Drivers are subjected to licence and criminal background checks with their licences and photos retained on file;
- b) Drivers may be reviewed by riders and, following a complaints process, may have their access to the Driver App suspended or cancelled;
- c) Vehicles are subject to annual inspection requirements and there are age and vehicle condition requirements;
- d) Snow tires are required between December and March each year;
- e) Uber keeps a record of each trip taken including time and date, starting point, end point, distance and route travelled, fare charged and the name of both passenger and driver; and
- f) Uber maintains an insurance policy of \$5,000,000 for passengers while on an Uber arranged trip.



In addition to Uber's self-regulations, a rider in Ontario is covered by his or her own automobile insurance policy. If a rider is injured while using Uber, they can make a claim against their own no-fault accident benefits insurer.

If a rider does not have their own automobile insurance, they can make a claim with the Motor Vehicle Accident Claims Fund (MVACF). This fund provides compensation to people injured in an automobile accident and no existing automobile insurance exists.

Uber is not going away. It continues to expand into more countries and cities each month and the number of riders per day is only increasing.

It remains to be seen if the public will continue to embrace it.

Strange Laws That Exist



1

France

It is illegal to name a pig Napoleon.

2

British Columbia

It is illegal to kill a Sasquatch.



3

Souris, P.E.I.

It is illegal to build a snowman > 30" if you live on a corner lot.

A Cautionary Tale

Are You Receiving Justice? Consult a Lawyer To Be Sure

"Mary" was involved in two separate motor vehicle accidents and her accident benefits insurer was offering her \$16,000.00 to settle both claims on a full and final basis. She wanted to know if it was a fair offer.

We requested a copy of Mary's files from her insurer. Our review revealed some significant concerns:

- The insurer never explained to Mary how to claim attendant care or housekeeping and home maintenance benefits;
- Even though Mary never claimed an attendant care benefit (because she didn't know how to), the insurer sent her to insurer's examinations, which identified that she needed attendant care;
- Even though the insurer had compelling evidence from its own assessors that Mary needed attendant care and housekeeping and home maintenance benefits, the insurer never paid her anything for either of these benefits; and
- For her second accident, the insurer took the position that Mary's injuries fell within the Minor Injury Group (MIG), even though the same insurer with the same adjuster had compelling evidence from her first accident that she had a pre-existing condition that would prevent her from achieving maximal recovery within the MIG. As a result, the insurer denied much-needed treatment.

These concerns were raised directly with the insurer, to no avail. A mediation application was submitted on Mary's behalf. At mediation we claimed for the past attendant care (as outlined in the insurer's own reports), housekeeping and home maintenance, outstanding treatment, future treatment, as well as interest due to date. The insurer offered a very meagre amount, so the mediation failed.

An Application for Arbitration was then submitted for Mary. The insurer retained legal counsel, who tried to intimidate Mary by demanding an Examination Under Oath. We refused on behalf of Mary because the insurer had denied all benefits by this time, and the purpose of an Examination Under Oath is to determine entitlement to a benefit, which the insurer had already done.

Mary's persistence paid off. Her accident benefits claims were settled on a full and final basis for \$85,000.00. This is over five times what the insurer was initially offering to settle Mary's accident benefits claims.

Mary's case is a cautionary tale. Accident benefits can be very complicated and your insurance company may not be treating you fairly. It is always a good idea to check with a lawyer to ensure that you get the compensation and benefits that you are entitled to.

Profile Of Dr. Daniel Wilhelmus

Medical Consultant



Smitiuch Injury Law is pleased to introduce Dr. Daniel Wilhelmus as the firm's Medical Consultant.

Daniel obtained his Doctor of Chiropractic in 1995 from the Canadian Memorial Chiropractic College and opened a multidisciplinary health care office in Simcoe, Ontario.

In November 2007, Daniel was injured in a motor vehicle accident. As a result of the accident and due to the severity of his injuries, he ultimately had to sell his business and have his right leg amputated.

Daniel was introduced to Smitiuch Injury Law when they represented him in the motor vehicle accident claim. After getting to know the lawyers and their team, he

made the offer to head up the firm's expansion into the Simcoe area and to help with in-house medical reviews. "I love the team approach and find the Smitiuch Injury Law staff to be the type of staff I would want in my office," said Daniel. He really enjoys the input he is able to provide at the firm. "This is a great place to work and help people who are at the lowest point of their lives. The caring attitude is displayed each day by everyone who works here. The care of the client is the main focus of the team."

As an amputee, Daniel is able to sit with clients and talk about his experiences with the legal process, his medical treatment and the losses associated with the accident. It has helped comfort and provide perspective for clients.

Daniel recently completed the Catastrophic Impairment Assessors Course and is certified in the AMA Guides to Evaluation of Permanent Impairment, 4th edition by the American Board of Forensic Professionals and is a Certified Catastrophic Impairment Rater.

Daniel will be supporting the firm in all its locations – Toronto, Brantford, London, Hamilton and Simcoe and will be seeing clients where the need presents itself. His addition to the firm enhances Smitiuch Injury Law's commitment to providing excellent customer service.

4

Sudbury, Ontario
It is illegal to attach
a siren to
your bicycle.



5

China
It is illegal for adult
children not to visit
their parents "often".

6

Kentucky, U.S.A.
A woman cannot
remarry the same man
more than three times.



7

Thailand
It is illegal to step
on money.

Source: thoughtcatalog.com & readersdigest.ca

Fight for Justice

It has been a busy time in recent months at the firm as we continue to fight for justice and help those who need it the most. Here are just a few of our recent success stories and advocacy for positive change:

Trial - Bhatt v. William Beasley Enterprises Limited (Centreville Amusement Park):

The minor Plaintiff was injured while boarding a ride with his father at the amusement park. The Defendant advanced the argument that there was contributory negligence on both the minor Plaintiff and his father in part because he had a pre-existing bone condition. The trial judge ruled that the defendant was responsible for the injuries suffered and there was no finding of liability on either the minor or his father.

Arbitration - Cox v. Aviva Canada Inc.:

The Applicant was riding his bicycle in Burlington, Ontario, when an unidentified vehicle struck either him or his bike and he fell to the ground. Due to the hit and run, the accident was not reported to the police and the bike was not kept as evidence. The next day, our client was found to have suffered a subdural hematoma. A forensic engineer provided an opinion that the damage to the bicycle described could only have been caused by a motor vehicle. At the Arbitration hearing, based on the testimony of the witnesses, the Arbitrator ruled in favour of the Applicant.

Advocacy - Muzik:

We are now representing the family of Duvel Hibbert of Brampton who was killed in a double shooting at the Muzik nightclub. Duvel's family is struggling to understand what happened at the club that night, and how their son could die so tragically. The

family hopes some good can come of this tragedy. The onus should be on Muzik and the City's licencing services to ensure adequate security. Clearly people's lives depend on it. Significant media attention has been directed at these issues.

Changes to Car Accident Victims' Rights

A number of reforms to automobile insurance legislation and regulations have recently been implemented, to the detriment of car accident victims. These reforms apply to automobile insurance policies issued or renewed on or after June 1, 2016.

The amendments include, but are not limited to, the following:

- a revised definition of "catastrophic impairment" will now apply only to those who have the most devastating injuries - this new definition constricts the meaning of the classification and makes understanding who qualifies as catastrophically impaired less clear, as the Glasgow Coma Scale test (a numeric scoring system used to evaluate the effects of traumatic brain injury) will no longer be used;
- attendant care benefits and medical and rehabilitation benefits will be lumped together for a combined total of \$65,000.00 for non-catastrophic claims (previously \$50,000.00 for medical and rehabilitation benefits and \$36,000.00 for attendant care benefits) and \$1,000,000.00 for catastrophic claims (previously \$1,000,000.00 for medical and rehabilitation benefits and \$1,000,000.00 for attendant care benefits);
- the duration of medical and rehabilitation benefits will be reduced from 10 years to five years for all non-catastrophic claimants except children;
- the duration of eligibility for non-earner benefits will be reduced from life to a maximum of two years, with an initial waiting period of four weeks; and
- as of August 1, 2015, an accident victim with a pain and suffering claim will face an increased deductible of approximately \$37,000 on an award entitlement, as opposed to \$30,000. In addition, the former \$100,000.00 threshold above which the deductible applies has been raised to \$121,799.00.

Clearly, the above changes will have a devastating impact on all accident victims and diminish the chances of catastrophically impaired accident victims regaining their independence. Skilled legal representation will become even more necessary.

Congratulations to Chris Jackson
Recipient of the 2015 OTLA Outstanding Law Clerk Award

Smitiuch Injury Law Event Calendar

September 24, 2015 - 6th 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.

Brantford Golf & Country Club, Brantford, ON

November 18, 2015 - The Law Society Foundation's Toronto Lawyers Feed the Hungry Program

Feed the Hungry provides hot, healthy community meals to Toronto residents in need. Smitiuch Injury Law is pleased to be a sponsor of the program and to volunteer their time serving meals to guests.

Osgoode Hall, Toronto, ON

January 29, 2016 - The Advocates' Society - Tricks of the Trade 2016 Conference: Litigation Strategies in a Time of Change

Michael Smitiuch, Smitiuch Injury Law Principal, will be participating in a panel demonstration entitled Critical New Decisions in Tort Law.

The Carlu, 444 Yonge Street, Toronto, ON

February 6, 2016 - Kids Can Fly - 9th 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



For further information or to discuss how we can help you

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We are going green!
This is our last
paper edition.
Future editions will be
distributed
electronically.



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