

disclosure

Your quarterly source of personal injury news



Fearless Advocacy 2.0

Chiocchio v. The City of Hamilton et al.

The lawyers, paralegals and staff at Smitiuch Injury Law continue to fearlessly advocate for their clients at both trials and arbitrations. It is the philosophy of the firm to take cases to trial where the other side fails to make a fair and reasonable settlement offer. We have conducted numerous trials and arbitrations in recent years and do not shy away from challenging liability or damages cases. The case of *Chiocchio v. Ellis*, 2016 ONSC 7570 (CanLII) is one such example.

On December 7, 2016, the Honourable Mr. Justice Skarica released his Reasons for Judgment after a four week trial before him in Hamilton.

This action arose from a tragic motor vehicle accident that happened on April 29, 2006. The accident resulted in the Plaintiff (our client) suffering a fractured cervical spine which rendered him a quadriplegic.

The losses and damages suffered by the Plaintiff were considerable.

The trial proceeded before Justice Skarica on the issue of liability only. While one of the Defendants admitted some fault for the accident, the main issue was whether the City of Hamilton was liable also.

The evidence during the trial established that the intersection in question had a history of accidents and that the City failed to paint the stop line at the intersection despite the recommendation to do so. The

visibility at the intersection also became poor the further back that a motorist stopped.

In the end, Justice Skarica found the City of Hamilton liable and apportioned fault at 50% against the City and 50% against the Defendant driver. This decision was significant since the Plaintiff was rendered a quadriplegic and his losses and needs for the future were significant. In finding liability against the City,

Justice Skarica concluded as follows:

"In my opinion, the evidence establishes that the condition of the intersection with the faded stop line posed an unreasonable risk of harm to a reasonable driver. Accordingly, I find on a balance of probabilities that the City of Hamilton failed to keep the intersection at 5th Concession West and Brock Road in a reasonable state of repair."

"The cost of repainting was a meager \$100, at most."

In conclusion, The Honourable Mr. Justice Skarica stated, *"All counsel in this difficult trial were very well prepared and I wish to extend my appreciation for their excellent assistance."*

Click here to read the full Reasons for Judgment on CanLII. (*Chiocchio v Ellis*, 2016 ONSC 7570 (CanLII))

Michael Smitiuch and Peter Cho were trial counsel for the Plaintiffs.



Intersection of accident - 5th Concession West and Brock Road, Hamilton, ON (Google Earth)

7 Top Safest & Most Dangerous Countries to Drive in

Safest

Most Dangerous

1



Federated States of Micronesia 1.9



Libya 73.4

2



Sweden 2.8



Thailand 36.2

3



Kiribati 2.9



Malawi 35.0

Annual Traffic-Related Fatalities per 100,000 Inhabitants - 2013 (🇨🇦 Canada 6.0)

Canadian General Standards Board (CGSB) Wired Glass Removed

Wired glass has existed for almost 125 years. It was first developed in the early 1890s as a method of strengthening regular glass which was prone to breaking due to vibrations and heat and it was not a good method of fireproofing.

Wired glass was quickly recognized to be much stronger, safer and more fire retardant than regular glass and was soon installed in factories, hospitals, hotels and office buildings. In 1892, the National Board of Underwriters, a national fire insurance organization, proposed wired glass standards and in the United States, wired glass first started to appear in state and city building codes in 1899.

For decades, wired glass was thought to be safe. It was used everywhere and can be found in schools, hospitals and public buildings. The problem is, when shattered, it can result in horrific incidents and injuries.

"I have seen a rising number of cases involving wired glass related injuries," says Michael Smitiuch, Principal of Smitiuch Injury Law. "We have over a dozen cases on the go all across Canada, this is a systemic problem. Although the standards will be changing, I think that school boards and other public bodies need to move quicker on this."

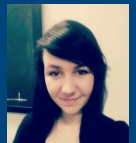
In 2006, the United States International Building Code (IBC) (Section 715.4.6.1), was updated and wired glass was effectively banned from being installed in all human traffic areas.

For several years, Smitiuch Injury Law has been advocating for change as it relates to the use of wired glass. At last, someone is listening in Canada. The Canadian General Standards Board (CGSB) has recognized that wired glass (CAN/CGSB-12.11—*Wired Safety Glass*) is dangerous and in February 2017, removed it from the national building standards. "It can shatter when hit and cause lacerations," says Jacqueline Jodoin, senior director of CGSB. "It isn't safe because it's not impact-resistant." The building standards are voluntary and "have no force of law," she noted, but observers hope the removal of wired glass from the national guidelines will discourage its use.

Over 100 years after wired glass was initially used and countless injuries, its use is finally being limited. "It will take time to replace all the wired glass installed in Canada, but for each piece replaced or not installed, a severe injury may be avoided," says Smitiuch. "This positive change will result in fewer injuries across Canada."

For more information visit our website at www.sil.lawyer

Profile Of Caroline Stacey *Student-at-Law*



Smitiuch Injury Law is pleased to introduce Caroline Stacey, Student-at-Law, who has been with the firm since July 2016.

Caroline is a native of Bradford, Ontario.

She attended York University where she earned an Honours Bachelor of Science degree in Biology. Wanting to eventually become a successful lawyer and litigator, she obtained her law degree (J.D.) from the University of Windsor's Faculty of Law.

During law school, Caroline participated in many extracurricular activities locally and abroad, such as completing courses regarding International Human Rights in

Switzerland as well as representing the University of Windsor in a legal competition in The Hague. She also completed one semester of her law studies in Lyon, France, during her final year of law school.

While at Windsor Law, she was an executive of the International Law Society and mentored other students in oral advocacy.

Caroline is fluent in Polish and enjoys learning languages. She has studied French, Spanish, Russian and American Sign Language. In her spare time, Caroline spends time with family and friends, reads fantasy novels, and is an avid traveller.

Caroline successfully passed both her Barrister and Solicitor Licensing Examinations. Caroline has been a crucial and valuable member of the team at Smitiuch Injury Law.

Caroline can be reached directly at caroline@sil.lawyer or 416-621-1551, ext. 214.

4

United Kingdom 2.9

5

San Marino 3.2

6

Switzerland 3.3

7

Netherlands 3.4


Liberia 33.7


Democratic Republic of the Congo 33.2


Tanzania 32.9


Central African Republic 32.4

Source: Wikipedia (<https://goo.gl/qp3bxx>)

Advocacy for Positive Change

It has been a busy time in recent months at the firm, 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:

Advocacy - Jamie and Russell Gillman:

Jamie and Russell Gillman have filed a \$4 million lawsuit against the Toronto Transit Commission (TTC) over a violent Union Station confrontation, in which all charges against the two men were dropped. They have filed a lawsuit against the two transit officers and the TTC. After leaving a Toronto Maple Leafs game, the Gillmans were physically confronted by two transit enforcement officers at Union Station. Both the Gillmans and the public deserve assurances that this sort of incident will not be repeated.

Motion - David Schnarr v Blue Mountain Resorts Limited, 2017 ONSC 114:

On January 6, 2017, the Honourable Madam Justice Tzimas released an Endorsement ruling in favour of a motion brought forth by Peter Cho, Counsel for the Plaintiff. The Plaintiff was a downhill skier and the Defendant was a ski resort where the Plaintiff skied.

Recreational waivers are currently widely used by occupiers and suppliers of goods and services in Ontario to negate any and all liability they may have when someone is injured on their premises, regardless of their own negligence. Many occupiers and suppliers require consumers to execute a waiver before engaging in an activity, otherwise the consumer is denied entry or services. For example, waivers are required to be signed at ski resorts, trampoline parks, indoor skyflying facilities, etc. In Schnarr, we successfully challenged the ability of a supplier of goods and services from doing this as the Ontario Consumer Protection Act, subsection 7(1) and subsection 9(3), specifically prevents a supplier from doing this. The Consumer Protection Act states that consumers have rights to goods and services of reasonably acceptable quality and that this cannot be varied or voided by a waiver.

In Schnarr, Madam Justice Tzimas found that the Defendant's waiver was far too broad and violated the Plaintiff's right under the Consumer Protection Act, and it was read down and amended to remove the offending language. Accordingly, the Plaintiff was entitled to pursue claims for the Defendant ski resort's alleged failure to provide services of a reasonably acceptable quality.



Advocacy - Nosakhare:

Nosakhare Ohenhen, spent five years, three months, and twenty days in prison for crimes he did not commit. After being acquitted of all charges, he has filed a \$4.5 million lawsuit against the Toronto Police Service and the five officers involved.

Justice Quigley concluded that there were no legitimate grounds for police to stop or arrest him and that Ohenhen's arbitrary detention, unreasonable search, and denial of counsel was a brazen and blatant violation of his constitutional rights.

Toronto Police need to be held to a higher moral standard, so that what happened to this young man, doesn't happen to someone else.

New Accident Benefits Dispute System You Lose Before You Even Begin

It is a common legal principle in civil law that the party that loses a case must pay at least some of the winner's costs, which can include legal fees and disbursements. This is based on the tenant of access to justice, which allows anyone regardless of economic resources to advance a claim against a party that has wronged him or her. In the context of the accident benefits system, it means that an injured person can advance a dispute against an insurance company and, if they are successful, their legal costs will be paid. They are not hindered in advancing a claim because they cannot afford to do so.

On April 1, 2016, all disputes for accident benefits from motor vehicle accidents in Ontario were moved into a new system through the License and Appeals Tribunal (LAT) through the Ministry of the Attorney General. With a new system came new rules. One of the most concerning is Rule 19, which deals with costs.

A recent LAT decision with respect to this rule deemed that costs can only be claimed if a party has acted unreasonably, frivolously, vexatiously or in bad faith within the dispute resolution process. In other words, as long as both parties have acted well within the dispute resolution process, costs will not be awarded, no matter how egregious an insurer might have been in denying benefits.

In our view, this is totally unjust and unfair.

At Smitiuch Injury Law we fully intend on appealing any adverse decisions on costs and will raise the access to justice principle in order to declare the current Rule 19 void.

Smitiuch Injury Law Event Calendar

February 4, 2017 - Kids Can Fly - 10th 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

February 15, 2017 - The Law Society Foundation - Toronto Lawyers Feed the Hungry

The Toronto Lawyers Feed the Hungry program has provided hot, healthy community meals to Toronto residents in need since 1998. This important year-round program provides more than 60,000 meals a year. Smitiuch Injury Law is pleased to sponsor and serve a meal.

The Law Society of Upper Canada's Cafeteria, Toronto, ON

May 4 - 5, 2017 - Hamilton Health Sciences - 2017 Annual ABI Conference

24th Annual Conference on Neurobehavioural Rehabilitation in Acquired Brain Injury. Smitiuch Injury Law is pleased to be a Gold sponsor and exhibitor of this conference.

Hamilton Convention Centre, Hamilton, ON

May 9, 2017 - Canadian Association of Neuroscience Nurses - 2017 Spring Event

Concussion Update: Diagnosis, Management & Patient Experience. Smitiuch Injury Law is pleased to be the corporate sponsor of this event.

Best Western Lamplighter Inn, London, ON



For further information or to discuss how we can help you

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SMITIUCH INJURY LAW

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