

# disclosure

Your quarterly source of personal injury news



**SMITIUCH INJURY LAW**

## Our Firm has Canada covered from Coast to Coast

With offices in Toronto, Brantford, Simcoe and Hamilton, Smitiuch Injury Law has been proudly serving clients from across Ontario for close to 20 years. Recently, however, we have taken our trademark brand of zealous advocacy nationally. From Vancouver to Halifax and beyond, insurance companies from all over the country are becoming all too familiar with our tenacious approach to litigation.

Below, we'll take a look at some of the cases we're working on from around Canada.

### ***TD v. BPC Penco Inc. et al. (Nova Scotia)***

In 2007, our client, TD, was walking through the halls of his Amherst, Nova Scotia, high school when he pushed open a wired-glass door and his arms went through the glass. The jagged glass, held together by steel wire, shredded his arm. It tore his biceps and triceps and severed multiple nerves and arteries. "The blood was unreal, it looked like a horror movie," TD said. Students rushed to help stop the bleeding. TD's heart stopped beating and his breathing ceased. Surgeons scrambled to save his life. TD survived, but his life would never be the same. Residual nerve damage forced him to give up on his dreams of becoming an underwater welder. He missed significant time from school and was forced to completely reassess his life.

This was a tough case. First and foremost, we needed to prove that the Defendants were aware or at least should have been aware of the dangers of wired glass. Secondly, we needed to establish that there were cost effective measures available to diminish the risk the glass posed to students.

Ultimately, we were able to convince the lawyers for the Defendants that we had a case. On the brink of trial, the matter resolved at a Judicial Settlement Conference in the fall of 2017. TD received the fair compensation he deserved, and perhaps as importantly, wired glass has since been removed from national building standards.

### ***MC v. Vancouver Coastal Health Authority et al. (British Columbia)***

In 2013, MC was admitted to the psychiatric ward of a Vancouver

area hospital after experiencing psychotic symptoms and severe paranoia. Shortly after admission, he began having suicidal thoughts. While under the care of hospital staff, MC made multiple attempts to take his own life.

MC was eventually released from hospital, only to be re-admitted several weeks later. Despite continuing to have suicidal thoughts and a history that included multiple suicide attempts, MC was granted a pass allowing him to leave the hospital unsupervised.

After leaving the hospital one evening on his own accord, MC tragically took his own life after jumping from a suspension bridge located only a short distance from the hospital. The lawsuit alleges that hospital staff were negligent in allowing an obviously suicidal individual to leave the premises unsupervised.

### ***MV v. Fraser Academy et al. (British Columbia)***

Despite growing awareness regarding the dangers of wired glass, especially in schools, it unfortunately remains commonplace.

In May of 2016, our client, MV, a grade 12 student at a private school in Vancouver, British Columbia, was leaving a school assembly when he pushed open a wired glass door and his hands perforated the glass. His injuries were consistent with

typical wired glass injuries - severed tendons and nerves in both hands, as well as deep lacerations requiring dozens of stitches to close.

MV, an elite level cross country runner who was planning to compete at the university level, ended up missing months of training. His scholarship offers were withdrawn and he was forced to defer his first year of post-secondary studies while he recovered from his injuries.

While this case is ongoing, we are confident it will end favourably for our client.

These cases are emblematic of Smitiuch Injury Law's penchant for taking on tough cases and succeeding. We relish the opportunity to demonstrate this on a national scale. ✕



# 7 Ways the Law Can Work Against Injury Victims

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## THE DEDUCTIBLE

In car accident cases, pain and suffering awards less than ~\$130,000 are deducted by ~\$39,000. eg. a jury awards \$60,000, the victim will only receive \$21,000 after the deduction

2

## THE THRESHOLD

In car accident cases, unless the Judge concludes your injuries/impairments are permanent, serious and of an important physical, mental or psychological function, the victim will not receive a pain and suffering award

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## NOTICE PERIOD

An injury victim must provide notice to a municipality (eg. City, County) within 10 days of their injury or they can be prevented from pursuing an action

## Chapter 2. McKnight v. Ontario (Transportation)

The Ontario Court of Appeal has upheld the jury trial verdict obtained by Peter Cho and Luke Hamer. Peter and Luke obtained the verdict in Brantford in March 2017, for a total of \$2.44M in damages, which included the maximum amount allowable in law for pain and suffering. The Plaintiff was a young man suffering with chronic pain and psychological injuries. The Court of Appeal wholly dismissed the appeal brought by the Defendants and awarded costs against them.

The Court of Appeal's decision in *McKnight v. Ontario (Transportation)* 2019 ONCA 28 stands out for several reasons:

1. An injured Plaintiff with chronic pain received the maximum of \$379,153.00 for pain and suffering in Canada. The Plaintiff did not fracture any bones or suffer a brain injury. The Court of Appeal did not alter the damages award, nor did they comment that it was inappropriate.
2. The Court of Appeal dismissed the Defendants' argument that a mistrial should be granted and upheld the principle that a "mistrial is the remedy of last resort."
3. The Court of Appeal wholly dismissed the Defendants' argument that a Statement of Claim should not be amended to match the amount of the jury award.

Based on the award, it is clear that the Brantford jury accepted the position and arguments advanced by the Plaintiff.

The appellants argued that the jury's award was the result of being inflamed. In particular, they pointed to the Plaintiff's claims of being mistreated by the Defence trial counsel. This submission was summarized by the Court of Appeal as follows:

*The appellants took the position that many of the respondent plaintiff's complaints were the product of pre-accident psychological trauma and issues as well as stress from the litigation. During his cross-examination, the respondent exhibited signs of stress and complained that the appellants' trial counsel was yelling at him and that he was asking about the suicide of the respondent's stepfather. In re-examination, he complained that the appellants' counsel had also yelled at him and questioned him about his step-father's suicide during his examination for discovery.*

The Plaintiff's treating psychiatrist opined that "defence counsel's conduct had a negative impact on the respondent's psychological condition." However, the Court of Appeal rejected the appellant's argument and reiterated that the Trial Judge was in the best position to determine if it was appropriate.

As such, the jury verdict in *McKnight v Ontario (Transportation)* remains as one of the highest jury awards for chronic pain in Canadian history. ✕

## Profile of Patrick Myers Student-at-Law



Patrick Myers is a Student-at-Law with Smitiuch Injury Law for the 2018 - 2019 Articling term.

He earned his law degree (J.D.) from the University of Ottawa. Before studying law, he completed an Honours Bachelor of Social Sciences degree in Criminology from the University of Ottawa.

During his time in Ottawa, Patrick volunteered at a local men's homeless shelter working closely with at risk men, providing them with meals and using his positivity to brighten their day. During this time he also volunteered with various organizations lobbying Senators to encourage positive policy changes.

Following his undergraduate degree but prior to enrolling in law school, Patrick backpacked Europe for a year, visiting 14 countries and over 50 cities. He lived permanently in London, England, for six months working at a local pub and immersing himself in the English culture. Upon his return to Canada, Patrick worked in wide range of security roles primarily in the GTA and from 2012 - 2015 he was the Director of Security at a prominent commercial property.

When Patrick enrolled in law school, he also took on a position at the local hospital as a Protection Agent. As part of his training at the hospital, he participated in various

seminars on tactical communication, de-escalation, non-violent crisis intervention and use of force. In addition to his course work, Patrick also participated in the advanced dispute resolution practicum provided by the Faculty of Law and he participated in the 2017 Rick Weiler Mediation competition.

In his spare time, Patrick spends time with family and friends, works out in the local gym, cooks and bakes regularly, and explores Ontario's outlying areas.

Recently, Patrick successfully passed both the Barrister and Solicitor Licensing Examinations. ✕



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**DAMAGES**

There is a limit of ~\$380,000 on how much a victim can obtain for pain and suffering, regardless of your injuries

5

**DEDUCTIONS**

In car accident cases, any medical benefits previously received will be deducted, dollar for dollar, from an award for similar medical expenses

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**TRIAL DELAYS**

Courthouses in Ontario prioritize criminal trials over civil trials. As a result, due to limited court resources, civil trials (eg. personal injury cases) are being delayed significantly

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**JURY SELECTION**

For a civil trial, no information is available about prospective jurors other than age, address and occupation. A lawyer can unconditionally dismiss up to 4 potential jurors when selecting 6

## Fearless Advocacy for Positive Change

The team of lawyers, paralegals and staff at Smitiuch Injury Law continue to fearlessly advocate for their clients.

It is the firm's philosophy to tackle tough societal issues and to push our cases to trial, to the Ontario Court of Appeal, and even to the Supreme Court of Canada. Whether it be the safety of rooming houses or the duty



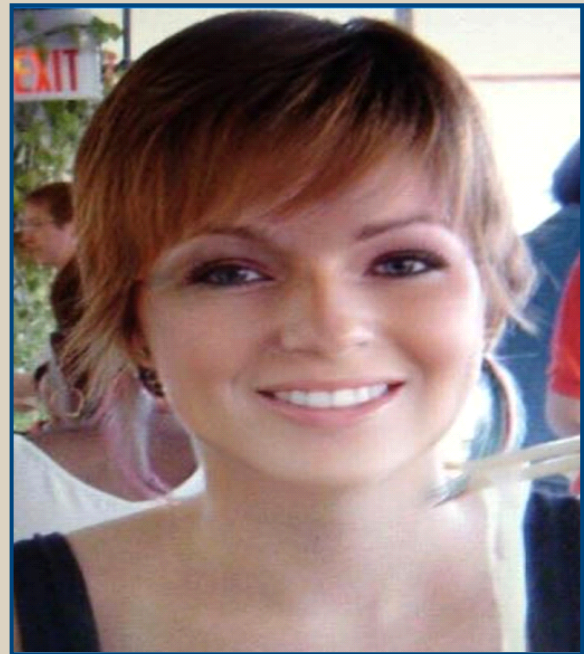
The window in Alisha Lamers' basement apartment.

that a municipality owes to its drivers, Smitiuch Injury Law works tirelessly to ensure our clients get the justice they deserve.

One such example, involves the tragic death of Alisha Lamers. Due to the housing crisis in the GTA, many people are living as tenants in unregulated and illegal basement apartments. In 2013, Alisha was one of them. She was asleep in her basement unit when a fire broke out. She became trapped in the inferno and was unable to escape because there was only one exit and bars on the windows. Alisha's tragic and avoidable death has highlighted the problems with rooming houses across the GTA. This case will be heading to trial with Mike Smitiuch and Luke Hamer looking to hold Alisha's

landlord accountable for his actions, to raise awareness and to effect positive change.

Another example of the firm's advocacy efforts involves municipalities and their duty of care to drivers on their roadways. Smitiuch Injury Law's client, Michael Chiochio, became a quadriplegic in a car accident in



Alisha Lamers

2006. At trial, the judge found that the City of Hamilton was 50 percent liable for the crash for failure to repaint a faded stop line. The decision was overturned at the Ontario Court of Appeal. Mr. Chiochio is now seeking leave at the Supreme Court of Canada to appeal the decision. The case turns on the application of the "ordinary reasonable driver" standard that municipalities must adhere to in their duty to repair roadways. Michael Smitiuch states "this is a case which raises fundamental issues about road safety in Canada and could potentially impact all drivers across the country."

We will continue to advocate for our clients and attempt to make positive change. ✕

## Smitiuch Injury Law Event Calendar

### **February 2, 2019 - Kids Can Fly - 12th Annual Storybook Breakfast**

Children and their parents enjoy breakfast with well-known cartoon characters. Proceeds from this event are used to support early child development and parenting. Smitiuch Injury Law was pleased to be a participant and donor to this event.

New Covenant Christian Fellowship Church, Brantford, ON

### **February 6, 2019 - Ontario Bar Association's Institute - Elder Law Program**

Mike Smitiuch was a speaker and panelist at the Elder Law program. He spoke about how juries are penalizing nursing homes for elder abuse actions.

OBA Conference Centre, Toronto, ON

### **May 2 - 3, 2019 - Hamilton Health Sciences - 2019 Annual ABI Conference**

26th 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

### **June 22, 2019 - FORE The Kids Charity Golf Tournament**

This year FORE the Kids Charity Golf Tournament is supporting Cardiac Kids, in support of the SickKids Foundation. Cardiac Kids raises funds for children who are suffering from congenital heart disease. Smitiuch Injury Law is pleased to be a participant and donor to this event.

Granite Ridge Golf Club, Milton, ON



For further information or to discuss how we can help you  
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