

disclosure

Your quarterly source of personal injury news

SMITIUCH INJURY LAW

PROFESSIONAL CORPORATION

What Would Cars Be Like Without the Civil Justice System?

1

Gas Tanks

Several car manufacturers, including GM and Ford, designed defective gas tank placement, which resulted in fires and explosions even in minor collisions. As a result of litigation, gas tanks are now universally located within rigid frames.

5

Illusory Park

Ford and Chrysler were two manufacturers that experienced systematic problems with transmissions that slipped out of park and allowed their “parked” cars to roll away. In one instance, a pregnant woman was killed after trying to save her four-year-old daughter in a parked minivan that rolled away. Ford eliminated the problem after being held responsible twice in court. Chrysler ignored the problem against its own engineers’ recommendations, until finally litigation and regulatory investigations forced them to recall over a million affected vehicles.

6

Tires

Tire manufacturers from Firestone to Goodyear tried to cover up problems with defective tires and have been held accountable in the courts. Firestone’s defective tires caused 271 deaths, and the resulting litigation brought tires and their manufacturers under increased scrutiny.

2

Door Latches

Ford’s own engineers identified the problem with its “paddle-style” handles, which allowed the doors to accidentally open in collisions. But rather than fix the design, Ford covered up the problem through red tape, until held accountable in court.

7

Side Impact Protection

When a police officer was left paralyzed by a low-speed, side-impact collision, a court held that the absence of side protection was a design defect. Now all cars are designed with rigid side-impact protection.

3

Electronic Stability Control

The popularity of SUVs eventually brought to light the stability problems of certain models. Ford’s Explorer, built on the already troubled Bronco II frame, experienced a rollover rate more than twice that of other SUVs. One result of litigation on SUV rollovers was an increased emphasis on the development of electronic stability control.

4

Air Bags

Auto manufacturers have been developing air bag technology since the 1950s, yet were extremely slow in installing it. By 1988, only two percent of new cars came equipped with air bags. Courts found that manufacturers knew full well their cars were safer with air bags and that many lives could have been saved. Eventually, manufacturers were forced to install air bags in all cars.

8

Seats

Safety engineers call the prevalence of weakened seats the “most egregious, widespread defect to be found.” Weak seats can collapse in even low-speed impacts and kill rear passengers. Without adequate regulatory standards, only court cases were able to highlight manufacturers’ negligence and force them to install stronger seats in all cars instead of just certain models.

9

Seat Belts

Court cases went a long way in highlighting the dangers of inferior seat belts, or no seat belts at all. One example was Chrysler’s defective Gen 3 seatbelt, installed in more than 14 million cars and proven to unlatch in accidents. Both seat belts and seats themselves were redesigned in response to litigation.

10

Power Windows

As power windows became more common, so did deaths associated with them. Children were especially vulnerable through accidental depression of rocker-style window switches. The inexpensive solution, a lift-up style switch, was ignored by several manufacturers in order to cut costs, but litigation eventually forced universal acceptance of the safer switches.

11

Roof Crush

Vehicle manufacturers, particularly makers of SUVs, had long known roof strength was a critical weakness during rollovers. Without adequate regulatory standards, it was only litigation that forced manufacturers to begin strengthening roofs.

Key Moments in Canadian Legal History

1 An Act to confer the Electoral Franchise upon Women, S.C. 1918, c.20
1919 - Women are given the right to vote.

2 Bill C-84
1976 - The death penalty is abolished from the *Criminal Code*.

3 Canadian Charter of Rights and Freedoms
1982 - Guarantees free speech, equality rights and freedom of religion.

The Loss of a Loved One

On a much too regular basis in Ontario, families receive phone calls that a loved one has been tragically killed. Many of these senseless deaths are caused by car accidents, assaults and product failures. In many cases, the fatality is the result of the careless negligence of another person.

When a loved one is fatally injured in Ontario, the family is able to seek compensation through the *Family Law Act*. The individuals who are entitled to make a claim under the Act include the spouse, parents, children, siblings, grandparents and grandchildren. Family members have two years from the date of the accident/incident to start a lawsuit against the at-fault parties. If an action is not started prior to the two year mark, the family members will be barred from obtaining compensation.

The *Family Law Act* states that a family member can obtain compensation for the loss of guidance, care and companionship that the person might reasonably have expected to receive if the injury or death had not occurred. Family members may be entitled to seek compensation for:

- Payment of funeral expenses;

- The loss of income that the deceased would have contributed to the household;
- The loss of contributions to household and homemaking chores;
- The loss of income of grieving family members; and
- Payment of other out-of-pocket expenses – grief counselling.

Unfortunately, the law in Ontario does not put what we believe is a just value on the loss of a loved one. As an example, the following are a list of cases and the amounts received by family members:

- *Fiddler v. Chiavetti*, 2010 ONCA 210 – a parent received \$125,000.00 for the loss of their child;
- *Hechavarria v. Reale*, [2000] O.J. No. 4288 – a husband received \$85,000.00 for the loss of his wife;
- *Wilson et al. v. Beck et al*, 2011 ONSC 1789 – child received \$65,000.00 for loss of father; and
- *To v. Toronto Board of Education*, [2001] O.J. No. 3490 (C.A.) – a sibling received \$25,000.00.

No amount of compensation will ever come close to replacing the loss of a family member. At Smitiuch Injury Law we are experienced at handling these types of cases and will take them to trial to ensure that justice is served.

Profile of Luke Hamer *Student-at-law*



Smitiuch Injury Law welcomes Luke Hamer, a Student-at-law with the firm. While articling at Smitiuch Injury Law, Luke will be working under the direct supervision of the firm's Principal, Michael Smitiuch.

Before joining the firm, Luke studied at the University of Toronto from 2005 to 2009 where he received an Honours Bachelor of Science degree, majoring in Anthropology and English. After completing his undergraduate degree, Luke focused on completing the next stage in his pursuit to becoming a lawyer.

Luke travelled abroad to attend law school at Bond University in Australia from 2009 to 2011. He completed the Legal Skills

practical component, obtained his Juris Doctor degree and graduated with honours. Luke returned to Canada in September 2011 and received his Certificate of Qualification from the National Committee on Accreditation (NCA) in October 2011.

During law school, Luke's main areas of interest were constitutional law (both Canadian and Australian) and civil litigation. Luke is excited to have the opportunity to learn and expand on the latter at Smitiuch Injury Law. Luke finds personal injury law most rewarding when an individual, who has been harmed or subjected to unfair treatment, can be assisted.

In his spare time, Luke has volunteered with Habitat for Humanity and as a camp counselor in Guelph, Ontario. Luke is a chess enthusiast and enjoys watching classic cinema, such as Barbie and Dora the Explorer, with his wife and four year old daughter.

Luke can be reached directly at lhame@smiuchinjurylaw.com, 416-621-1551, Ext. 211.

- 4 R. v. Morgentaler, [1988] 1 SCR 30**
1988 - Abortion provision forcing a woman to carry a fetus to term unless she follows certain criteria violates the *Charter*.
- 5 Reference re Milgaard (Can.), [1992] 1 SCR 866**
1992 - Twenty-two years after being sentenced to life in prison for murder, David Milgaard's conviction is overturned.
- 6 Michael Smitiuch is called to the Bar in Ontario**
1998 - The rest is history.
- 7 R. v. Bertuzzi, 2004 BCPC 472 (CanLII)**
2004 - Todd Bertuzzi, of the Vancouver Canucks, is charged, pleads guilty, and is sentenced for assault causing bodily harm for a hit on a player during an NHL game. A civil action follows.

Review of the 2011 Accident Benefits Seminar

On September 22, 2011, Smitiuch Injury Law hosted their second annual 'The "New" Accident Benefits: Practical Issues for Health Care Professionals' seminar. The "sold-out" free event was held at the Brantford Golf & Country Club in Brantford, Ontario. Attendees heard from speakers and an expert panel on the latest developments in accident benefits over the past year.

Michael Smitiuch acted as the host and moderator of the seminar.

Dr. Leon Kadish, an Orthopaedic Surgeon with PROMED Evaluations, explained the complex process of calculating whole body impairment ratings as a method of determining catastrophic injuries. Chris Jackson, Accident Benefits Manager at Smitiuch Injury Law, provided an update on the latest developments in accident benefits law in Ontario.

The final portion of the seminar was an open forum question and answer session with an expert panel comprised of Willie Handler (Senior Manager of Auto Insurance Policy, Financial Services Commission of Ontario), Rose Bilash (defence lawyer representing auto insurance companies, Shillingtons LLP), John Barry (President, Pursuit Health Management) and Smitiuch Injury Law's own Chris Jackson. Participants asked the expert panel questions surrounding the Minor Injury Group (MIG), assessment limits and medical and rehabilitation benefit limits.

The event concluded with a cocktail reception and social, allowing participants the opportunity to

network with each other and the Smitiuch Injury Law team.

Handouts are available to any health care professionals who were unable to attend the event.

Next year's free seminar is already in the planning process and is scheduled for Thursday, September 20, 2012. Register now, as we expect it to be "sold-out" again.



Michael Smitiuch addresses the AB seminar attendees while the expert panel intently looks on.

"Spring Forward" – The Perils of Daylight Saving Time

Since the Spring of 1918, when the Dominion of Canada passed the Daylight Saving Bill, Canadians have been moving their clocks forward one hour on the second Sunday in March and back one hour on the first Sunday in November. Most Canadians enjoy the extra hour of daylight when they "spring forward" however losing an hour sleep in March can also have potentially negative consequences.

Two recent studies have found statistical evidence which indicates that the number of traffic accidents increases on the first Monday directly following the "spring forward" time change.

A study by McMaster University found that traffic accidents on the first Monday after we "spring forward" increase by almost 17% compared to a normal Monday. The study, *"Sleep Deficit, Fatal Accidents and the Spring Shift to Daylight Saving Time"*, states one hour less sleep can result in a change in our internal clocks thus making some people less attentive and more fatigue than normal.

The second study was conducted by the Insurance Corporation of British Columbia (ICBC). Their research also found that time changes can alter some peoples sleep patterns which may throw off their internal clocks. Motor vehicle accident statistics indicated that there is a higher risk associated with driving on the first Monday after Daylight Saving begins.

In British Columbia between 2005 and 2009, there was an average of 690 car accidents per year on the Monday before the "spring forward" time change compared to an average of 850 car accidents per year on the Monday following the "spring forward" time change. This represents a 23% increase in car accidents.

What can you do to minimize your risk?

- Go to sleep earlier than normal on the Sunday we "spring forward".
- Slow down while driving and pay extra attention.
- Take Monday off work.

We "spring forward" this year on Sunday, March 12, 2012.



Smitiuch Injury Law Event Calendar

January 24, 2012 – Essentials of Case Management

Chris Jackson, Accident Benefits Manager, will be speaking on the essential components of Case Management.
McMaster University, Hamilton, ON

February 4, 2012 – Kids Can Fly – 5th 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.
Rossini Lodge, Brantford, ON

May 2, 2012 – 2012 Registered Nurses' Foundation of Ontario (RNFOO) Awards & Scholarship Gala

Smitiuch Injury Law is pleased to be a sponsor of this event.
Liberty Grand Entertainment Complex, Toronto, ON

September 20, 2012 – 3rd Annual The "New" Accident Benefits: 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

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PROFESSIONAL CORPORATION

"Helping those who need it the most."

Toronto: 21 Four Seasons Place, Suite 600 / Toronto, Ontario M9B 6J8 / **T** 416.621.1551 **F** 416.621.1558 1.866.621.1551
Brantford: 330 West Street, Unit 6 / Brantford, Ontario N3R 7V5 / **T** 519.754.1558 **F** 519.754.1580

www.smitiuchinjurylaw.com

