

disclosure

Your quarterly source of personal injury news

SMITIUCH INJURY LAW

PROFESSIONAL CORPORATION

Consumer Products and the Civil Justice System

Consumer products, personal injuries, misleading advertisements and lawsuits are related in many ways. Lawsuits started as a result of a personal injury or misleading advertisement can result in safety improvements to a consumer product or it being discontinued. Both can result in safer products and fewer personal injuries or deaths.

Who hasn't heard of the McDonald's Hot Coffee case (*disclosure, Fall 2011*) or defective automotive parts (*disclosure, Winter 2012*) but have you heard of the following seven consumer products that have been improved or discontinued as a result of the efforts of a personal injury lawyer and the Civil Justice System?

Fisher Price Toys



In August 2007, Fisher Price recalled over 1.5 million toys. The toys involved in the recall, which were made in China, were manufactured with lead paint. More than 80 different toys were recalled including popular Sesame Street, Dora the Explorer and Diego toys.

Coleman Propane Heaters



In June 2005, a jury in the United States ordered Coleman Company to pay a Florida woman \$10.1 million in damages in connection with a malfunctioning propane heater that killed her husband and son in 1999. It was determined that a design flaw in the Coleman PowerMate propane heater produced deadly carbon monoxide.

Yoplus Probiotic Yogurt



General Mills agreed to an \$8.5 million settlement, ending a consumer fraud class action lawsuit that alleged that the food manufacturer misrepresented the digestive health benefits of its Yoplus probiotic yogurt.

Evenflo Infant Car Seats/Carriers



In May 2007, Evenflo Company recalled all Embrace Infant car seats/carriers due to a malfunctioning handle. Evenflo warned consumers that when used in carrier mode the handle could release without warning, causing the seat to rotate forward, resulting in the infant falling out.

Firefighters Personal Alert Safety System Device



The Personal Alert Safety System (PASS) device is a motion sensor worn by firefighters while on duty. It flashes and emits a sequence of ear splitting beeps if a firefighter stops moving for more than 30 seconds. The National Institute of Standards and Technology determined that some can fail if they get too hot or wet. A tougher new standard for testing PASS devices was released by the National Fire Protection Association.

Simplicity and Graco Cribs



In September 2007, 1.2 million Simplicity and Graco cribs were recalled by the Consumer Product Safety Commission. At least two infants died as a result of a design flaw in the crib that allowed the drop rail to be installed upside down. This could result in the rail detaching from the crib thus creating a gap and potential suffocation.

Skechers Athletic Shoes



Skechers USA agreed to pay \$40 million to resolve allegations that it deceived customers about the benefits of its Shape-ups athletic shoes. The allegations centered around advertisements that claimed the athletic shoes would help people lose weight and strengthen their buttocks, legs and stomach muscles.

Famous People with Law Degrees

1 DAVID E. KELLEY
Before becoming a famous TV writer and producer, he worked as a Boston lawyer. Kelley is the creator of Boston Legal, Ally McBeal, The Practice, Chicago Hope and Harry's Law.

2 TONY LA RUSSA
After graduating from law school he decided that he'd rather ride the buses in the minor baseball leagues than practice law. Good decision. After 3 World Series championships and 6 league titles, he ranks 3rd all-time for wins by a manager.

3 STEVE YOUNG
Here's something most of us will never do: win a Super Bowl and complete a law degree in the same year. This San Francisco 49er's quarterback did both of these things in 1994. In total, Young won 3 Super Bowls and was named to the Pro Bowl 7 times.

Damages for Pain & Suffering & Loss of Enjoyment of Life

When we meet with new clients, they are often surprised to learn that there is a limit on the amount that they can receive for pain and suffering damages in a lawsuit in Ontario.

By way of background, there are two main types of damages available in personal injury cases: non-pecuniary general damages (i.e. pain and suffering) and pecuniary damages (i.e. the financial costs to an injured party). In 1978 the Supreme Court of Canada capped general damages awards for pain and suffering at \$100,000.00. This amount is indexed to inflation and, as of January 2013, the maximum a person can receive is \$345,584.00. For a person to receive the maximum he or she would have suffered catastrophic injuries (e.g. traumatic brain injury or paralysis).

Many factors are considered when general damages are assessed. The key factors are whether a person will have permanent problems and symptoms due to the injuries and how these problems interfere with a person's ability to function in all areas of their life (e.g. employment, social and recreational life). In addition, other factors

such as the age of the person (e.g. how long they will suffer for) or whether they had any pre-existing conditions that might have contributed to their current medical presentation will be taken into account.

In addition to the cap noted above, new clients are also surprised to learn that in a motor vehicle accident there is a "threshold" that you must meet in order to receive any compensation for pain and suffering. You must have a permanent and serious impairment or have scarring in order to qualify. If the value of your pain and suffering claim is \$100,000 or less, there is a \$30,000 deductible which is taken off the damages amount.

Given the restrictions placed on pain and suffering damages, at Smiutch Injury Law we do everything we can to demonstrate the severity of the problems our clients are suffering from. This includes obtaining expert medical reports, medical illustrations and using photos from before an incident to show a high level of activity.

The Expansion Continues *A New Associate Joins the Firm!*



Smiutch Injury Law is pleased to announce the addition of a third lawyer to the firm. Luke Hamer has accepted a position as an Associate Lawyer.

Luke was born and raised in Guelph, Ontario. He studied English and Anthropology at the University of Toronto and then operated his own residential roofing company after graduation.

Although he always had an interest in law, it was the hit television show, "Law and Order" that inspired him to get "down off the roof" and "go down under". In 2009, he was accepted to Bond University on the Gold Coast of Australia and he completed his Juris Doctor (J.D.) law degree in two

years before returning to Canada and articling at Smiutch Injury Law. He wrote the Barrister and Solicitor examinations in December 2012, and was called to the Bar in January 2013.

Luke says that he enjoys the variety that civil litigation offers, as no two cases are the same.

Many in the firm can attest to Luke's precise attention to detail and sharp analytical mind. "Luke is definitely an asset to our firm" says Michael Smiutch, Principal at Smiutch Injury Law. "It was our gain when Luke retired as a roofer and became a lawyer, but more importantly, it was our clients that benefited the most".

In his spare time, Luke plays soccer and enjoys the occasional chess game. He is married to his high school sweetheart and they have two children.

Smiutch Injury Law continues to expand. The firm now has three lawyers working out of both our Toronto and Brantford offices. We are currently servicing clients throughout Ontario, as well as clients in other countries who were injured in Ontario. With our paperless system, clients can be fully serviced no matter where they reside.

4 JERRY SPRINGER
Some say his job as a lawyer prepared him well for *The Jerry Springer Show* and his career in scandal journalism. Prior to the *Springer Show*, he worked as a lawyer, a campaign aide to Robert Kennedy and was the mayor of Cincinnati, Ohio.

5 GANDHI
You feel bad about all of those lawyer jokes now, don't you? After studying law in England, he passed the bar in 1891 and returned to India to practice in Bombay. It was then that he figured out being a lawyer may not have been his calling - he was too shy to speak loudly in court.

6 ANDREA BOCELLI
Before wowing the world with his incredible voice, this Italian tenor was actually a lawyer. After graduating from law school, Bocelli began his legal career as a court-appointed attorney. An audition with Italian rock legend Zucchero the following year, however, quickly put an end to that.

7 GERALDO RIVERA
A young Geraldo Rivera was one of the top five in his Brooklyn Law School class in 1969. As the lawyer for a Puerto Rican activist group called the Young Lords, Rivera caught the eye of an Eyewitness News exec who offered him a job, and his career in journalism began.

CIBC Run for the Cure

On September 20, 2012, four enthusiastic staff members of Smitiuch Injury Law participated in the 16th Annual, Canadian Breast Cancer Foundation CIBC Run for the Cure.

Despite the cool and windy day, nothing would stop Jessica Fonseca, Sarah Glass, Amanda Miceli and Mandy Waite from participating in Canada's largest single day volunteer-led fundraising event. Having the moral and financial support of everyone at Smitiuch Injury Law helped to motivate the ladies to train and be there for people that could not run. Breast cancer is the third leading cause of deaths in Canadian women after heart disease and lung cancer. Events like the CIBC Run for the Cure help raise money not only for cancer research but also to help educate people about lifestyle changes that will help reduce women's risk of breast cancer.

When the four ladies arrived at Queen's Park in Toronto for the event, they quickly noticed how many people, including CIBC employees, families, friends, and cancer survivors, were there to walk, run, or volunteer. "Everyone was happy and really excited to be able to support such a great cause" said Mandy Waite. "We will definitely participate again next year". The whole environment was very lively and fun. Music was played throughout the event and free refreshments and food were provided for participants.

The 2012 CIBC Run for the Cure brought together more than 170,000 Canadians in nearly 60 communities across Canada in this annual tradition to raise awareness and funds for breast

cancer research, treatment, and care. A grand total of over \$30 million was raised that day. It is rewarding to know that there are many caring and unselfish individuals that would take part in such an event for other people.



L-R: Jessica Fonseca, Sarah Glass, Mandy Waite and Amanda Miceli prepare to participate in the CIBC Run for the Cure on September 20, 2012.

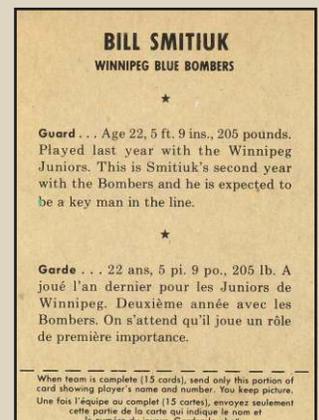
The Father behind Smitiuch Injury Law

Some would describe the founder of Smitiuch Injury Law as "competitive". When you delve into Mike's background it is easy to see why this may be. Growing up in a family with three boys (including the firm's Operations Manager, Keith) and a sister, athletics and friendly competition played a central role in his household.

The Smitiuch Family's inspiration for playing sports can be traced to both of Mike's parents, Bill and Lu, who were accomplished athletes back in their hometown of Winnipeg, Manitoba. Lu was a talented speed skater and her brother was drafted by the Montreal Canadiens.

Bill played a number of sports, but excelled at football. After playing in high school, Bill earned a spot on the Winnipeg Rods Football Club. At the time, the Rods dominated the junior football scene in Western Canada and forty players went on to play professional football, including Bill. In 1955, at the age of twenty one, Bill joined the Winnipeg Blue Bombers of the Canadian Football League and played as a guard. This was back at a time when the CFL was considered to be superior to the National Football League. Smitiuch's teammates included future legendary NFL coach, Bud Grant, and three time All-American, Calvin Jones, who was featured on the cover of *Sports Illustrated* in 1954 and tragically died in a plane crash in 1957. Bill roomed with Calvin during the 1956 season.

Although Bill never won the Grey Cup, the Bombers made it to the Western Finals in both the years that he played for them and the lessons that he learned were invaluable. As Bill says, "I learned the value of always working hard and never giving up." These are traits that were clearly passed onto his children.



Smitiuch Injury Law Event Calendar

February 3, 2013 - Kids Can Fly - 4th 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 9 - 10, 2013 - Hamilton Health Sciences - 20th Annual Conference on Neurobehavioural Rehabilitation in ABI

The goal of this conference is to enhance the understanding of complex issues following brain injuries related to forensics, addiction, behaviour, mental health and pain. Smitiuch Injury Law is pleased to be a participant and Gold sponsor of this event.

Hamilton Convention Centre, Hamilton, ON

September 25, 2013 - 4th 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

October 1, 2013 - Law Society of Upper Canada - Practice Essentials: Plaintiffs' Personal Injury Law

This program offers a hands-on primer on the essentials of a plaintiffs' personal injury file. Michael Smitiuch will be co-chairing this event.

The Law Society of Upper Canada - Donald Lamont Learning Centre, Toronto ON



For further information or to discuss how we can help you
please contact Michael Smitiuch at:

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"Helping those who need it the most."

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