



MOSAIC

CARRANZA LLP **spring 2012** newsletter

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survey says...

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Carranza recently conducted a referral source survey as a continued commitment to better serving their clients. The results were astounding.

Every year thousands of immigrants flee to Ontario in search of a better life. Once they get here they are faced with many challenges.

the plight of migrant workers in Ontario



The tragic motor vehicle accident of February 6th, 2012 near Hampstead, where eleven men lost their lives, was the first time many Ontarians became aware of the presence of foreign migrant workers in the province's green belt.

Out of the public focus, for decades thousands of migrant workers have been coming to this province to work in poorly paid agricultural jobs. With the federal government's recent changes in immigration policy it is expected that the numbers of temporary migrant workers in Canada will dramatically increase over time. But how can it be that thousands of men and women travel thousands of kilometres to do these hard jobs for such little pay?

Given the abysmal economic disparities between the countries of the North and those of the South, agricultural work in the north often offers an important economic opportunity for workers in the south that is not available in their home

countries. For countries of the north it is an opportunity to fill much needed vacancies for poorly paid back-breaking work. For countries of the south, it represents a valuable socio-economic safety valve in that the foreign jobs taken help to alleviate unemployment and underemployment pressures in impoverished sectors of the population. However, these economic benefits for the workers and their countries of origin also come with high costs and challenges, mostly for the workers and their families.

In addition to the obvious hardship of being separated from their loved ones, often for several months at a time, workers come to Canada with very limited English language skills, limited knowledge of the country, and of their legal rights. Generally, migrant workers come to work in rural communities with little access to services and information. The temporary nature of their immigration and employment status, their lack of familiarity with

their rights as employees makes migrant workers some of the most vulnerable labourers in Canada.

This has led to many abuses. Despite working long and back-breaking hours migrant workers are generally not paid overtime, not even when they work on holidays. The workers are commonly unaware of their right to refuse unsafe work and due to their precarious temporary contract situation feel pressured to take on any work assignment, no matter how unsafe, for fear of being sent back or not rehired the following season.

Lack of knowledge of their legal rights is particularly concerning since foreign workers often do jobs with a relatively high risk of injury. This has led to particularly egregious abuses following work-related injuries where migrant workers have been terminated and sent back home despite ongoing need for treatment and without an opportunity to seek compensation for

what are often permanent and disabling injuries. In such cases, instead of returning home with money for their families, the worker, often the only breadwinner in the family, returns as an emotional and economic burden to his family that was already overwhelmed with the daily struggle of poverty.

There are no quick fixes to this situation. Needed legislative and regulatory changes will take some time. However, there are some important immediate steps that can be taken to help to improve the plight of migrant workers. First of all, it is crucial that migrant workers be informed of their legal rights. Workers need to receive, in their own language, information about employment standards, safety, immigration procedures, their rights in case of injury, etc.

Advocacy groups like Justice for Migrant Workers have for years done a heroic job by regularly holding information sessions in rural areas

where the migrant labourers work, and they assist workers when they are injured, as well as advocating for much needed legal changes to the foreign workers program. Unfortunately, volunteers for Justicia are often not welcomed by employers. In some cases employers have gone as far as threatening their workers with dismissal if they attempt to go near the Justicia volunteers.

While there are difficult ethical and economic considerations involving the existence and expansion of a migrant workers program it is fundamental that while such a program exists, the people who make enormous sacrifices to come to Canada and grow the food that we eat, should be fully protected under the law. Anything less would be simply unjust. At Carranza, we are committed to advocating on behalf of migrant workers and their families to ensure that they receive the protection under the law that they rightfully deserve. ●



Juan Carranza LL.B., M.B.A.
Founding partner of Carranza LLP

Juan fights passionately to ensure that his clients receive just and fair compensation independent of their socio-economical, cultural, national, and linguistic, gender or religious background.

in our continued commitment to better serve our clients, Carranza conducted a referral source survey and we are thrilled with the results

In late 2011, Carranza undertook a survey to more clearly identify the reasons why clients are referred to our law firm. We value our referral sources and want to ensure a mutually beneficial relationship.

The respondents indicated reputation for fierce advocacy, cultural sensitivity, experienced advocates, proven results, multiple languages, and compassion as reasons for referring clients.

The results of this survey are used to develop the strategic direction for the firm, as well as play a role in key decision making procedures. We are committed to a client-centered approach to representing our clients, and wish to continually strengthen these referral relationships to provide the most comprehensive service to our clients. ●

Results from the survey indicated 83% of respondents had referred clients in the past and 17% were new to our firm. 100% of respondents would continue to refer clients and colleagues to our firm.

100%

of respondents would continue to refer clients and colleagues to our firm.

top 3 reasons why they refer us:

- 1 reputation for fierce advocacy
- 2 experienced advocates
- 3 cultural sensitivity



some of the comments included:

“They responded with clients very quickly, friendly staff and first contact with the firm is excellent.”

“Client expressed gratitude for referring them to Carranza Law Firm because she was extremely happy with the work they are doing for them.”

“Clients are very pleased with the response from this firm, very quick response time and eager to assist client with their needs.”

Catastrophic Impairment and the Glasgow Coma Scale: *Mallat v. Personal Insurance Co. of Canada*

The level of benefits available to a person injured as a result of a motor vehicle accident substantially increases if the injured party is determined to have suffered a Catastrophic Impairment.

Under Section 2(1.2)(e)(i) of the *Statutory Accident Benefits Schedule (SABS)* an individual may be deemed to have met the “Catastrophic Definition” if they have received a score of 9 or less on the Glasgow Coma Scale (GCS), if the test was “administered within a reasonable period of time after the accident” and if the test is “performed by a person trained for that purpose”.

One of the seminal decisions considering the definition of catastrophic is *Desbiens v. Mordini*¹ a decision of Justice Spiegel of the Ontario Superior Court. In *Desbiens*, the Court commented that:

the legislature’s definition of “catastrophic impairment” is intended to foster fairness for victims of motor vehicle accidents and ensure that victims with the greatest health needs have access to expanded medical and rehabilitation benefits.

The GCS is often used to measure the severity of a head injury following an accident. There have been several cases dealing with catastrophic impairment based on a GCS rating of 9 or less. Many of these cases consider the impact of sedating drugs and intubation and the effect those medical interventions have on the injured person and their GCS rating.

In the recent decision of *Mallat v. Personal Insurance Co. of Canada*², the insured applied for a catastrophic impairment designation after a vehicle

crossed into her lane and hit her vehicle head on. As a result she suffered multiple serious injuries, including a closed head injury. The insurer denied her application and relied on their experts’ findings that the GCS scores were recorded after sedation and intubation and were therefore invalid, or were attributable to medications given to the insured for anesthesia.

Following the collision the insured was trapped in her vehicle under the dashboard for 30 minutes prior to extrication. It was noted that the insured had a brief loss of consciousness before the first GCS was administered at 2:55 p.m. with a score of 15.

While being transported by air ambulance, the insured was administered Fentanyl for pain three times and a GCS was also administered three times with a score of 15 each time. Upon arrival at the hospital at 4:00 p.m., her GCS score was 13. It was recorded prior to a number of assessments including a CT scan of the brain, insertion of a chest tube in her collapsed lung and emergency surgery for her orthopedic injuries.

A GCS test at 5:30 was 13, approximately 10 minutes after the drug Propofol had been administered three times within a period of 20 minutes. Following a 3 ½ hour surgery for orthopedic injuries it was noted she did not respond easily to verbal or tactile stimulation. At 4:00 a.m. while in the Trauma Observation Unit she was administered a GCS test and scored 8 on two occasions. Over the next two days, her scores rebounded to a range between 11 and 15.

The first issue the Arbitrator considered was *whether the insured received a valid and accurate GCS score*. The Arbitrator gave little, if any, weight to the opinion of the Insurer’s expert that intubation and medications administered for the purposes of surgery invalidated the insured’s GCS score of 8.

The Arbitrator found that it could reasonably be inferred that the properly trained individual administering the GCS test was not only aware that the insured had been given Propofol 10 minutes before the GCS test, but was also aware that the drug, which is fast acting and leaves the system quickly, would not interfere with a valid and accurate GCS test score.

Likewise, the Arbitrator also found that the expert should have been aware that the drug Fentanyl, when administered intravenously, leaves the system within a half hour to one hour. The Insurer’s expert also ignored that the insured was no longer intubated after surgery. The Arbitrator found that the lower GCS score was not due to the effects of medication administered to induce anesthesia but rather, arose as a result of a traumatic brain impairment.

The second issue was *whether the GCS test was administered within a reasonable period of time*. The Arbitrator concluded that it was not a question of how early or how late the GCS test was administered after the accident, but whether it was administered within a reasonable period of time after the accident in relation to the facts of the particular accident. The Arbitrator found that based on the facts of this very serious car accident, with its →

¹ [2004] CanLII 41210 (ON S.C.).
² 2011 CarswellOnt 15122 (FSCO).

multiple emergency procedures, a valid GCS test with a score of 8 was “administered within a reasonable period of time after the accident” and was as a result of the brain impairment suffered from the motor vehicle collision. The Arbitrator concluded that pursuant to paragraph 2(1.2)(e)(i) of the SABS, the insured suffered a catastrophic impairment.

As seen in this recent FSCO decision, the clinical findings by health care professionals are integral to the process of evaluating whether an individual has sustained a catastrophic impairment. However, this decision is a continuing example of how insurers are routinely denying accident benefits to the most seriously injured car accident victims. As a result, people need a lawyer to assist them in accessing the treatment they need now more than ever. ●

Top 25 Canadian Immigrants Award for 2012

Juan Carranza has once again been nominated as one of 75 finalists for the Top 25 Canadian Immigrants Award for 2012 based on his continuing commitment to supporting immigrants, communities and much more.

The Top 75 shortlisted finalists are a diverse mix of engaged, inspiring Canadians who all serve as great role models for any newcomer — indeed any Canadian. The shortlist is now live at canadianimmigrant.ca/top25 and the voting phase of the awards will be open until April 13, 2012.

Now it is our turn to help! It is a people’s choice award, and relies on votes. So all we need to do is VOTE! Please show your support and take two minutes out and vote for Juan Carranza. The award is well deserved, and reflects well on our organization as whole. It is quick and easy to do, simply click on the link, fill in the form, and vote! Be sure to click on the facebook share and tweet buttons to share who you voted for – and encourage others to vote too!

Visit www.canadianimmigrant.ca/top25

March is National Social Work Month

Social work, a profession set in enhancing and embracing social diversity and helping to improve people’s lives, is based around core values, including social justice, dignity, integrity, professional competence and the importance of human relationships. Social workers provide the human connection and act as the link between the individual and services in the community.

The profession of Social Work originated in the early 19th century and was born out of an increase in poverty and social activism, and a movement towards providing a more formalized process for the delivery of health, educational and legal services to those in need.

Over the decades, Social Work has grown and flourished to fulfill a need in society. Social Workers are employed in a variety of workplaces ranging from private and public agencies, hospitals, schools and clinics--to businesses and corporations.

Through their commitment to improving the lives of others, they help individuals and families cope and solve issues, advocate for improved services and social reform, conduct research, and are intricately involved in planning and policy development.

The type of cases depend on the setting in which they work. Here are just a few examples of how social workers provide varying levels of support and strengthen relationships:

- In the case of a child who is having difficulty managing their behaviour in school, the social worker will act as a liaison connecting the different parties involved and help come up with a plan and facilitate the delivery and provide necessary guidance and support;
- A family in crisis due to job loss and financial difficulties relies on social workers to identify the needs of everyone, involve everyone in determining a course of action and

connect them to the other available community resources. This can take years and social workers provide continuing support;

- A social worker in a community based agency works on behalf of new immigrants to advocate for more access to affordable community housing.

As March is National Social Work Month, we want to recognize the instrumental value these hard working professionals contribute to our society as a whole. The list of what social workers do for our community is endless. It is a truly noble profession.

On behalf of all the staff and clients of Carranza LLP, we would like to extend our sincere thanks and appreciation to all social workers. ●

in the community

staff profile

Maria Capulong Barrister & Solicitor

country of origin:

Canada, parents from the Philippines

languages spoken

English, Tagalog

specialties

Personal Injury Litigation, Motor Vehicle Accidents including pedestrians and cyclists, Psychological Trauma and Disorders, Chronic Pain, Orthopaedic Injuries and Migrant Worker Law.

Maria’s background in psychology, a tenacity honed by years of running her own firm, and experience on her feet before the court as a former Provincial Prosecutor, make her an asset to any client, no matter what religion, race, culture or gender. She has the ability to console and counsel her clients as well as the skill to anticipate the opposition’s theory and tactics, and turn them to her clients’ advantage.

While Maria’s focus is personal injury law, she has a passion for social justice and it shows in and out of the courtroom. She pursued a career in law in order to fill a need after noticing that the Philippine community lacked legal representation, and continues to dedicate a portion of her practice to issues that disproportionately affect that community, including migrant worker law.

Maria was called to the Bar in 2007. She earned her Bachelor of Laws from the University of Windsor’s Faculty of Law. Her passion, understanding and tenacity make her a powerful advocate and opponent.



ask a lawyer

Coming up in the Summer 2012 issue of the Mosaic Newsletter, we want to answer your questions. Email or mail your question by May 1st, 2012 and if your question is selected for the newsletter, you will receive a prize.

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Carranza is SickKids Hospital donor of the week

Carranza has been a generous supporter to SickKids since 2009. The firm supports the Carole Harrison Trauma Fund, which helps support families who are dealing with a child with a traumatic injury. To date the firm has donated more than \$60,000 to support the trauma team.

we want to hear from you!

Our success is measured by the satisfaction of our clients!

Carranza LLP is the only ISO 9001:2008 certified personal injury law firm in Canada, and this certification by the International Organization for Standardization (ISO) ensures that our firm adheres to the following principles:

- A customer focused organisation
- Management responsibility
- The involvement of people at all levels
- Ensuring a process-oriented approach
- A systematic approach to management
- A factual approach to decision making
- Mutually beneficial supplier relationships
- Continuous improvement

In our continued efforts to meet our client’s needs, we want to hear from you! Simply submit your answers to the following questions and you will be entered in a contest to win a great prize!

- What would you like to see in a Personal Injury law firm?
- How can we improve our service?
- How can we better communicate with our clients?

Please remember to include your name and telephone number with your entry. Entries can be submitted online at www.surveymonkey.com/s/2012_client_feedback

Contest deadline: April 30th, 2012
Prize Draw – May 1st, 2012
1st Prize - \$400 Prepaid VISA Gift Card
2nd Prize - \$200 Prepaid VISA Gift Card
3rd Prize - \$100 Prepaid VISA Gift Card

Only one entry per person.
Rules and regulations available at www.carranza.on.ca





Carranza is Toronto's largest ethnic personal injury law firm with services in over 24 different languages*. Our experienced personal injury lawyers are committed to helping all injury survivors achieve maximum recovery and fair compensation by providing unsurpassed professional and culturally-sensitive representation. We not only help our clients overcome the language barrier, but we also assist with any cultural issues that may arise. When your patient looks for a personal injury lawyer, it is important that they find one that understands not only the ever-changing legal system, but also their unique situation and individual needs. Inspired by all you do, we believe our job is more than helping them through litigation; we go to great lengths to ensure our clients receive all the rehabilitation they need and compensation they deserve. From the outset of their claim, our clients receive immediate guidance and expertise from their Accident Benefits team. You provide the healthcare. We will provide the rest.

*Languages include: Cantonese, Mandarin, Spanish, Italian, Punjabi, Tagalog, Filipino, Portuguese, Farsi, French, Bengali, Bosnian, Gujarati, Hebrew, Hindi, Kiswahili, Malayalam, American Sign Language, Russian, Sylheti, Tamil, Telugu, Urdu, Vietnamese and English.

carranza LLP

Multiple languages. Singular focus.

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