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**carranza** LLP

# MOSAIC

CARRANZA LLP Spring 2018 Newsletter

## Another important victory: Client gets triumphant decision at the Licence Appeal Tribunal

LAT Decision for J.N. v. Travelers Insurance **By: Adrian Carranza**

J.N. was a fit young man with a promising career in healthcare, working two jobs as a Personal Support Worker and also training to become a registered nurse. Things were looking pretty good for J.N. in the summer of 2014. But he had no idea his life would be thrown

upside down that summer when he was unexpectedly struck by a car while crossing the street.

The collision left J.N. with injuries to his back, shoulder and neck. His life plans were suddenly on hold. J.N. followed his doctor's advice dutifully, taking medication and going for physiotherapy. His back pain improved and when his physiotherapy ended, he started an exercise and fitness program with a personal trainer as recommended by his treating doctor and the insurance doctor.

### The rehab incident

One day, while doing back strengthening exercises with his trainer, J.N. reinjured his back suffering a disc herniation. His back pain worsened and he had increased difficulties with lifting, carrying, as well as returning to work. J.N. turned to the insurance company for help, but they refused to pay him income replacement benefits

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arguing the disc herniation was a new injury and not related to the car collision.

J.N.'s lawyer, Moira Gracey, a partner at Carranza LLP, intervened by stating that the herniation was a direct result of the rehabilitation that was not only recommended by J.N.'s family doctor, but also by the insurance company's doctor. Moira requested that Travelers pay J.N.'s benefits, and when they refused to pay, she applied for a hearing before the License and Appeals Tribunal (LAT).

## At the hearing

Moira argued that the chain of causation between the car collision and the disc herniation was not broken, as J.N. reinjured his back while following the treatment necessary as a result of the car collision. She added that had it not been for the car collision and resulting back pain, J.N. would not have been doing the back strengthening exercises and would not have sustained the disc herniation. Travelers Insurance maintained that the disc herniation was not the result of the car collision, and therefore J.N. was not entitled to further income replacement benefits.



MOIRA GRACEY

## The decision

On February 9, 2018, the Licence Appeal Tribunal released its decision. The adjudicator accepted Moira Gracey's reasoning of causation and found a causal connection between the car collision and J.N.'s disc herniation. The adjudicator ruled that J.N. was entitled to receive income replacement benefits to the date of the hearing and ongoing.

Congratulations to J.N. and Moira Gracey on this important victory. We at Carranza are proud of the tireless work and effort put forth by Ms. Gracey to represent her clients with the utmost professionalism and dedication.

Congratulations Moira on another great victory!



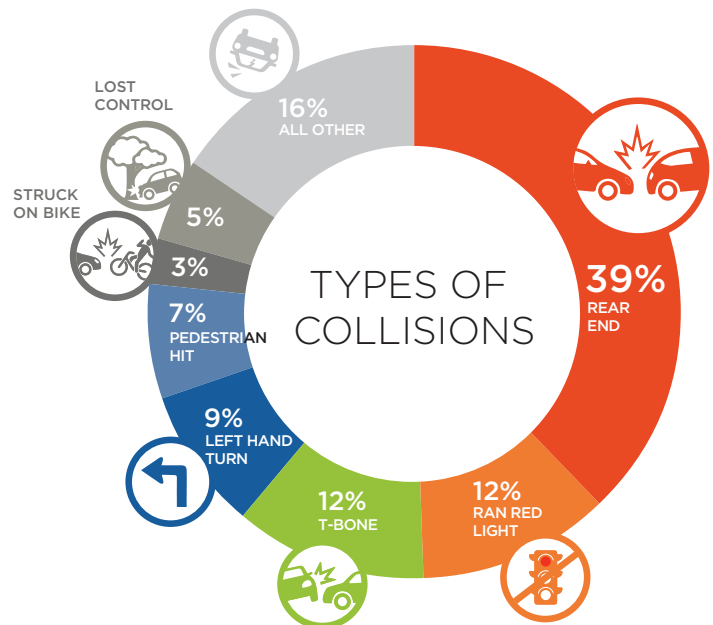
## Carranza's car accident statistics for 2017

Regular readers of Mosaic may recall that two years ago, we had a look at our open cases at the firm to try to determine what kind of accidents were the most common, and what could be done to avoid them.

In the spring 2016 issue, we discussed how to avoid car accidents in general, and then in the autumn issue of 2016, we focused on left hand turns and how to do them safely to avoid collisions, where possible.

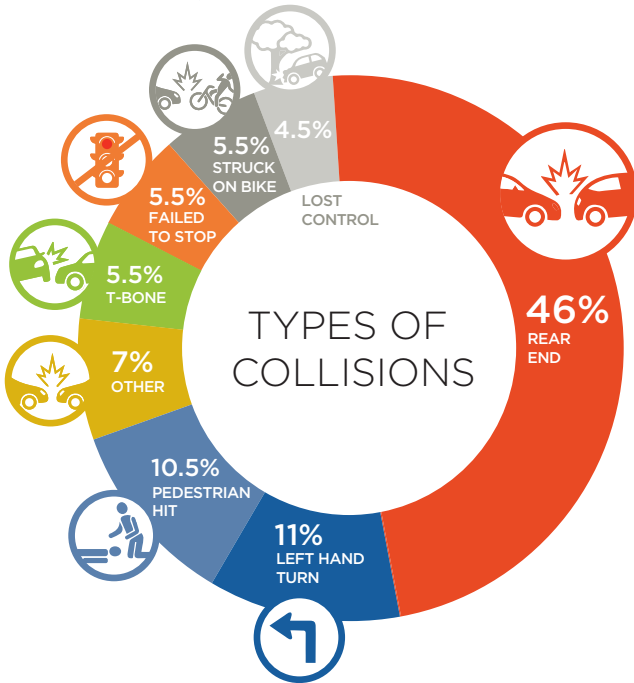
This year, we decided to take another look at our data, only this time from all active motor vehicle accident (MVA) cases. For the most part, the statistics remain consistent with our 2016 findings, and in both years, rear-ended collisions were by far the highest cause of motor vehicle accidents that our clients were involved in.

## 2017 Causes of collisions



Of the total active files we have at the firm, 87% of our files are MVA-related.

## Comparing those new stats to 2015



Of the total active files at the firm at that time, 72.5% were MVA-related.

The 2016 Ontario Road Safety Annual Report Selected Statistics\* provided some interesting comparative stats:

- Pedestrian fatalities: 20.7%
- Fatal rear-end collisions: 27%
- Sideswipe collisions (compare to T-bone): 5.6%
- Turning movement (compare to left turn): 22.5%

\*Preliminary 2016 Ontario Road Safety Annual Report Selected Statistics: <http://bit.ly/2Frwv77>

Evidently, rear-ending is still a big cause of accidents. In 2015, nearly half of all of our MVA cases were rear-end collisions! The number dropped a bit in 2017 to 39%; and in Ontario 27% of fatal crashes in 2016 were rear-end collisions.

So how can we avoid rear-end collisions to the best of our abilities? Read the next article to find out ↗



## Tips to avoid rear-end collisions

Rear-end collisions are one of the most common causes of motor vehicle accidents (MVAs). Out of our active files in 2017, it was our leading category of MVA causes.

While rear-end collisions cannot always be completely avoided, there are some things you can do to put yourself in a better position to avoid being rear-ended, or to at least minimize the effects.

### 1. Maintain a safe following distance

Always leave enough space between your car and the car in front of yours (so as to avoid rear-ending the vehicle in front of yours) to allow time to safely stop. A safe driving distance is different on city roads vs. the highway, but a good rule of thumb is the “three second rule”:

- Choose an object on or near the road ahead to use as a fixed reference point, like a sign or a tree.
- As soon as the rear end of the vehicle in front of you passes the object, start counting: one thousand one, one thousand two, one thousand three.
- If you pass the object before you finish counting, you are following too closely.
- If you finish counting before you pass the object, you have established a good following distance.

Of course, current road and weather conditions must be considered. Depending on road conditions, three seconds might not be enough. When it is rainy, icy or snowy, when there are fallen leaves on the road, or if there is low visibility due to fog or the time of day, increase the distance between your car and the one ahead of you.

Another reason to increase the distance between your car and the vehicle in front of yours is to give yourself time and space to change lanes or get away from another car if you are being tailgated. In the unfortunate circumstance that you are still rear-ended, space will hopefully allow you to avoid rear-ending the car in front of you.



## 2. Be aware of your surroundings

Scanning the road ahead is essential, but you should also be alert to road conditions at your sides and behind you. If you see cars beginning to slow down ahead, you can begin to slow down too. If you see something unexpected on the road such as debris or a stalled car, you will have time to make a decision, like switching lanes instead of just having to slam on your brakes.

Also, be sure to check your mirrors often. Drivers should be checking their mirrors every five to eight seconds and then again when slowing down or stopping. When coming to a stop at a traffic light or stop sign, always look in the rearview mirror to be sure vehicles behind you are also stopping.

When you come to a stop, try to leave enough space between your car and the vehicle in front of you to be able to change lanes or pull over to the side of the road if necessary (e.g. if a car coming up behind you isn't going to stop!).

## 3. Be predictable

Letting other drivers know your next move is crucial to staying safe. It can be irritating when drivers suddenly change lanes without signaling, or slow down abruptly to make a turn – but worse, this puts everyone at risk of a crash.

Rather than stopping suddenly, slow down gradually when approaching a stop sign, red light, or when preparing to turn.

Activate your turn signal with plenty of time for your turn or lane change.

## 4. Make sure your car is in good working order

As well as making sure your gas tank is not nearing empty and that you have windshield washer fluid in the tank, you should also check your signal lights frequently. Make sure to check your headlights, brake lights, and turn signals in the front and the rear.



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# Mindfulness and Driving: Focus on the Road

By Jennifer Boyce, Ph.D., C.Psych.

Distracted driving is the leading cause of fatal collisions in Ontario for the fourth year in a row according to 2016 data from the Ontario Provincial Police. More people are killed due to distracted driving than speeding, not wearing a seatbelt, and most shockingly, drunk driving.<sup>1</sup> What is so important about that text or that phone call? Perhaps a better question is what is so unimportant about our own lives that we are so easily drawn away by something that can wait. While it might seem obvious or redundant to put mindfulness and driving together, these statistics show us otherwise. To drive mindfully has become an imperative for the safety of our families, our friends and our children. But what does it mean to be mindful?

## What is mindfulness?

To be mindful is to be present. “Mindfulness is the combination of concentration, clarity, and awareness brought to bare on even the smallest details of experience.”<sup>2</sup> When you are turning left, you are aware that you are turning left. As you accelerate, you are aware of the pressure of your foot on the gas pedal. How many of us have arrived home after driving without any recollection of how we got there? Mindfulness connotes awareness of the body, feelings, thoughts, and external objects in present time without judgement or the desire to achieve anything. Many people associate mindfulness with formal practices such as sitting meditation, but mindfulness can be practiced with any activity. The term mindfulness stems from the Buddhist tradition which has systematized practices that train the mind towards peace, wisdom, and compassion. Mindfulness is a deceptively simple concept, but requires much effort and practice to perform consistently. It is best learned with a teacher.

Dr. Jon Kabat-Zinn is credited with being the pioneer in introducing mindfulness to the western medical community in 1979. His Mindfulness-Based Stress Reduction program (MBSR) has been the



flagship of programs and therapies within psychology, behavioural medicine, and neurobiology whose aim is to reduce stress and promote healing in normal and clinical populations. Kabat-Zinn defines mindfulness as “the awareness that emerges through paying attention on purpose in the present moment and non-judgementally to the unfolding of experience moment to moment” (p.145)<sup>3</sup>. Research has shown several benefits of mindfulness including stress reduction, decreased anxiety and depressive symptoms, reduced rumination, less emotional reactivity, improved well-being, and a strengthened immune system<sup>4</sup>. So, how does it work when you are on the road? Below we will look at some practical approaches to incorporating mindfulness into your driving routine.

## Before you drive

Are you fit to drive? Close your eyes and briefly focus your awareness on the different parts of your body moving from head to toe. Note the sensations. Take approximately 1 to 2 minutes. Are you tired? Stressed? Still stewing about the meeting you had with your boss? Evaluate whether you are fit to drive at this moment. If not, wait a few minutes.

Take deep breaths. Often we are busy rushing to meetings, play dates, soccer games, and appointments that we completely forgot about. Take a pause. Sit in your car and take 5 to 10 deep breaths and let go of the last event with each exhale.

Set your intention to drive mindfully. Most people set the intention to reach their destination quickly. Therefore, you race through the amber light, tail gate on the advanced green arrow, and weave through traffic. When you set your intention to be mindful, your priority is no longer speed. It becomes about safety and well-being of yourself and everyone sharing the road with you.

## While driving

Be aware of your environment. Be aware of the other vehicles around you. Leave appropriate distance between you and the vehicle in front. Scan for pedestrians, even when the lights are green and check your mirrors regularly. When others honk, become aware of the sound, then let it go.

## The Mindful Passenger

If you are a passenger, you too need to be mindful. You are now the receptionist, navigator, and executive assistant. Answer the phone, respond to texts, and provide directions as necessary. Your job is to assist the driver and ensure that s/he is alert and fully functional. Be prepared to take over if necessary.

Enjoy the ride. Feel your body in the seat. Get comfortable. Breathe deeply as you set out on your journey. Play music. Enjoy the breeze. Play a podcast. You can be aware of your environment and still have fun.

## In conclusion

An accident shocks you into the present moment. You become acutely aware that things can change in an instant. Practicing mindfulness while driving does not eliminate the possibility of an accident, but it strengthens your ability to prevent one. The latest statistics show that the average daily commute for Ontarians is 54 minutes. This rises to 66 minutes for people living in the Greater Toronto Area.<sup>5</sup> Thus, there are many opportunities to become distracted by responding “OK” to a text, answering the phone, or searching for it when it falls between the seats. Seconds count when you are travelling at 60 kilometres per hour. Your focused attention and ability to respond effectively could save your life. To be mindful behind the wheel is to take charge of your safety. However, in life, accidents happen which often leave people feeling afraid and nervous when traveling in a vehicle.

**Dr. Jennifer Boyce, C.Psych.** is a registered psychologist and certified yoga therapist. She is the founder of Flow Consulting. She uses mindfulness to help individuals restore and create peace in their lives, particularly those involved in motor vehicle accidents. Visit Dr. Boyce’s website [www.getinflow.ca](http://www.getinflow.ca) or contact her at 647.343.7068 or [jboyce@getinflow.ca](mailto:jboyce@getinflow.ca) to explore how applying Mindfulness could help you.

## References

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