

## A personal injury firm that's actually personal

At Carranza LLP, we specialize in personal injury law. Speaking 20 different languages, we are committed to helping injury survivors achieve maximum recovery and compensation.

We specialize in the following areas of personal injury law:

- Car accident claims
- Long term disability claims
- Slip and fall claims
- Brain injuries
- Spinal cord injuries
- Paediatric injuries
- Orthopaedic injuries

**carranza** LLP

A personal injury firm that's actually personal

1280 Finch Ave. West,  
Suite 200  
Toronto, Ontario  
M3J 3K6

Toll Free Line: 1-877-633-1065  
www.carranza.on.ca

### Stay connected!

We want to hear from you!  
Please review us on Google.



carranza LLP



**P1-3** | Moira Gracey continues to fight for the land rights of native Maya people of Belize



**P3** | What can you do to help your discovery process?



**P4** | Don't forget these winter driving tips!

# MOSAIC

CARRANZA LLP Winter 2017 Newsletter

The Maya people of Belize have been fighting for rights to their own lands for over two decades

Carranza partner Moira Gracey has been working with a team that is fighting for the land rights of the native Maya of Belize since 1997. Eighteen years later, the struggle continues...

In 1999, the team worked on a proceeding before the Inter-American commission on human rights on behalf of the Maya people of Belize, who were seeking recognition of their land rights. That was eventually successful. In 2007, Moira was part of the legal team that filed and won a test case in the Belizean courts, in which two Maya villages' customary title to their lands were affirmed. The court ruled that the government of Belize had violated the constitution by denying the existence of that title.

The government refused to act on that case however so the next year, in 2008, further litigation was filed on behalf of all of the traditional Maya villages. Again the court ruled that Maya villages have rights to their land rights and the government violated the Constitution in ignoring those rights. This time, the government appealed.

Continued on page 2

In 2013, the appeal decision was released. It was a split decision, in which the court upheld the land rights themselves, but overturned the finding that the government had violated the constitution. Both parties appealed that decision to the highest court, the Caribbean Court of Justice. Mere days before the appeal was to be heard in April 2015, the government conceded every issue except damages, agreeing to an order that was virtually identical to that won by the Maya people at trial and in 2007.

*“The Maya people of Toledo achieved a groundbreaking victory in international courts in April 2015... The court affirmed that these traditional land rights constitute property equal in legitimacy to any other form of property under Belizean law. The judgment is the culmination of litigation filed against the government of Belize by the Maya Leaders Alliance and the Toledo Alcaldes Association on behalf of the Maya villages. The government of Belize in the past has vigorously contested the assertion that the Maya have customary land rights. This agreement is historic in that the government has finally reversed this position and come to an agreement with the Maya people.”<sup>1</sup>*

Subsequently, the Caribbean Court of Justice ruled on the issue of damages, affirming that the government had indeed violated the constitutional right to equal protection of the law, awarding damages of \$300,000 Belize dollars to be put into a fund to demarcate and protect the land. The Caribbean Court assumed supervisory power over the implementation process.



THE WINNING TEAM IN JUNE 2015, IMAGE VIA CULTURALSURVIVAL.ORG

## The New Challenge — Implementing Maya Land Rights

Nine months after agreeing to protect and recognize Maya land rights, the Belize government appointed a Maya Land Rights

Commission with a mandate of implementing the court order. Progress has been slow and unsatisfactory so far. In the almost two years since it was formed, the Commission has met with the Maya leadership organizations only four times, and has not yet developed a work plan or timelines for implementing the court order. The \$300,000 in damages has been spent entirely on this Commission, with not a penny provided to the Maya leadership organizations to participate in the consultation process.

The Caribbean Court of Justice is supervising the implementation of the judgement. Three hearings have been held thus far. In the first two hearings, the CCJ counselled patience, and made no orders. However, in the most recent supervision hearing, held on October 24 and 30 (available for viewing on the CCJ website), the court expressed some frustration with this slow pace of implementation – effectively, no real movement has occurred – and ordered the government to produce, in consultation with the Maya, a detailed work plan to develop the demarcation mechanism within three years. It gave the government of Belize until the end of January 2018 to finalize this work plan, and scheduled a compliance hearing for the middle of February 2018 to confirm this first step is adequately completed.

The Caribbean Court of Justice has also recommended that the government establish an independent mechanism to address the issue of ongoing incursions on Maya lands by third parties, and the government itself; a mechanism in which the Maya parties have confidence. To date, the government has often ignored its obligation under the CCJ order to refrain from issuing any leases or permits over Maya village lands, and not to allow any person (government officials or private individuals) to interfere with Maya use of their lands. Because of this lack of responsibility, the legal team representing the Maya has had to go to court three times against the government of Belize.

First, we filed a claim for unconstitutional expropriation of Maya lands resulting from the Belize government widening the road and building an agricultural border facility on Maya land near the border with Guatemala, with no notice or compensation to, and no consent from, the Maya village.

The second was a claim for trespass and breach of the CCJ order resulting from the actions of Belizean creole man in a common law relationship with a Maya woman, who started building a house

in her village without approval from the village. The site where he chose to build is an archeological site sacred to the Maya. The Maya asked police to step in, sent an eviction notice, and also notified the Department of Archeology.

They also held a village meeting at which the man was threatening people. The village leaders arrested him, and he agreed to take down the house he had begun building without consent. When the police came, they spoke only to the man, not to the village leaders. Then the man went to the press, accusing the Maya villagers of being racist (the man is black). Days later, a riot squad arrived in the village in the middle of the night, and arrested a dozen villagers for assault and forcible confinement. After putting these Maya subsistence farmers through the criminal process for almost a year, all charges against them were dropped.

The village sued the man for trespass to make him leave, and the government for compensation for not removing him despite the CCJ order that the government not allow third parties to interfere with Maya villages’ land rights. That case is proceeding slowly; most recently the government is trying to have it summarily dismissed (thrown out).

In a third legal proceeding, the authority of Maya customary leaders (“alcaldes”) to impose penalties on village members was challenged. The legal team successfully defended the alcaldes, and the government subsequently committed to rectifying technical deficiencies in the alcaldes’ appointments to protect them against any future such challenges. Moira is cautiously hopeful that the government will in fact carry out those rectifications.

This case demonstrates the interaction between politics and law. A legal victory such as the groundbreaking decision at the Caribbean Court of Justice in 2015, is no guarantee that the rights recognized by the court will be meaningfully protected on the ground without ongoing political and legal pressure. Governments around the world give lip service to protecting indigenous people’s rights, but lack far behind in acting on those promises, because most often, it means giving up some of the government’s own power over important resources, or the ability to distribute land for public or partisan purposes, or confronting systemic racism within the government’s own ranks.

Moira is working on these cases *pro bono*, as is the Indian law clinic at the University of Colorado, and Jide James-Eluyode, a Senior research fellow at the University of Arizona. The local lawyers in Belize, Magali Marin S.C., and Monica Magnusson Coc, Belize’s first indigenous Maya lawyer, are less able to work for free.

<sup>1</sup> Source: <https://www.culturalsurvival.org/publications/cultural-survival-quarterly>

## Observations of a Clerk: Assisting with the Discovery Process

Litigation can be a frustrating and sometimes lengthy process; but there are ways you can contribute to your legal team’s ability to resolve your claim in a timely manner.

by: Marc Neckles

In most cases, before a claim can be mediated or settled, parties to an action will need to undergo the Discovery process. The basic purpose of this process is to *ensure more open and complete discovery prior to trial* in order to *facilitate settlement*<sup>2</sup>. In its simplest form, this process is an opportunity to substantiate your claim for damages through the use and procurement of medical and economical evidence.

The Discovery process will require a number of things from a number of individuals, but by my observations, the two most influential contributions you can make to the success of your discovery process are communication and preparation.

### Communication — Keep us updated

When advancing a claim for damages you will be required to provide the defendant’s lawyer with copies of any relevant medical and economical records, as well as records to assist with determining liability. A primary source of medical evidence is your family physician’s clinical notes and records. It is imperative that you communicate with your doctor so s/he can document it properly. Your legal team will obtain these records in the early stages and throughout your claim, and these records will eventually be consolidated to form your Affidavit of Documents.

The Affidavit of Documents will be used to help formulate a clear picture of how your accident has affected you medically, economically, and socially.

In order to ensure that your lawyer has the most updated, complete and relevant records, contact your legal team periodically to provide them with updates on specialists you may have seen or are scheduled to see, recent doctor visits, changes in your employment,

and your general well-being. These updates may be crucial in determining who, what, where and when to request additional records. For these reasons, communication with your legal team, whether it be your lawyer, law clerk or assistant, can greatly affect the time it takes to procure the documentary evidence required to resolve your claim.

### Preparation

At some point during the discovery process, you may be required to undergo an Examination for Discovery. This in-person examination usually only lasts one day and takes place in an informal setting, such as a court reporter's office. It can signify that a file is

closer to mediation or settlement; however the experience can be a bit intimidating.

Based on my experience, preparation can help to alleviate some of the nervousness associated with attending the discovery. For this



MARC NECKLES

reason a meeting between you and your lawyer should be scheduled at some point before your Examination for Discovery. Be proactive in contacting your lawyer's office to schedule a preparatory meeting as soon as you receive notice of the Examination for Discovery. The preparation meeting is an opportunity to voice any concerns you have and to reacquaint yourself with the details of your claim. Being properly prepared to answer questions at the Examination for Discovery will likely result in the necessary parties having a clearer picture of your claim for damages.

### Conclusion

The discovery process can greatly influence the quality and timing of settlement in personal injury claims. As a claimant, you can contribute to the success of your discovery process by communicating medical and financial updates to your legal team and ensuring you are prepared to attend the Examination for Discovery.

<sup>2</sup> Rules of civil procedure Rule 30 Discovery of Documents, Synopsis, Requirement and scope of Disclosure.

## Don't forget these winter driving tips

Winter weather came early this year! Remind yourself about these tips for driving in the snow and ice before you head out for the holidays.

1. Make sure your **car is winter-ready**: keep your gas tank full, top up your window washer fluid (making sure it is effective for sub-zero temperatures) and make sure you have an ice scraper/snow brush in the car. It goes without saying to most in Ontario that you should have four winter tires on your car (you're even eligible for an auto insurance discount if you use them!).
2. For longer drives or if you're heading out of the city, pack a **winter survival kit**. Your kit might include: gloves, jumper cables, a small shovel, a first aid kit, sand or salt, a blanket, flashlight and/or torch, candles, safety vest, water bottles and non-perishable energy foods.
3. **Check weather and road conditions** for your route. Choose the route you'll take ahead of time and check the weather forecast to make sure you know what to expect before you hit the road. Of course, you should drive more slowly and give yourself extra travel time to get to your destination.
4. Before you set off, be sure to **clear snow and ice** from your car. Make sure you can see clearly, that your windows are not fogged up, and that you have even cleared the snow from the roof of your car (so that it doesn't blow off into someone else's windshield on the highway).
5. Keep a **safe distance behind snow plows** and avoid passing them, if possible.
6. **Avoid using cruise control** — it is easier to lose control on

slippery roads if you are cruising. Steer gently on curves in the road and in slippery conditions. If you skid, take your foot off the brakes and steer in the direction you want to go (being careful not to over steer).

7. **Don't drive distracted** (ever, but especially in bad weather). Put away your cell phone, make sure pets are secured, and try not to be distracted by anything else if possible.
8. **Keep OPP numbers handy** and travel with a fully-charged cellphone. The non-emergency number for the OPP is 1-888-310-1122. For provincial highway conditions, go to [www.ontario.ca/511](http://www.ontario.ca/511) or call 511.
9. Finally, **download our brochure** on what to do if you're ever in an accident. (<http://www.carranza.on.ca/resources/blog/blog-post/personal-injury-blog/2017/12/20/Don-t-forget-these-winter-driving-tips>)

We hope you never need it!



**Your friends at Carranza wish you a happy holiday season!**

**May this time of year be filled with happiness, love and laughter. We wish you a prosperous 2018.**