



**P2** | Kevin Doan wins big for client T.N.



**P3** | Aliza Karoly explains how diet affects your recovery after trauma



**P4** | Geoffroy Pavillet on keeping your cases fresh

# MOSAIC

CARRANZA LLP Winter 2015, Newsletter

**P3** | When dieting really is a pain

**P4** | Freshly squeezed litigation

**P5** | Community update

**P6** | Distracted Driving - what you should know

## Punitive award a lesson for insurers

Unreasonable delay in awarding brain injury benefits results in historic \$3.75 million arbitrator's ruling

A large punitive special award was recently ordered against an auto insurer to enforce the duty of good faith and to help protect the rights of injury victims in their accident benefits claims.

Fourteen years after an October 2000 auto accident which left her with a severe and catastrophic brain injury, an arbitrator at the Financial Services Commission of Ontario on Nov. 20 [2014] awarded T.N. a special award of \$750,000 for the unreasonable delay or withholding of her benefits by the Personal Insurance Company of Canada. The arbitrator also ordered a significant amount of interest in excess of \$3 million that had accrued on overdue benefits, including *Continued on page 2*

## Punitive award a lesson for insurers

*Continued from front cover.*

retroactive 24-hours-a-day supervisory attendant care benefits. (*T.N. and Personal Insurance Company of Canada*, FSCO AO6-000399).

These awards appear to be the largest combination of benefits, interest and special award ever ordered against an auto insurer. The large special award highlights the need to protect the rights of car accident victims to be treated fairly and promptly at every step of their claims, consistent with reciprocal duty of utmost good faith by insurers and their insureds. During the acute phase after a catastrophic brain injury, prompt rehabilitation and care for victims such as T.N. to maximize recovery of brain functions is far more valuable than large financial awards ordered years after the brain has largely stopped responding to rehabilitation.

In *T.N.*, the arbitrator considered the various factors relevant to fixing an amount for a special award including: (a) the amount of the benefits unreasonably withheld or delayed; (b) the time the benefit is withheld or delayed; (c) failure to respect important obligations under the Statutory Accident Benefits Schedule; (d) other factors that increase the gravity of the insurers conduct; and (e) mitigating factors. The arbitrator found that despite prompt awareness of the catastrophic nature of T.N.'s brain injury, the

**Kevin Doan** represented T.N. in her claim against the Personal Insurance Company of Canada



insurer failed to adequately address her personal and nutritional needs. He found that given the catastrophic injuries, she was clearly a vulnerable individual who was deprived of important rehabilitative care and assistance. In ordering the significant special award, the arbitrator reasoned in part that it is important for the insurer to understand the significance of the breaches that occurred in this case, so that they are not repeated.

For T.N., the awards give some comfort and hope that there will be far fewer risks to her safety and well-being in the future. She was only 21 years old at the time of the accident, conscientious and entrepreneurial and in the prime of her life. She sustained multiple open skull fractures resulting in a catastrophic Glasgow Coma Scale reading. For several months after the accident, Personal did not accept that it was T.N.'s proper insurer and attempted to have her submit an application for benefits to another insurer, despite clearly being a proper insurer to accept an application for benefits. It was only after her former lawyer unilaterally submitted an application to Personal in April 2001 that the company appointed a case manager to assist in the catastrophic claim.

**These awards appear to be the largest... ever ordered against an auto insurer.**

Despite her severe injuries, T.N. optimistically attempted to return to running her equestrian business shortly after the accident in early 2001, hoping to maintain it while in denial of the impairments she had sustained. She would ingest large amounts of heavy pain-killers in the earnest belief she could perform at the levels that made her a former two-time high school female athlete of the year. Her once-blossoming business eventually closed. Without effective treatment, her chronic pain produced vicious cycles with upheavals that resembled little of the life she led before the accident. Her neurocognitive impairments warrant the retroactive and ongoing round-the-clock attendant care award.

T.N. has been awarded the treatment and care that she needs and deserves, but the dark experiences and turmoil during the many years without proper support and care easily flash back. Though various awards to T.N. are under appeal, she hopes that her long saga in the legal system and a significant special award will result in more children in other families receiving the support that she was once dishearteningly denied. 🌈

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## When Dieting Really is a Pain

**Anyone who has been involved in a serious accident will tell you: it changes everything. The trauma you experience following an accident even affects areas of your life you wouldn't expect, such as your metabolism.**

*By Aliza Karoly*

Trauma takes your metabolism by surprise. Prior to the accident or injury, you may have been happy with your health, weight and activity level, but once you experience the trauma of injury, your body will face changes. You can take some control over the inevitable inflammation your body may experience by educating yourself about foods that can literally cause you pain.

From vending machines in the emergency room and comfort food while you recuperate at home to meals provided by family and friends, what you put in your mouth will change. Fast food may replace home cooked meals due to fatigue or limitations from your injuries. You may not be able to carry as many groceries as you used to and may cut corners on ingredients, just to get the



meal cooked and done. If you are not mindful of these changes, in a short time, you may feel painfully swollen, overweight, and lethargic. You may also feel stressed, which could cause 'emotional eating'. In addition, stress from trauma has been linked to disrupted thyroid function which also affects your metabolism.

Did you know that you can help reverse some of these changes? Many common foods that you may be eating actually increase your inflammation and pain. While inflammation is a healthy response to fight off infection, prolonged inflammation is not healthy. If you are injured you are likely suffering from prolonged pain and inflammation that requires medication, treatment and exercise. Very few are aware that turning to a dietician and nutritionist can also serve to reduce inflammation and help you get better. Let's take a look at some of the good and bad foods lurking in your kitchen so that you can be mindful about what you eat.

Foods that cause inflammation generally contain sugar, dairy products, trans fats, artificial colouring and refined white flour. These may appear in less obvious food items such as agave, frozen yogurt, barley and rye, peanuts, and seasonings. Corn causes inflammation whether in natural form, as chips, high fructose corn syrup or corn oil. Deep fried foods, foods with excess sodium and deli meats containing nitrites also all cause inflammation. Cooking with corn, canola or soybean oil also causes inflammation as opposed to olive oil which exhibits anti-inflammatory effects.

- Nature has also created foods that have been shown to help curb inflammation. These include:
- Oily fish, like salmon, mackerel, tuna and sardines, cooked in a healthy way – Omega-3 fatty acids fight inflammation.
- Whole grains contain fiber, which are shown to reduce an inflammatory protein marker in blood. *Continued on page 5*

# Freshly squeezed litigation

## Personal injury lawyers and health practitioners must resist over-processed litigation and serve fresh cases each time.

By Geoffroy Pavillet

A recent CBC investigation reported some orange juice cartons misleadingly describe processed juice as 100% “pure and natural,” and that’s only one recent example of foods and beverages under attack for excessive processing. Consumers expect genuine product advertising, and while processing can benefit producers’ bottom line, it’s usually at the expense of product quality or integrity.

Food processing is the transformation of raw ingredients to produce a longer shelf life. Through grinding, slicing, heating, and other processes, the taste and nutritious value of initial ingredients can be substantially altered. With orange juice for instance, the unique taste of oranges is removed by squeezing them into tanks, stripping the oxygen, and adding flavour packs to the tasteless liquid.

Obviously, as a tool to increase profits, processing is tempting. After all, truly fresh, pure and natural juice would not last long on a grocery store shelf. This processing goes beyond food and beverages and reaches every aspect of our economy, including personal injury law. Certainly, the legal system requires an inevitable and legitimate degree of processing. By its very essence, lawyers must gather and process facts to feed into the legal framework. However, in personal injury, excessive processing of the facts will actually weaken a case.

Personal injury claims can take many years, during which time lawyers and experts jump from one client to another, and run the

risk of copying from one report and pasting it onto another one – not only the form but also the substance of their work. Lawyers and experts share responsibility for this, as a lawyer’s untailed request for an expert report typically triggers an equally bland report.

Like processed juice, expert reports are made tasteless when removing specificities of a case. One typical flavour-remover is to refer consistently to people as “the client”. That person has a name! Some experts even refer to themselves as “this writer” or “this therapist”, removing any trace of genuine human interaction.

We need to take the time to add specific details. When children are present to interpret for their parents, naming them will personalize the report. If someone engages in a “range of social activities”, listing what activities are done, where and when, makes them real.

After sucking genuine flavours out of a case, processed reports then add their “flavour pack”. Some experts provide paragraphs of copied and pasted literature, on chronic pain for instance, without articulating how it relates to the particular



facts of our case. Processed reports then make generic recommendations using ambiguously hesitant wording that weaken their opinions: “would consider”, “may require” or “may benefit”. When reading these reports, personal injury claims are fed many pages of empty calories that fail to give clients the nutrients they need.

Like orange juice, personal injury claims have become increasingly processed, merely following economic trends that we have limited control over. However, as people come to miss the lost fla-

## What is genuine is credible, and credibility wins cases.

vours of our heavily processed world, and return to valuing quality over quantity in every aspect of life, we must adjust our practices by striving to deliver ‘freshly-squeezed’ cases. Our challenge is to remain genuine, stay away from over-processed litigation, and present each plaintiff as unique by embracing them, along with any imperfections.

What is genuine is credible, and credibility wins cases. 🍌

## When dieting really is a pain

Continued from page 3

- Dark green vegetables such as spinach, kale, broccoli and collard greens contain vitamin E which protect the body from pro-inflammatory molecules called cytokines.
- Nuts are packed with antioxidants which can help your body fight off and repair damage caused by inflammation.
- Colourful vegetables such as peppers, tomatoes, beets, squash and leafy vegetables have high antioxidants. Tomatoes and tomato sauce contain lycopene which is also beneficial. Hot peppers particularly are rich in capsaicin, a chemical that reduces pain and inflammation and is used in topical creams. Turmeric, another spicy ingredient in Indian cooking and curry, also helps regulate the immune system against inflammation.
- Still keeping it spicy, garlic shuts off pathways that lead to inflammation. Onions also contain similar anti-inflammatory chemicals.
- All fruits can help fight inflammation, because they’re low in fat and calories and high in antioxidants. But berries, especially, have been shown to have anti-inflammatory properties; most especially raspberries, blueberries and strawberries. Studies have also shown that tart cherries have the highest antioxidant level of any food.
- While it is not easy to cook healthy meals when you have suffered an injury, you can help to reduce your pain through your plate and your pantry. Stay mindful of what goes in your mouth and try to stay positive! Sometimes you truly are what you eat. 🍌

### IN THE COMMUNITY

The employees of Carranza LLP participated in the SCI Wheelchair Relay Challenge and the Ontario Employment Education & Research Centre’s Workers’ Bowl

A team of six from Carranza LLP participated in the SCI Wheelchair Relay Challenge in September. The “Carranza E-LEMON-ators,” who wore neon yellow team shirts to match their name, placed 12th overall out of 36 teams with a time of 34.18 minutes.

Managing partner Juan Carranza said, “You don’t know how difficult it is to get around in a wheelchair, let alone race, until you experience it yourself. We have been participating in the Spinal Cord Injury Wheelchair Challenge for a number of years now, and it’s a fun event for a great cause. We’ll be back to try to better our score next year!”



In November, the Carranza Strikers participated in the Ontario Employment Education & Research Centre’s Workers’ Bowl, raising over \$2100 for the cause. The firm also received an honourable mention at the Workers’ Bowl for our generous donation to Justicia for Migrant Workers.

# Distracted Driving

## What you need to know

Ontario's Transportation Minister has reintroduced the distracted driving bill (Bill 31). What is distracted driving, why is it such a big problem, and what will Bill 31 mean for you?

### Statistics

Distracted driving is now the leading cause of death on the roads in Ontario (followed by impaired driving and speeding) (via OPP)



Drivers engaged in text messaging on a cellular phone are 23 times more likely to be involved in a crash or near crash event compared with non-distracted drivers. (Virginia Tech Transportation Institute, 2010)

**84%** of distracted-driving-related fatalities in the US were tied to the general classification of carelessness or inattentiveness (National Highway Traffic Safety Administration, 2009)

**80%** OF COLLISIONS & **65%** of near crashes have some form of driver inattention as contributing factors (National Highway Traffic Safety Administration, 2010)

Distracted drivers are 3 times more likely to be in a crash than attentive drivers (Alberta Transportation, 2011)



Driver distraction is a factor in about **4 million** motor vehicle crashes in North America each year

Children are four times more distracting than adults as passengers, and infants are eight times more distracting than adults as passengers



Economic losses caused by traffic collision-related health care costs and lost productivity are at least **\$10 billion annually**. That's about 1% of Canada's GDP! (Government of Canada)

Drivers who are engaged in the following distractions are more likely to be in a crash or near crash event compared with non-distracted drivers

- Text messaging (or texting) on a cell phone — 23 times more likely
- Talking on a cell phone — 4 to 5 times more likely
- Reading — 3 times more likely
- Applying makeup — 3 times more likely
- Reaching for a moving object — 9 times more likely
- Dialing on a hand-held device — 3 times more likely
- Talking or listening on a hand-held device — 1.3 times more likely



### In Ontario, Bill 31 would:

Increase penalties for talking or texting on hand-held phones, up to a **fine of \$1,000** and three demerit points — the toughest in Canada.



Require drivers to wait until pedestrians have finished traversing the street at designated school and pedestrian crossings (this could make pedestrians safer after the recent spate of pedestrians being struck by cars as the evenings have gotten darker)

Increase the penalty for drivers who "door" cyclists, from **\$60 - \$500** currently up to **\$300 - \$1,000**, and three demerit points instead of two.

Require motorists to stay one metre away from cyclists "where practicable."



Impose the same sanctions on drugged drivers as drunk drivers



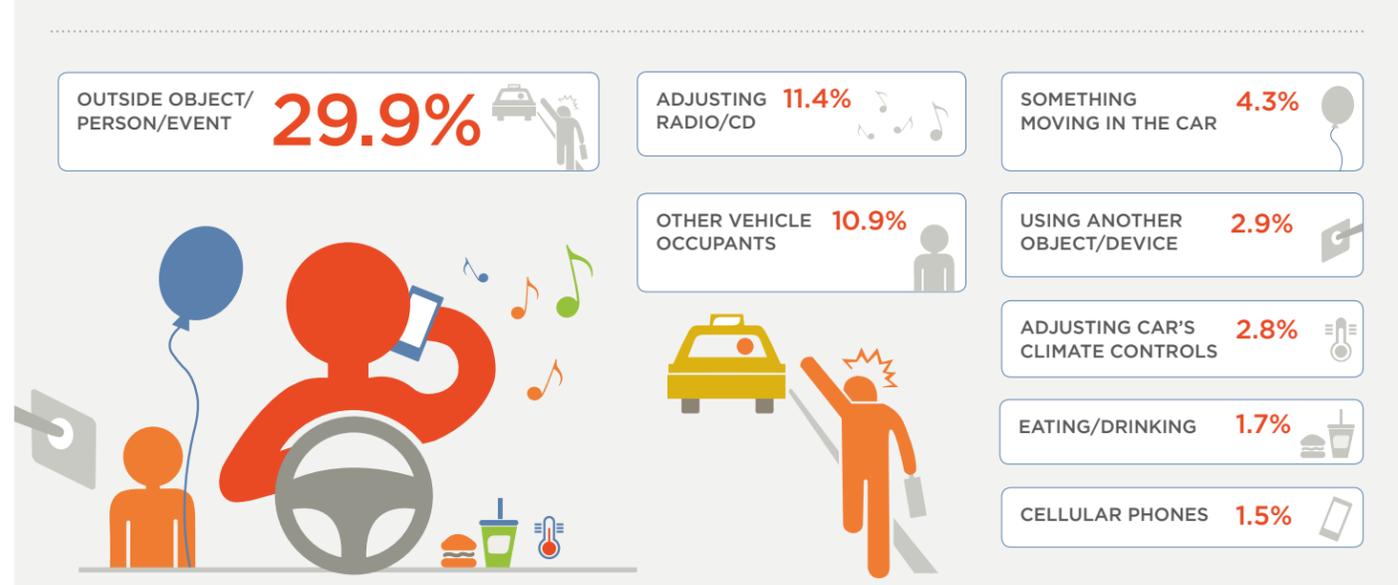
Require cyclists to use proper reflectors and bicycle lights or face fines of up to **\$500** (and the bill would also permit the use of flashing red lights on bicycles)

Outlaw painting any vehicles the same colour of yellow as school buses.



For more information about the bill please visit: <http://www.ontla.on.ca/lao/en/bills/>

### Top distractions identified by CAA/AAA:



### How can you stay distraction-free?

- 1** Plan your route before you go.
- 2** Keep your phone out of reach.
- 3** If you need to make or take a call, find a safe place to pull over.
- 4** When travelling with children, try to ensure they have any books, snacks or other toys/activities they need before you start driving.
- 5** Set radio and temperature controls before you drive.
- 6** Be extra cautious of bicycles.
- 7** Be extra vigilant when the roads are wet or icy, and when it is dark out.

Many languages. One focus.

At Carranza LLP, we specialize in personal injury law. Speaking over 24 different languages, we are committed to helping injury survivors achieve maximum recovery and fair compensation.

We specialize in the following areas of personal injury law:

- **Car accident claim**
- **Long term disability claim**
- **Slip and fall claim**
- **Brain injury**
- **Spinal cord injury**
- **Paediatric injury**
- **Orthopaedic injury**

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