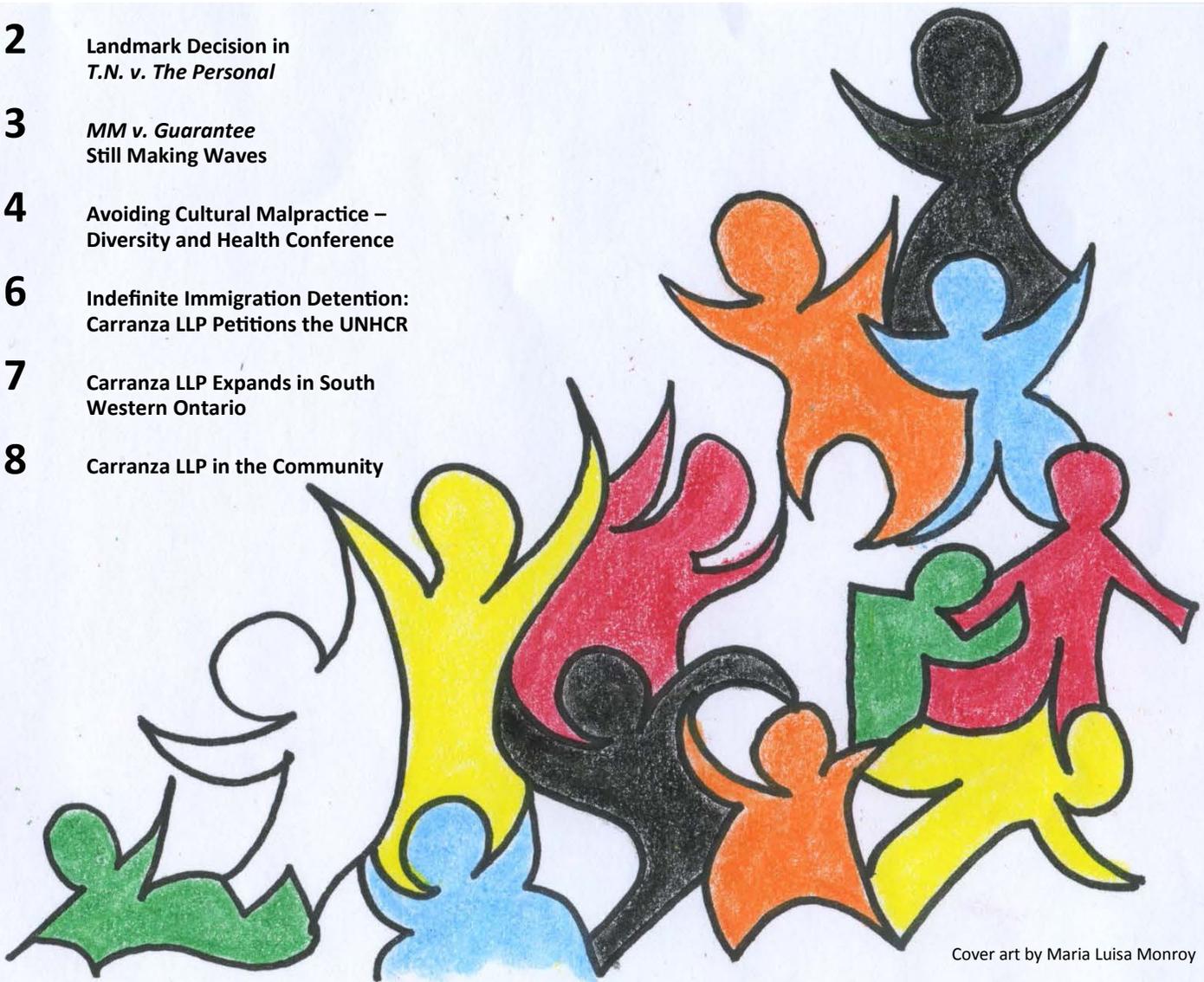


# MOSAIC

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Cover art by Maria Luisa Monroy



# Landmark Decision in T.N. v. The Personal

In another example of Carranza LLP lawyers moving the law forward, an Arbitrator ordered the insurance company to cover the cost of our client's medical marijuana. This is the first time ever in Ontario that marijuana has been recognized as a covered medication under the automobile no-fault benefit system.

Since 2001, the Marijuana Medical Access Regulations (MMAR) has enabled Canadians with serious diseases access to medicinal marijuana to alleviate symptoms and reduce pain. In 2012, the number of people in Canada with legal authority to possess dried marijuana increased by 104%.

Carranza LLP client T.N. was catastrophically injured in a car accident in 2000 when she was just 21 years old. Due to her extensive injuries she suffered pain, anxiety, insomnia and lack of appetite. She had been prescribed opiates, anti-depressants, tranquilizers and hypnotic medications

but all of these had significant side effects for her.

For T.N., the only substance that alleviated her pain without dangerous side effects was marijuana. T.N. asked the insurer The Personal to have the cost of her monthly marijuana allowance covered under her no-fault auto insurance, which entitles an insured person to reasonable and necessary medical benefits. The Insurer denied that marijuana was reasonable and necessary, and took the position that marijuana is not an item of a medical nature, but is experimental, and should therefore not be covered.

Previous cases before the Financial Services Commission had recognized that injured people sometimes turn to marijuana to deal with chronic pain or other consequences of accidents, but none have resulted in funding it as medication.

Carranza LLP lawyer Kevin Doan, who represented T.N., says “The arbitrator found, in the particular facts of this case where the injured victim has exhausted her extensive efforts in using other remedies and has endured for

years the significant adverse side-effects from the other remedies, that she has made her case that medical marijuana may be awarded under the no-fault automobile policy. In my view, this case should not encourage victims to resort to medical marijuana as the first treatment of choice. Rather medical marijuana should be a last option.”

Because of these conditions, it is unlikely that this ruling will open a flood gates of claims for medical marijuana. However, for injured people who rely on medical marijuana for effective relief not available from other medication, this case is of significant importance.

Health Canada’s Marihuana Medical Access Program Statistics: <http://www.hc-sc.gc.ca/dhp-mps/marihuana/stat/index-eng.php#a12>

# M.M. v. Guarantee:

## A bright line in the GCS sand

By **Moira Gracey**

Carranza's precedent-setting case of *M.M. v. Guarantee*, covered in our [last issue of Mosaic](#) continues to make waves. It was described as one of the ten most important accident benefits cases of the year at the Ontario Trial Lawyers Association 2013 Spring Conference.

### ***Changing the legal landscape***

In this case we met our primary goal by getting the right result for our client M.M. But one of the most exciting aspects of this legal work is that every decision sets a precedent for future cases.

This case involved a young girl who suffered severe bleeding at the scene of the accident, and paramedics recorded a GCS score below 9, which quickly improved after she was given oxygen and bleeding was staunch.

The importance of the decision in *M.M. v. Guarantee* lies in its contribution to the law on catastrophic impairment. In it, the arbitrator pointed out that since the entire purpose of the Glasgow Coma Scale (GCS) is to measure consciousness, and therefore brain function, a low GCS score is almost always going to be a result of a brain impairment. Both the courts and FSCO have reinforced more and more the regulation's "bright line" test for the GCS-9 criteria for a catastrophic impairment. It does not necessarily matter whether the injured person has ongoing brain impairments, or an

identified brain injury. The government saw fit to make a GCS score of 9 an indicator of sufficiently serious injuries that greater insurance coverage may be needed, with very few exceptions.

Insurers have always resisted a simple interpretation., despite the rarity of GCS 9 scores and other conditions required for med/rehab benefits. Insurers have fought to limit the GCS-9 test for being taken too early, too late, in the presence of medication or intubation, or alcohol, or because the injured person's brain impairment did not last long enough, or was not caused by a physical injury to the brain, or the physical brain injury was not severe enough.

*M.M.* was relied on in a more recent FSCO case, *Security National/ Meloche Monnex v. Manos Hodges*, in which the Director's Delegate reaffirmed that a GCS score of 9 recorded three days after the accident in the presence of bleeding in the brain met the test.

**For health care providers**, the lesson from this line of cases is that you should bring any GCS score of 9 or less in your patient's records to the attention of your patient's representative immediately. For patients with serious injuries who require more than \$50,000 in treatment and assessments, a catastrophic designation is needed.

### ***Insurance industry seeks to eliminate the GCS 9 test***

Since the courts have not accepted their arguments, the insurance industry has and will likely continue to pressure the government and regulator to narrow this category. During the 2011 review of the catastrophic definitions, FSCO's expert panel (criticized by some as being heavily insurer biased) recommended eliminating the GCS 9 criteria entirely. FSCO adopted its proposal "to reduce the chance of inaccurate determinations," despite there being no evidence that inaccurate determinations are a problem.

The Ontario government has not yet acted to adopt this proposal. Therefore it is important that they hear the stories of injured people who have received the designation as a result of this test and suffered negative consequences in their recovery.

Please encourage your clients and patients to contact their MPPs offices, or the Association of Victims for Accident Insurance Reform (FAIR), at [fairautoinsurance@gmail.com](mailto:fairautoinsurance@gmail.com)





# EQUITY IN HEALTHCARE

## CARRANZA LLP PARTNERS WITH WILLIAM OSLER FOR GROUNDBREAKING CONFERENCE

**By Simone Stothers**

What is cultural malpractice? And how does it affect quality of care? These are some of the pressing issues that will be addressed at an upcoming conference organized by the William Osler Health System in partnership with Carranza LLP in fall 2014.

### ***Exciting advances for healthcare equity***

The issue of equity has been at the forefront of public debates on health care in Canada recently. In May 2013, Toronto City Council voted in favour of the Board of Health's recommendations to improve healthcare access for medically uninsured residents. This vulnerable sector of the population includes refugee claimants and undocumented migrants. Earlier in 2013, Council had committed to supporting policies aimed at improving access to city services (such as public health and homeless shelters) for the city's undocumented residents, thus propelling Toronto towards becoming a Sanctuary City for migrants similar to some major US cities. On December 9, 2013 the Ministry of Health and Long-Term Care announced the new Ontario Temporary Health Program for refugees who are medically uninsured as a result of the Federal Government's cuts to the Interim Federal Health program.

All of these announcements are evidence of broad-based support for the notion that access to healthcare is a basic right that should not depend on

nationality or immigration status. These policy changes were the fruit of years of hard work by concerned community members, doctors, nurses, students, and frontline workers who advocated in defense of the health care needs of our most vulnerable city residents.

### ***Healthcare provider forum on cultural malpractice***

As such, the upcoming conference "Diversity and Health: Avoiding Cultural Malpractice and Promoting Quality Care" comes at a promising time. Public and private health providers from across the spectrum of care – acute care, hospital-based rehabilitation, community programming and long term care – will be gathering to share ideas and build skills in the areas of diversity, ethics, and cultural competence.

Keynote conference speaker Dr. Joseph Betancourt is a member of the Harvard Medical School faculty, and directs the Disparities Solutions Center at Massachusetts General Hospital (MGH). He is internationally recognized for his expertise in racial and ethnic health disparities, cross-cultural medicine, equitable recruitment into the health professions, and health policy research on racialized communities.

When not addressed, language and cultural barriers can clearly have adverse effects on accessibility, quality of care and health outcomes. As noted in a 2007 Case Report in *Canadian Family Physician*, "the inability to express one's wishes and needs in health encounters can result in poor health outcomes and in disempower-

ment of patients." In addition, once discharged from hospital, these patients will often encounter obstacles obtaining private care or insurance coverage from companies that are often not equipped to navigate linguistic and cultural differences, and who may unjustly deny treatment based on assumptions related to the client's ethnic or racial background.

### ***Diverse population calls for cultural competence***

According to Statistics Canada's 2011 National Household Survey (NHS) released this year, 49% of Toronto residents are immigrants, representing over 230 ethnic origins. Over 1,250,000 Toronto residents identify themselves as an immigrant and 64,945 are non-permanent residents. In Toronto, 49% of residents identified as "visible minority". In the Greater Toronto Area, Peel was found to have the highest level at 57%.

This confirms the need for cultural competence not only in health care, but all public and private enterprises. This will respond to the continuing demographic changes in Toronto and across Canada, and will go towards eliminating health disparities of people of diverse backgrounds. This not only improves health outcomes and the quality of care, but may also go towards decreasing the likelihood of professional liability and malpractice claims.

### ***Get involved!***

Contribute your knowledge to this dialogue at this worthwhile conference. Find registration details on the following page.

# Diversity and Health: Avoiding Cultural Malpractice and Promoting Quality Care

A unique conference for public and private health providers from across the continuum of care (acute care, hospital based rehabilitation, community programming and long term care).

**SAVE  
THE  
DATE!**

**September 23, 2014**

**Grand Empire Banquet and Convention Centre, Brampton, ON**

Participants will:

- Learn how Diversity & Ethics impact quality of care and health outcomes.
- Become more aware about what is happening to promote Diversity & Ethics within your medical/rehabilitation community.
- Enhance your cultural competence and ethical decision-making skills.
- Take away practical tools and strategies you can use to enhance quality of care and outcomes within your practice and organization.

**Keynote Speaker:**

**Dr Joseph Betancourt, M.D., M.P.H.**

Director, the Disparities Solutions Center

Director of Multicultural Education, Massachusetts General Hospital

Assistant Professor of Medicine, Harvard Medical School



Organized by the William Osler Health System

In partnership with Carranza LLP and Neuro-Rehab Services

For more information: [leslyn.thompson@williamoslerhs.ca](mailto:leslyn.thompson@williamoslerhs.ca) 905 494 2120 Ext. 50101



# End Indefinite Detention of Immigrants: Carranza LLP Petitions the United Nations Human Rights Commission

By **Macdonald Scott**

Carranza LLP client Michael Mvogo has been languishing in Canada's immigration jails for 7 years. Migrant rights advocates identify indefinite detention as unconstitutional, and have brought the issue before the United Nations Human Rights Commission.

Most countries have a "presumptive period" – a period of time that a person without immigration status can be held in jail in order to deport them. In the US this is ninety days, with the possibility of a 90 day extension. In 2008, the Parliament of the European Union passed a Directive that set out standards for Member States in their treatment of 'illegally staying third-country nationals'. Article 15 of the Directive states that the maximum period of detention pending deportation is 6 months.

The *International Covenant on Civil and Political Rights* ("ICCPR"), to which Canada is a party, expressly prohibits arbitrary arrest or detention. Based on this, the United Nations Working Group on Arbitrary Detention has set out several principles to determine whether the detention of a migrant is arbitrary, including that: "a maximum period should be set by law and the custody may in no case be unlimited or of excessive length". The Working Group established that 8 months' detention can be considered indefinite or arbitrary detention.

In Canadian law, indefinite detention is against our *Charter of Rights and Freedoms*. Section 7 establishes the right to life, liberty and security of the person. Section 12 articulates the right not to be subjected to any cruel and unusual treatment or punishment. Section 15 covers the right to equality before the law.

## Does Canada Detain Indefinitely?

Despite this, Canada has no presumptive period. The Government has argued in the courts and the media that this does not mean that we practice indefinite detention because a detention review is held every 30 days to review whether a person's detention has become indefinite. An Access to Information Request conducted by Carranza LLP found that only 13.9% of the detention reviews held in 2011 resulted in the person being released. As well, even if Canada does hold regular reviews, people are nonetheless being held anywhere from 7 to 10 years, merely for the administrative law measure of removing them from Canada. These people are not being held on criminal charges or convictions.

## What Carranza LLP is Doing to Fight Indefinite Detention

Carranza LLP client Michael Mvogo has been held 7 years to remove him from Canada. In 2012, we made an application saying that Mr. Mvogo's detention violates the Canadian Constitution (specifically the *Charter of Rights and Freedoms*). We argued this was true since Canada

does not have a presumptive period. This was denied by the Immigration Division tribunal. Co-Counsel (and former Carranza LLP articling student) Jean Vecina then took this case to the Federal Court, who refused to hear it.

Since that time, Carranza LLP and Jean Vecina have filed an official complaint with the United Nations High Commissioner for Human Rights Working Group on Arbitrary Detentions. We are seeking an opinion from this body that Canada's lack of a presumptive period is contrary to international law.

## The End Immigration Detentions Network

Mr. Mvogo is part of 191 men held under similar conditions in the Central East Correctional Centre in Lindsay, Ontario. As part of this group he participated in hunger strikes and other actions in the jail to protest Canada's lack of a presumptive period. Carranza LLP has been proud to support these detainees, and their outside supporters, the End Immigration Detentions Network. Carranza LLP staff have spoken in the media about this struggle and participated in organizing. As well, as part of the Law Union of Ontario's Immigration Legal Committee, Carranza LLP has assisted in drafting a legal opinion about the lack of a presumptive period in Canada.

Find out more about the network at [www.endimmigrationdetention.com](http://www.endimmigrationdetention.com) or on twitter at #migrantstrike.

# Rolando Aguilera

## Expands Carranza LLP's Presence in South Western Ontario



A son of immigrant parents, Rolando understands that “working hard” on its own, is never enough. The life of a newcomer often means navigating that fine line between so-called success and set back. An injury can be one of those set backs that can tragically stifle the hopes and aspirations of the newly arrived.

This personal experience made Rolando sensitive to the needs and interests of those in similar circumstances, and has led him to support many social justice initiatives. He has given his time to the Pro Bono Students of Canada-Family Law Project, Community Legal Services Program at Osgoode Hall Law School, and the Centre for Spanish Speaking Peoples’ Legal Clinic. More recently he had the opportunity to work with the Truth and Reconciliation Commissions of Canada and Honduras.

Rolando articulated with a prominent law firm serving First Nations across Canada where he worked on complex legal files requiring substantive research and prepared legal memoranda on environmental, constitutional, and treaty law matters.

All of this experience has made Rolando a skilled personal injury advocate.

Presently, Rolando is leading Carranza LLP’s operations in London, Ontario. He serves clients from all over south-western Ontario including Leamington, Kitchener and Guelph. Says Rolando, “Extending our physical presence to southwestern Ontario allows Carranza LLP to continue our tradition of personal injury advocacy that is truly personal. By setting up in London we are better able to reach clients located outside of the GTA who would benefit from our firm’s solid reputation for advocacy and our understanding of diversity.”

Rolando’s move to London brings him closer to home, having grown up in Guelph and having studied at Western University before entering law school at Osgoode Hall. He is married to Maral, his wife of 8 years, and is the father of two young boys, Rafael and Kyumars.

**If you live in the London area or elsewhere in southern Ontario and have sustained injuries in an accident, contact Carranza LLP locally at 519-266-6715**

# IN THE COMMUNITY



## Carranza LLP Supported the Following Fall 2013 Community Events:

**Thanksgiving food drive** for the Daily Bread food bank

**SalvAide's 16<sup>th</sup> Annual Benefit Dinner and Auction** in Ottawa, October 24, 2013

**Cine Cuba** – festival of groundbreaking Cuban films, at the Royal cinema, November 1 to 5, 2013

**Casa Maiz** presents *Dia de los Muertos*- Mexican traditional celebration and cultural fair, at Artscape Wychwood Barns, November 2, 2013

**Hispanic Development Council's 35<sup>th</sup> Anniversary Celebration**, November 5, 2013

**“LIBERARTE” Art Exhibition** – showcasing works from *Taller Sol y Luna*, a community-based painting class that strengthens relationships among different ethno-cultural communities, at Romero House, November 14, 2013.

**Canadian Centre for Victims of Torture Annual First Light Celebration**, November 15, 2013

**Operation Christmas Child**, a project of Samaritan's Purse

## **BOWLING FOR MIGRANT RIGHTS**

Staff and family from Carranza LLP joined in a massive fundraising effort in support of the Ontario Employment Education and Research's Centre's "Education and Leadership Fund for Workers in Precarious Employment". This fun-filled bowl-a-thon raised over \$75,000 in support of programs for the most vulnerable members of our labour force such as migrant workers.



## **EDUCATION AND OUTREACH**

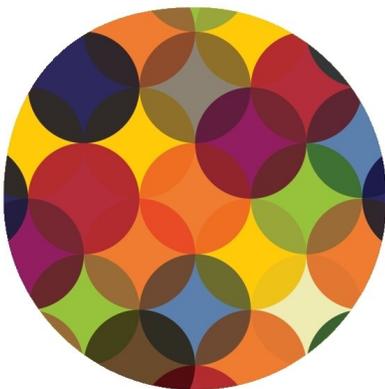
**"Barebones of Negligence"** workshop led by Carranza LLP's Managing Partner Juan Carranza, Credit Valley Hospital, 2013

### **Latino– Hispanic Coalition for Mental Health conference at the Centre for Spanish Speaking People:**

Carranza LLP was a proud sponsor of this innovative event focussed on community-based mental health promotion through education, advocacy, prevention and intervention. Managing partner Juan Carranza was featured as the keynote speaker. April 30, 2014

### **6th Annual Orthopaedic Acute Care & Beyond Conference**

Sunnybrook Health Sciences Centre- featuring managing partner Juan Carranza's presentation "How to Avoid Funding Potholes on the Road to Recovery" June 19, 2014





As Toronto's largest ethnic personal injury law firm, 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
- brain injuries
- spinal cord injuries
- long term disability claim
- Slip and Fall Claim
- Paediatric Injury
- Orthopaedic Injury

Carranza LLP is the first ISO 9001:2008 certified personal injury law firm in Canada which ensures every client receives the highest standard of customer service.



**Stay connected!**



**carranza** LLP

*Multiple languages. Singular focus.*

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