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CARRANZA LLP Autumn 2016 Newsletter

Should you avoid left-hand turns?

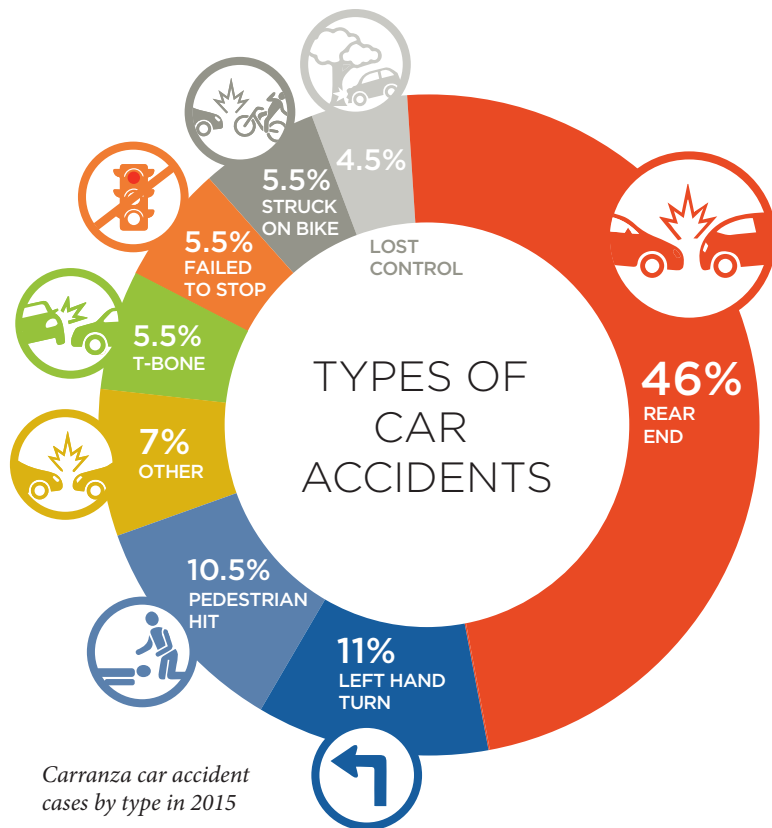
As we covered in the last issue of Mosaic, car accidents form the majority of our personal injury cases. Of these, 11% are caused by left-hand turns.

It will not come as a shock to any driver in the GTA to hear that left-hand turns are a common cause of car accidents.

Ontario's Highway Traffic Act (HTA) doesn't address where you should wait to turn left in an intersection. Section 141.5 of the HTA says you can't turn left across the path of an oncoming vehicle unless you have "afforded a reasonable opportunity to the driver or operator of the approaching vehicle to avoid a collision."

And if you decide to wait at the stop line instead of moving ahead? You have to stay there once the light turns amber.

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So what should you do? Young Drivers of Canada says to move ahead when turning left at a light, but just a little. New drivers are taught to slowly inch into the intersection with just the front end of the car.

However, as some have discovered the hard way, when it comes to insurance, the person who is turning left will almost always be found at fault, unless traffic cameras can prove the person going straight ran a red light.

Should you avoid left-hand turns?

According to an article in the *Toronto Star*¹, UPS, a company that needs to get drivers from A to B quickly, has instructed drivers to make three right turns instead of left when possible — which has created efficiencies and cost savings on their gasoline bills because drivers are idling less while waiting to turn left. “The policy, developed by a UPS engineer, has been around for years, and the company says that in the past decade, it saved nearly 38 million litres of gasoline in North America, and cut 100,000 metric tonnes of carbon emissions.” Of course a driver will make left turns sometimes, but the policy is to avoid them if possible.

Besides saving time and gas, and minimizing risk of getting into an accident, another reason to avoid turning left is that it requires a large amount of brain power. Researchers in a study published in the journal *Frontiers in Human Neuroscience* in 2013² were able to show for the first time that making a left-hand turn involves a large amount of brain activation — much more than driving on a straight road, for instance, or making a right turn.

Dr. Tom Schweizer, a neuroscientist and lead researcher in this study on distracted driving said it was surprising to see “just how much of the brain came online when you’re doing a left-hand turn...It really proves the point that there are a limited amount of brain resources. Because that left-hand turn in the intersection is so demanding, something’s got to give when you’re distracted.” Yet another, equally important reason to avoid left hand turns (or to be extra vigilant when you do) is that pedestrians are most often hit by cars turning left (25 per cent) or turning right (17 per cent) even when pedestrians have the right of way, studies have shown (according to the *Star*).

Tips for safe left-hand turns

Of course we are all going to have to make left-hand turns sometimes. So what are the top tips to avoid a car accident while doing so?

- When you inch out into the intersection to turn left, keep your wheels straight. If they are turned left, you’ll be pushed into oncoming traffic if someone rear-ends you.
- Make sure you are ideally placed in your lane. For intersections with left-turn lanes, steer sharply toward the left edge of your lane (once clear of any traffic island), then straighten out to position your vehicle alongside and parallel with the left edge of your lane.
- Never proceed blindly to make a left turn when traffic is backed up. When there are two lanes of oncoming traffic, if you can’t see both lanes with cars stopped, do not proceed.
- Don’t feel pressured to turn because light is turning red. Upon entering an intersection on a green light, you can lawfully complete your turn only when safe to do so. If it’s not safe to turn until the light turns amber or red, so be it. If you have not entered the intersection on a green light, you must remain stopped at the light when it turns amber/red.
- When there isn’t a stop light but a stop sign, be sure to come to a full stop and look all ways before turning.
- When turning left, and especially in poor light/darkness or bad weather, be extra vigilant in looking for approaching cyclists and pedestrians before turning.
- When in doubt, wait! You’ll be much better off waiting for the next cycle of lights than rushing into a left-turn and causing a car accident.

¹http://www.thestar.com/business/2014/04/07/why_ups_said_no_to_left_turns.html

²<http://www.thespec.com/news-story/2276200-the-most-dangerous-move-in-driving-left-hand-turns/>



Migrant workers in Ontario still fighting for rights after 50 years

The year 2016 marks the 50th anniversary of the Canadian Seasonal Agricultural Workers Program (CSAWP).

Not many people realize that, as NOW Toronto reported recently¹, tens of thousands of people work as migrant farm workers across Canada without healthcare, basic labour rights, or the possibility of applying for permanent residency.

In Ontario, for example, there is no minimum wage for farm workers. They are tied into contracts with single employers and can be sent home without cause.

As Juan Carranza wrote in the spring 2012 issue of *Mosaic*, 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.

This agricultural work often offers an important economic opportunity for workers. For Canada, it is an opportunity to fill much needed vacancies for poorly paid back-breaking work, while for the home countries of the workers, it represents a valuable socio-economic safety valve, helping to alleviate unemployment and underemployment pressures in impoverished regions —mostly rural

— in the home countries. 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.

The conditions migrant workers face

Migrant farm-workers typically come here with very limited English language skills, limited knowledge of the country, and of their legal rights. Generally, migrant workers are in rural communities with little access to services and information. The temporary nature of their immigration and employment status, and their lack of familiarity with their rights as employees makes migrant workers some of the most vulnerable labourers in Canada.

Unfortunately, this situation 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 feel pressured to take on any work assignment, no matter how unsafe, for fear of being sent back or not rehired. Women are often discriminated against simply based on gender and frequently won't even be considered for agricultural work. If workers assert their rights, they risk losing their jobs and being deported by their employers and respective consulate officials. 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.

"Why doesn't the public in Canada know these conditions exist? Simply because the threat of deportation keeps us quiet. The moment you speak up they send you home," says Gabriel Allahdua, an organizer with Justice for Migrant Workers originally from St.



Lucia who worked for four years in Canadian greenhouses. “Because farm workers have no status, we have no rights. Canadian immigration policy places them in a very precarious position.”²

Justice for Migrant Workers

Justice for Migrant Workers (J4MW) is an award-winning political collective that promotes the rights of the estimated 34,000 migrant farm workers in Canada. Promoting workers’ rights entails fighting for spaces where workers themselves can articulate their concerns without losing their work or being repatriated. Founded in 2002 by Evelyn Encalada Grez, Chris Ramsaroop, Jessica Farias, Nicole Wall



Chris and Evelyn (centre) along with Justicia organizers, including migrant workers and Sonia Singh, J4MW holds regular 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.

J4MW has been marking the 50th anniversary of the migrant farm-worker program in Canada this year with a call to action for migrant workers rights. Their campaign is called Harvesting Freedom, and they are calling on the Canadian government to allow migrant farm workers in Canada to access Permanent Immigration Status.

There are no quick fixes to this situation. The recommended 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. It is crucial that the people who make enormous sacrifices to come to Canada and grow the food that we eat should be fully protected under the law. Migrant workers should be informed of their legal rights such as about employment standards, safety, immigration procedures, and their rights in case of injury, in their own language.

At Carranza we have proudly supported J4MW for many years and 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.

For more information about J4MW and the Harvesting Freedom campaign, please visit <https://harvestingfreedom.org/>

¹ <https://nowtoronto.com/news/migrant-workers-canada-s-modern-day-slaves/>

² <http://www.theglobeandmail.com/life/food-and-wine/the-food-53-the-faithful/article30925902>



Case of Alvin Brown highlights need for reform

Alvin Brown is a Jamaican man with a history of schizophrenia, who had been a Canadian permanent resident since he was 8 years old.

He lost his permanent residence after he was convicted of and jailed for robbery. Following his jail sentence, he was detained at three different provincial prisons, despite efforts by border enforcement authorities to obtain a travel document for his deportation.

Alvin Brown was finally deported earlier this year, but he and his legal team are now seeking damages for his 5-year immigration detention. “It was cruel and unusual to detain Mr. Brown, who had mental health issues, for nearly five years,” his lawyer Jared Will has been quoted as saying.

The need for a ‘presumptive period’ in Canada

Why was Alvin Brown held so long as an immigration detainee? As our immigration consultant, Macdonald Scott, explained in an article for *Mosaic* two years ago: 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, for example, this period is 90 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 six months.

But in Canada, there is no presumptive period — in other words — no limit to how long a person can be held in an immigration detention centre. Mac says that, as the only first world country that allows a person held for immigration reasons to be locked up indefinitely, this makes Canada a rogue nation.

The government points to a detention review that takes place every 30 days. But in order to be released at one of these reviews, a detainee needs to show “a compelling reason s/he should be released” i.e. usually they’d need to find someone to post a huge bail.

What do you think of Canada’s lack of a presumptive period? Let us know on Facebook, Twitter or by email.

If you are interested in learning more, visit endimmigrationdetention.com and truthaboutdetention.com.



Ontario government prescribes bitter pill for brain injured victims

Legislative changes to Ontario's statutory accident benefits schedule (SABS) that came into effect on June 1st are causing significant hardship for brain injured and other catastrophic car accident victims in Ontario.

In an effort to lower insurance premiums, the provincial government cut in half the maximum limits available for medical, rehabilitation and attendant care benefits for catastrophically impaired individuals and made it more difficult to qualify as catastrophically impaired.

Background

The amounts an accident victim can access for medical/rehabilitation benefits are defined in the SABS, and they increase according to the severity of the injury. There are three categories: minor, serious, and catastrophic injuries. Under the previous regime, the coverage available was :

- “minor” injuries = up to \$3,500 for medical/rehabilitation needs
- Serious injuries = up to \$50,000 for medical/rehabilitation and \$36,000 for attendant care needs (\$86,000 in total).
- “catastrophic” injuries = up to one million dollars for medical and rehabilitation expenses and an additional one million dollars for attendant care benefits.

With the new changes, the limits for medical rehabilitation expenses and attendant care have been reduced:

- “minor” injuries = up to \$3,500 for medical/rehabilitation needs (this has not changed).
- serious injuries = up to \$65,000 for all medical/rehabilitation

and attendant care needs, combined.

- “catastrophic” injuries = up to one million dollars for all medical rehabilitation expenses and attendant care needs, combined.

Most health care and legal workers agree that these reduced amounts are grossly inadequate and many people with severe injuries will use up this coverage within a couple of years of their accident, without having fully recovered.

Qualifying as catastrophically impaired never automatically provided any injured person with more money. Every injured person always had to prove that they needed any treatment or attendant care that they claimed. Nevertheless, the changes passed by the legislature at the urging of the insurance industry have made simply qualifying for catastrophic impairment even more difficult, especially for many brain injured claimants.

For example, under the previous system, a person who experienced a reduced level of consciousness measured by a Glasgow Coma Scale (GCS) score of 9 out of 15 shortly after the accident would qualify for catastrophic impairment. This allowed the increased coverage amounts to kick in immediately after the accident, and improve chances for maximal recovery through intensive early treatment.

For adults who are injured, the new changes have replaced the GCS measure with the longer-term Glasgow Outcome Scale (GOS) which focuses on measuring level of function at different time periods after the accident, and raised the bar so that only those with very severe ongoing brain impairments will qualify. Essentially, a person must now be in a coma a month after the accident; incapable of moving around by themselves six months after the accident, or still requiring significant personal attendant care a year after the accident. As a result, many people who would previously



have immediately qualified as catastrophically injured under the GCS criteria will no longer do so. They will have to wait up to a year to even establish that they qualify under the GOS criteria, if they can meet those, or two years to establish their entitlement under other, equally difficult, sections of the regulation. If their medical and rehabilitation benefits of \$50,000 run out during that waiting period, they will have no access during that critical time to the specialized treatment and testing needed to help them cope with and minimize the effect of their brain injuries.

The consequences of this legislation quickly impacted a Hamilton man, who had a devastating motorcycle crash the same day the changes came into effect. Hospital staff initially assessed the accident victim with a GCS of 3, the most severe result with the patient being completely unresponsive. This GCS score would have qualified him for catastrophic impairment designation under the previous legislation, but does not qualify him under the new definition. He has exhausted his serious injury coverage in the first six months, but despite his brain injury, multiple fractures and other internal damage, he won't be able to even apply for the catastrophic category until June of 2018 – another year and a half. In the meantime, he and his family face bankruptcy as they try to figure out how to pay for needed treatments. This is typical of many other such cases.

Moreover, for people with mental or behavioural impairments after an accident like severe depression or PTSD issues, it has also become nearly impossible to qualify as catastrophically impaired. Instead of a single marked impairment on one of four aspects of personal function, the new mental/behaviour criteria require a marked impairment in three of the four. One doesn't need to be clairvoyant to know that many people with mental illnesses provoked by their accident will be left without needed benefits.

What to do?

Coverage that is almost equal to what was previously available to everyone is now available as optional coverage in your policy. As consumers, we can protect ourselves by purchasing that additional coverage, which gives you the pre-June 1 coverage limits (but not the pre-June 1 catastrophic definitions!). In practice, very few people (under 3%) had purchased these optional benefits, either

because they have not been properly advised of the consequences, are prioritizing lower premiums over the now-extra coverage, or are simply not interested in paying still more for less.

As lawyers, we will continue to advocate on behalf of our clients to expand the new definition of catastrophic impairment to provide coverage for vulnerable, very seriously injured clients who increasingly end up having to rely on taxpayer funded social assistance and the already overstressed health care system. We can also explore legal avenues like tort litigation and collateral insurance claims. With these changes, it becomes even more pressing for accident victims to have legal representation as early as possible to help reduce the bitter taste of the government's medicine.



In the community

Juan Carranza received an award

for his community involvement by the Correo Canadiense at their recent 15th Anniversary event.

Separately, Juan also attended an event in Ottawa to commemorate Hispanic and Latin Heritage month at a 'Hispanic Day on the Hill' in

Ottawa. The event was attended by the Speaker of the House as well as many MPs.

MP, Judy Sgro privately presented a bill to designate October as Hispanic Heritage Month in Canada.



Carranza was pleased to participate once again in Spinal Cord Injury (SCI) Ontario's Wheelchair Challenge.

The Wheelchair Challenge is a fun, family-friendly event! Participants, with and without disabilities, teamed up to complete quick and quirky challenges while using a wheelchair.

The Wheelchair Challenge helps remove attitudinal barriers towards people with spinal cord injuries. Participants depart the Wheelchair Challenge with a better understanding of accessibility issues, and knowing they have

supported members of their community through the funds they have raised, while taking part in a fantastic celebration.

Six Carranza team members were on hand to compete in the different challenges. It was once again a great event, and we look forward to the next one!



Maximum compensation in any language

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 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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