

MAR 26-27 The Oatley McLeish Guide to Motor Vehicle Litigation 2015
Get updated on the latest developments in personal injury and insurance law from some of Ontario's leading practitioners. Co-chaired by John McLeish, presentations by Patrick Brown and Alison Burrison.

MAR 31 Ontario Rehab Alliance Breakfast Workshops
McLeish Orlando, along with the two member firms of the PIA are proud to sponsor the Ontario Rehab Alliance Breakfast workshops. Join Patrick Brown, Laurie Davis, Patricia Howell and Ruth Wilcox as they discuss Service Marketing for the MVA Sector.

APR 15 Open Forum Session at Toronto Rehabilitation Institute
Partner, Alison Burrison along with Roger Oatley from Oatley Vigmond will be presenting an Open Forum session to health care professionals at Toronto Rehab's University Centre.

APR 25 MADD Canada National Conference for Victims of Impaired Driving
The member firms of PIA Law are proud to be partners with MADD Canada. During this weekend long event our lawyers will be hosting a workshop on benefits available to victims and improving entitlement.

APR 28 Free Practical Strategies Webinar: Auto Insurance Open Forum for Health Care Professionals
The member firms of PIA Law will broadcast an open forum to provide practical strategies to assist health care professionals in meeting the needs of their clients, getting paid, and dealing with "incurred".
Time: 9:00am -10:30am

MAY 1 GTA Rehab Network Best Practices Day Conference 2015
We are proud to support the 15th annual GTA Rehab Network's Best Practices Day. This year's theme, Rehabilitation and Reintegration: Perspectives across the Continuum, will bring together a dynamic range of speakers to examine rehabilitation within the current healthcare context and future directions for tomorrow.

MAY 14 Partners In Trauma Conference
McLeish Orlando is pleased to sponsor the annual one-day conference hosted by the Regional Trauma Program at Hamilton Health Sciences Centre. Delegates will gain knowledge in an effective and educational program which reviews current, evidence-based practice guidelines in the initial resuscitation of both the adult and paediatric trauma patient.

MAY 14-15 22nd Annual Conference on Neurobehavioural Rehabilitation in Acquired Brain Injury
We are proud to sponsor Hamilton Health Sciences 22nd Annual Conference. The theme this year is Inter-system Collaboration: Building Innovative Networks that Support Individuals with ABI The conference will feature national and international experts in brain injury rehabilitation.

MAY 21-22 OTLA 2015 Spring Conference- Driving to Success: Maximizing Your Auto Case
This year's OTLA 2015 Spring Conference is being chaired by Patrick Brown and Dale Orlando of McLeish Orlando and Christine Murray and Jennifer Bezaire. It will be held over two days at the Metro Toronto Convention Centre. John McLeish will present a paper entitled "Not Limiting Your Claim to Policy Limits: Strategic Decision".

For more information on upcoming events please visit: www.mcleishorlando.com

McLeish Orlando Announces Kate Mazzucco as a New Partner

McLeish Orlando LLP is pleased to announce that Kate Mazzucco has been made a Partner of the firm.

Kate has been an associate with the firm since 2007 and is an invaluable member of Patrick

Brown's team. Kate has extensive experience handling cases involving brain injury, spinal cord injury, and serious orthopaedic injury, with a specific focus on children.

Kate's success is attributable to her skill, dedication and passion. Her attention to detail and creative litigation strategies help get her clients the compensation that they need to secure their futures.

We are privileged to have Kate's thoughtful insight into the ongoing growth, development and refinement of the McLeish Orlando team.



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THE fine PRINT

WINTER/SPRING 2015

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War on Toboggans

Are municipalities getting nailed with lawsuits for kids and families tobogganing on city property? Absolutely not! Are municipalities held responsible when they know someone will get hurt, but do nothing about it? Sometimes, but it is rare.

If there is a war by municipalities against tobogganing, don't blame lawsuits. Believe it or not, tobogganing cases going to court against a city or town are few and far between. Over the last 50 years, there have been less than a handful of reported decisions. In fact, the most recent legal decision suggests very little exposure is created against a city or town when someone gets hurt tobogganing. In September of 2014, the court released the De Cou v. Leamington decision. This case involved Ms. De Cou who was sledding with her two boys when her sled hit something in the snow, catapulting her forward, and causing her to suffer injuries. She sued the town of Leamington. Leamington had no ban on tobogganing. Although town officials were fully aware that the town's property was being used by tobogganers, the town did nothing to maintain the property and keep it safe. The Court held that Leamington was not liable for the lady's injuries. Justice

Thomas Carey stated that "sledding and tobogganning bring a foreseeable risk of falls, tumbles and detachment from one's sled". He went on to state "going down a snow covered hill in February on a light piece of material (be it plastic, cardboard, Styrofoam or wood) is a typical Canadian winter experience. Falling off a sled is also part of that experience. I find that Ms. De Cou willingly assumed the known risk that she could be injured."

The dismissal of Ms. De Cou's claim was not novel. In Scoffield v. North York (Township) Public School Board, S. No. 20 a 15-year-old girl was injured while tobogganing with friends on a hill behind her school. She sued the Town of North York for the injuries she suffered. Although it was alleged that the area behind the school was in a state of ill-repair for not possessing a fence to block off access to the river, Justice Jeffrey held that "the accident did not happen by reason of this property not being fenced" and that "going over the bank was not of itself dangerous."

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McLeish Orlando Donates Over 500 Turkeys to the Daily Bread Food Bank

Once again we are honoured to have supported the Toronto Daily Bread Food Bank and their annual Holiday Drive held at the Sheraton Centre in Toronto in December. McLeish Orlando donated over 500 turkeys for the holiday drive to help the fight against hunger in the City of Toronto.

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In the Community

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This is our second year supporting the Toronto Daily Bread Food Bank with our annual McLeish Orlando Turkey Giveaway during the Holiday Season. Over the past two years we have donated over 1000 turkeys to this drive and we intend to continue to support this cause. We encourage all of our colleagues to join us next year for our Annual McLeish Orlando Turkey Giveaway to help the Daily Bread Food Bank's mission. Here are a few snap shots from the event

hosted by Breakfast Television on air at the BT Christmas Party.



From L to R: Patrick Brown, Dale Orlando and John McLeish with Frank Ferragine from BT.



From L to R: Patrick Brown, Dayana Gomez (DBFB), John McLeish, Dale Orlando and Allison Burrison.

McLeish Orlando supports Toronto Lawyers Feed the Hungry Program

McLeish Orlando is proud to support The Toronto Lawyers Feed the Hungry program. On October 8th, the lawyers and staff of McLeish Orlando volunteered their time at the Law Society of Upper Canada's cafeteria to help support some of the neediest residents in our city.

The Toronto Lawyers Feed the Hungry Program has provided hot, healthy community meals to Toronto residents in need since 1998. This important year-round program, provides more than 100,000 meals a year.

Ontario Passes Bill 15 But Who Really Benefits?

On November 20, 2014, the Ontario Liberal government passed Bill 15. The title of this new law is Fighting Fraud and Reducing Automobile Insurance Rates. With Bill 15, the Ontario Liberal's are delivering increased profits to insurance companies and perhaps lower premiums to Ontario drivers. Unfortunately, the higher profits and lower premiums are being delivered on the backs

of the most significantly injured innocent accident victims in Ontario. Part of the cost savings to insurers is being achieved by reducing the interest rate that insurers pay on awards for pain and suffering in a lawsuit from 5% per year to the current rate of 1.3%. Keep in mind that only innocently injured accident victims are entitled to receive damages in a lawsuit. Furthermore, only the most seriously injured people in the province are entitled to receive an award for pain and suffering. In order for an innocently injured person to receive an award from the Court for pain and suffering, the person first must satisfy a judge that they have suffered a permanent and serious impairment of an important physical, mental or psychological function.

Even if the person meets the verbal threshold, there is a mandatory deductible of \$30,000 on awards of \$100,000 or less (meaning that the insurance company of the person that caused the accident doesn't have to pay the first \$30,000 of the award). With Bill 15, the Ontario Liberals have added insult to injury. By reducing the interest rate on pain and suffering damages, the government has dramatically reduced the incentive from insurers to deal in a timely manner with the claims against them. Insurers will no longer have an incentive to try to resolve a claim at an early opportunity. Better to hold onto the money and keep it invested where they will expect to receive a return on investment of far greater than 1.3% per year.

Inez Martincevic : Working to Get Better Together

Inez Martincevic found herself in the Emergency Department of Toronto Western Hospital in October of 2011 after her back hyper-extended during a trapeze exercise class called Jukari. Unable to move her legs and in extreme pain, her worst fears crossed her mind—paralysis.

The neurosurgeon who treated Martincevic diagnosed her with a contusion, a bruise on her spinal column and deemed surgery unnecessary. Her spinal cord injury was treated for nine days in acute care before she was transferred to Toronto Rehab's Lyndhurst Centre for almost 3 months of inpatient spinal cord rehabilitation.

"When I went to rehab, I couldn't stand and had been suffering severe bowel and bladder issues," said Martincevic. "I was provided a great understanding of my injury and the team was proactive in discussing my rehab goals."

During Martincevic's outpatient therapy, she was invited to participate in the UHN

Spinal Cord Lean initiative. The goal of this initiative is to ultimately deliver better, more effective and efficient care to patients who have experienced a critical spinal cord injury.

Martincevic, eager to help improve care at UHN, was excited to join the initiative. "I participated in Lean because it was an opportunity to speak on behalf of patients and families who have had much more devastating injuries and may have more barriers to the health-care system than I," said Martincevic, who is a clinical dietitian at The Hospital for Sick Children.

As a first step to the UHN Spinal Cord Lean initiative, teams were brought together from acute care, rehab, and the community partners to map out the entire patient experience. This helped point out areas that could be improved. Janet Newton, Senior Clinical Director, Toronto Western Hospital, explains the importance of this collaboration, "By developing a better understanding of each other's programs and processes, we are optimizing the care we provide patients."

"Bringing the Toronto Western and Toronto Rehab teams together has been eye opening on both sides," said Tess Devji, Spinal Cord Rehab Lean Lead, Toronto Rehab. "It has allowed us to address language inconsistencies - for example, how we both define 'medically manageable' or 'rehab

ready.'" Communication, standardization, minimizing inconsistencies, and improving processes were all areas addressed together by the teams.

To date, Toronto Western and Toronto Rehab have implemented 192 improvements and continued to make changes through 11 rapid improvement events. "Part of the Lean experience is learning how we can work together, especially during important transition points," said Joanne Zee, Senior Clinical Director, Brain and Spinal Cord Rehab Program, Toronto Rehab. "One of our early successes was the creation of a standard process that allows us, in minutes to identify which patient is appropriate to transition from acute to rehab. Before, this took days!"

UHN has seen both quantitative and qualitative improvements since Lean was implemented:

- 13% reduction in total length of stay for acute and rehab patients
- 4-day average reduction in ALC (Alternate Level of Care) days
- Higher patient satisfaction

For more information on the UHN Spinal Cord Lean Initiative, visit www.uhn.ca.

War on Tobaggans

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The Court found no liability on North York. There are, very few cases where a City or township has been found responsible. When a city or township is found responsible, the facts are unusual and not your typical wintertime toboggan experience. In 1986, the Hewitt v. Etobicoke decision was released. In that case, the City allowed people on New Year's Eve to access an unlit city controlled ski hill. The tows to take skiers up the hill had been turned off,

but the City allowed a group of people to climb up the ski hill with toboggans. There was a built in light standard part way down the hill, which was not visible from the top. One of the tobogganers hit the light standard and was seriously injured. There was a precedent of sorts for finding the City liable in this case. Years earlier, a boy who was tobogganing hit a park bench and was killed. At a Coroner's Hearing, following the boy's death, the Coroner made specific recommendations that municipalities avoid building obstacles where people toboggan. This case has little relevance today, since ski hills are for skiers, and toboggan hills are for toboggans. Rarely do any operators try to mix the two. The other case that has had recent attention is Uggenti v. the City of Hamilton.

The case involved a tobogganer who tobogganed into a hidden ditch on a hill. The city knew the ditch was there and the city's records indicated that city officials knew the ditch posed a danger to people using the hill. Notwithstanding this knowledge, the city took no action to eliminate the risk of people using the hill, getting injured when they hit the ditch. The parties agreed to have a retired judge arbitrate the case. The arbitrator found the City of Hamilton responsible. The City of Hamilton appealed the arbitrator's decision and the court found the arbitrator's decision binding. It is uncertain if the result would have been different had the case proceeded to trial rather than arbitration. If there is a war on tobogganing, it is not because of lawsuits.