

# THE fine PRINT

WINTER 2020

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## The Perseverance of Craig Millar

*Turning tragedy into a source of inspiration.*

As an accomplished triathlete and marathon participant, Craig Millar lived a tremendously active lifestyle. He enjoyed playing hockey, running, and often cycled to work, which was 12 kilometres from his home in St. Catharines. At 54 years old, Craig set an incredible example for his wife and two children to live a healthy and active life.

Craig's 14 year employment as a cellarman at a Niagara winery also kept him fit. During harvest season, he was on his feet for 12 hours a day, 7 days a week and would walk over 5 kilometres each day. Despite these physical demands, Craig loved his job and always felt a sense of accomplishment after a long shift.

On the morning of July 26, 2016, Craig was cycling to work as part of his training for an upcoming triathlon. Tragically, a pickup truck struck him from behind, throwing him into a ditch. The driver fled the scene and it was an hour before a local farmer found him roadside with life-threatening injuries and called 911. In an instant, Craig's world changed forever.

As a result of the collision, Craig was diagnosed with a traumatic brain injury, hematoma, multiple fractures and ligament tears, and, most significantly, a spinal cord injury causing paralysis from his navel down.

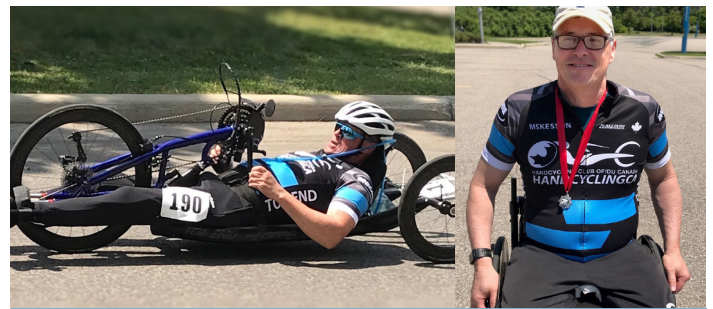
Shortly after the accident Craig and his wife contacted McLeish Orlando, and partner Joseph Cescon met with the Millar's at the hospital. Immediately following the meeting, our team began filling out the necessary paperwork to get Craig's claim open with his insurance company. We introduced Craig to an Occupational Therapist in the area to assist with discharge planning and on-going treatment.

Craig was introduced to various treatment providers in his area to assist with his on-going recovery after being discharged from the hospital, and

our team ensured that his claim was progressing and he was provided with the care and support required.

Despite losing the use of his legs, adjusting to the challenges of life in a wheelchair, being unable to return to a job he loved, and having to move out of his family home of almost 100 years, Craig worked tirelessly to rehabilitate. He participated in the Hamilton Health Sciences Regional Rehabilitation Centre and Brock University spinal cord rehabilitation programs and underwent intensive physiotherapy, occupational therapy, social work counselling, and personal support worker programs to improve his condition and meet his fitness goals.

Now, more than three years after his tragic injury, Craig's perseverance has led him to an incredible recovery. He is a proud member of Handcycling Canada and participates in races across Ontario and Quebec, mentors others at their training camps, and has embraced the welcoming and supportive Handcycling Canada community.



*Craig Millar won't slow down.*

Craig's road to recovery has been filled with physical and emotional struggles, and the pressures that the collision have placed on Craig and his family are immense. However, through his strength, perseverance, and commitment to recovery, Craig has turned a tragedy into a source of inspiration for others who have suffered spinal cord injuries.

McLeish Orlando is proud to have had the opportunity to represent Craig Millar and be a part of his incredible journey. We look forward to following his athletic endeavors in the future.



The lawyers at McLeish Orlando once again drew the attention of the personal injury bar for the recent decision of the Ontario Court of Appeal in *Tomec v Economical Mutual Insurance Company* 2019 ONCA 882. The court concluded that Economical could not deny housekeeping and attendant care benefits before our client had been determined to be catastrophically impaired. As a result, the two year limit to dispute benefits could not be triggered and therefore had not elapsed.

Our client sustained serious injuries when she was struck by a motor vehicle while crossing the street in September 2008. She applied for and received housekeeping and attendant care benefits. These benefits were subject to the 104-week limit because at the time she was not CAT. Indeed, in August 2010 Economical wrote our client to advise her that she would no longer qualify for the benefits as of September 2010.

Unfortunately, the Appellant's condition deteriorated. Significantly. Economical accepted that she was CAT in November 2015 but nonetheless refused to pay enhanced housekeeping and attendant care benefits. Although these benefits were no longer subject to the 104-week limit – the Appellant having been determined CAT – Economical took the position that the two-year limit to dispute benefits had been triggered by its letter dated August 2010 and had therefore expired.

*At the Licence and Appeal Tribunal, the adjudicator agreed with Economical. So did the Divisional Court.*

The Court of Appeal disagreed and allowed the appeal. Writing for a unanimous panel, Justice Hourigan found that the limitation period could

not run without the denial of a benefit. And for there to be a denial, an individual had to be eligible to receive the benefit. Here, our client – having not yet been determined CAT – had not been eligible for the enhanced benefits at the time of the August 2010 letter, hence the limitation period could not run.

Importantly, the court found this approach to be consistent with the SABS' consumer protection purpose, which is intended to maximize benefits for individuals determined to be catastrophically impaired. However, this intention would be entirely undermined by Economical's position that the limitation period to dispute benefits could be triggered and elapse before an individual had ever even qualified for those benefits.

Indeed, the court found that such a hard limitation would lead to an absurd result. In addition to barring an individual from claiming benefits before he or she was even eligible, a hard limitation would be inapplicable to someone who applied for no benefits before attaining CAT status, or who coincidentally became CAT within the two-year period. Since there was no reason to distinguish between these scenarios, a hard limitation could not stand.

## Why does this matter?

Under s. 46(2) of the old SABS, interest on overdue payments is compounded at 2%. Monthly. At this rate, interest can quickly exceed the principal, the total amount reaching the millions. Even under s. 51(3) of the new SABS, where the rate is 1% compounded monthly, interest can still lead to immense windfalls for the client.

With this much money at stake, it is essential to

hire a lawyer who understands limitation periods and the obligations imposed on insurance companies. Just because an individual is not catastrophically impaired today does not mean he or she won't become CAT in five years. And even though an insurance company says an individual is out of time to claim benefits or dispute a denial, it may not necessarily be the case. *Tomec* is a case in point.

The lawyers at McLeish Orlando played critical roles in representing our client at every stage of the *Tomec* decision and understand the nuances of limitation periods and how they can affect the interest on overdue benefits. We have since received notice that Economical is seeking leave from the Supreme Court of Canada to appeal this decision, which comes as no surprise given the implications for insurance companies. The lawyers at McLeish Orlando will continue to represent our client at every step of the proceedings in order to protect her rights, and fully intend to argue her case before the Supreme Court if need be.

**Written By:** Joseph A. Cescon  
and Ryan Marinacci, Law Student

Read more at [mcleishorlando.com/blog](http://mcleishorlando.com/blog)



# In the Community

## SCIO HOLIDAY LUNCHEONS

This year McLeish Orlando's annual holiday donation was made to Spinal Cord Injury Ontario. Together we hosted luncheons at SCIO's Lyndhurst and Hamilton General locations for people unable to travel home for the holidays.

We welcomed over 100 in-patients with their family, friends and health care providers, to share in good company and festive cheer!

## CLOTHING DRIVE

On November 14, 2019, McLeish Orlando dropped off another bundle of gently loved clothing from staff and lawyers to New Circles as a part of our Fall Cleaning initiative. We were overwhelmed by how many people donated! New Circles does incredible work in building stronger communities by providing for those in need.

## FOOD DRIVE

At the end of 2019, the staff and lawyers at McLeish Orlando participated in a Holiday Food Drive! All of the non-perishable goods were donated to the Daily Bread Food Bank as a way to ensure that families were able to access nutritious food during the holiday season.

Everyone donated a minimum of three cans of food. By the end of the drive we had collected 265 items for the Daily Bread Food Bank!

Curious about our numbers? Take a look below:

Cans: 202 Pasta: 20 packs Baby food: 43 packages of baby food

This food drive was a great success! We hope that you had a happy and safe holiday season.



## RENEWED COMMITMENT TO TRI

McLeish Orlando celebrated our renewed commitment to Toronto Rehabilitation Institute (TRI) in both December 2019, and at the beginning of 2020. Over the last decade, McLeish Orlando and Oatley Vigmond have donated over \$1.7 million to TRI, including our \$300,000 commitment this year. The donation will be used to fund a variety of things, including:

- The McLeish Orlando & Oatley Vigmond Continuing Education Awards, which provide clinicians in the hospital with funding to attend specialized training
- A redevelopment of the family and patient dining lounge at Lyndhurst Hospital
- A portion has been directed to the highest priority needs of the hospital.

Toronto Rehabilitation Institute is one of North America's leading rehabilitation facilities. We are proud to support the health care providers working at TRI, as they have been instrumental in the recovery of many of our clients.

## 2020 Best Lawyers® List

We are excited to announce that four lawyers from McLeish Orlando have been included in the 2020 edition of the Best Lawyers in Canada. Best Lawyers® is a peer-reviewed publication that is well renowned and respected in the legal community. Congratulations to:



John McLeish  
Recognized since 2006



Dale Orlando  
Recognized since 2010



Patrick Brown  
Recognized since 2013



Salvatore Shaw  
Recognized since 2016



*Congratulations to all those listed in the  
14th Edition of The Best Lawyers in Canada.  
We are proud to share your company.*

## The 2019 Canadian Legal Lexpert Directory

Lawyers included in the Canadian Legal Lexpert Directory are nominated and voted in by their peers based on their skill and expertise within the practice area of personal injury. Three partners from McLeish Orlando have once again been chosen for inclusion in the list this year. Congratulations to: John McLeish, Dale Orlando, and Patrick Brown for being recognized.

Thank you to everyone who took the time to vote. McLeish Orlando is honoured to have three partners included on the list, and we could not be more proud of their well-deserved accomplishments.





# EVENT CALENDAR

## AUG 12 Beach Blast

McLeish Orlando was excited to have participated in the Beach Blast Volleyball Tournament in support of Acquired Brain Injury (ABI) support groups serving the Hamilton, Peel, Halton, Toronto, and York Regions.

## AUG 19 18th Annual Deb Snead Memorial Golf Event

McLeish Orlando joined the Women's Law Association of Ontario (WLAO) and the Canadian Association of Women Executives & Entrepreneurs for their 18th Annual Deb Snead Memorial Golf Event.

## AUG 19 4th Annual Drive for ABI – Charity Golf Tournament in Support of HBIA

McLeish Orlando was proud to sponsor the 4th Annual Drive for ABI Charity Golf Tournament in Support of the Hamilton Brain Injury Association (HBIA). It was a great day out on the course!

## SEP 19 PIA Back to School Conference

As a member firm of PIA Law, McLeish Orlando was proud to co-host the Back to School 10th Anniversary Conference with the Toronto ABI Network. The conference was titled, "Mental Health: Navigating Life After Trauma". In addition to the conference, the Awards of Excellence in Brain Injury Rehabilitation was presented in collaboration with the Ontario Brain Injury Association.

## SEP 26 HHSC Focus on Trauma Conference

McLeish Orlando was a proud sponsor of the 16th Annual Focus on Trauma Conference. The conference was hosted by the Critical Care and Acute Medicine Program, along with the Neurosciences and Trauma Program of Hamilton Health Sciences.

## SEP 29 BIST 5K Run, Walk or Roll

McLeish Orlando, as a member firm of PIA Law, was proud to be the 2019 Platinum Corporate Sponsor of BIST. The BIST 5k Run, Walk or Roll was a great family fun event, where we got fresh air, exercise, and supported a great cause!

## OCT 3 BIAWW Oktoberfest

As a proud Platinum Sponsor of the Brain Injury Association Waterloo-Wellington (BIAWW), McLeish Orlando was excited to attend BIAWW's Oktoberfest. This fundraising event featured beer and food with an authentic Oktoberfest flavour.

## OCT 25 OTLA Fall 2019 Conference

McLeish Orlando was proud to have two lawyers presenting at the OTLA 2019 Annual Fall Conference. McLeish Orlando partner, Patrick Brown, presented 'Batling Bias in Bike Crash Cases. Copes, Judges, Juries – Top Five Pointers, and McLeish Orlando lawyer, Michael Warfe, presented 'Helmets and the Law: Implications of Helmets in Bike Crash Cases'.

## OCT 25 3rd Annual Halloween Bash In Support of SickKids

McLeish Orlando was excited to sponsor this spooky event! All proceeds from the event were donated to the SickKids Trauma Unit.

## OCT 30 TRI Rocket Ride for Rehab

McLeish Orlando was particularly excited to sponsor Toronto Rehab Institute's Rocket Ride for Rehab. McLeish Orlando lawyers, Lindsay Charles, Nick Todorovic, Taraneh Etemadi and Nicole Fielding were excited to participate in this ride. This year, supporters of the event were able to raise \$334,000.

## NOV 6-8 OBIA Conference

McLeish Orlando was a proud Gold Sponsor of the Ontario Brain Injury Association's 2019 Provincial ABI Conference. The conference theme was: Forging New Pathways – Navigating Challenges – Exploring Breakthroughs.



*Nick Todorovic, Lindsay Charles, Taraneh Etemadi, and Nicole Fielding at the TRI Rocket Ride for Rehab.*

## MCLEISH ORLANDO<sup>LLP</sup> LAWYERS

### Toronto

151 Yonge Street, Ste. 1800  
Toronto, ON M5C 2W7

T: 416-366-3311  
TF: 1-866-985-5112  
F: 416-366-3330

### Barrie

Consultation Office  
92 Caplan Avenue  
Barrie, ON L4N 0Z7

TF: 1-866-868-0208  
F: 705-722-9469

### Hamilton

Consultation Office  
One Hunter Street East,  
Ste. G100  
Hamilton, ON L8N 3W1

T: 905-574-6210  
F: 416-366-3330

### Kitchener

Consultation Office  
51 Breithaupt Street, Ste. 100  
Kitchener, ON N2H 5G5

T: 519-957-9621  
F: 416-366-3330

### St. Catharines

Consultation Office  
21 Duke Street  
St. Catharines, ON L2R 5W1

T: 289-786-7221  
F: 416-366-3330

[mcleishorlando.com](http://mcleishorlando.com)

   @mcleishorlando