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Accident and Injury Law

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Moose Class Action: Act of Government, Not Act of God

This newsletter is published by Ches Crosbie Barristers. It is for information purposes only and no legal advice is intended.

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Over the years, Newfoundlanders have bought into the idea that collisions with moose on the highways are acts of God or nature, not something government can control. We just hope it doesn't happen to us. And when we go out on the highways, particularly at night, we live with fear, and our loved ones live with fear, until we are safe at home.

That is the way the government wants us to see it. Moose/vehicle collisions are nothing the government can do anything about.

The members of the Moose Vehicle Collision class action say moose collisions on the

island portion of this province are an act of government, not an act of God.

Government made a decision to bring this non-native invasive species here about a hundred years ago. Government has also avoided taking responsibility for managing the hazard it created. Government's policy positions on the moose/vehicle collision issue are out of touch with sound ecological balance and with best safety practice in places like Sweden, Alberta, New Brunswick, and now even in our own national parks.

Lobby groups like Save Our People Action Committee

have proposed what seem like sensible ideas, such as a reduction in moose numbers, elimination of problem moose, and the erection of moose fencing. But government and government's own expert officials say these measures won't work. So what is an ordinary person, with no special learning in the field of moose and highway safety, to think?

People have several times asked me to consider a moose class action, and I have several times declined. But something happened last October that made me reconsider. Municipalities Newfoundland and Labrador had a conference in St. John's,

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Moose Class Action, cont'd.

and while driving to the city one of the mayors hit a moose near the Foxtrap Access Road and was admitted to hospital. The mayors at the conference passed a resolution asking the government to take action on the moose hazard and sent government a letter. This event suggested that public opinion on the moose/vehicle collision problem might be shifting to the point where government would feel political pressure to take meaningful action.

After the mayor's collision, I sought out world class experts and learned that the government has allowed the moose population here to reach densities of five to ten times what is allowed in places like northern Ontario. The government puts out a figure of 120,000 moose for the island, but 150,000 is a better guess and 200,000 is realistic. If we followed Ontario guidelines, we would

have 21,000 moose. I was told that the result of our government-imposed high moose densities is an ecological crisis in which moose are drastically over-browsing on young trees and destroying the forests.

Another recent development confirms what experts have told me and suggests the

timing for this class action is right. Last week, Parks Canada confirmed plans for a drawdown of moose numbers in Gros Morne National Park by four thousand animals, aimed at reducing numbers to 20% of what they are now. Credible federal authorities right here in Newfoundland have recognized the environmental damage and threat to highway safety posed by too many

moose, and are taking decisive measures. In the meantime, our own government is in denial of the problem.

Environmental degradation and too many moose on the highways is a consequence of too many moose in the woods.

The Moose Vehicle Collision class action is taken for those Newfoundlanders and their loved ones whose lives have been changed forever by the reign of terror on our highways, and for the safety of future users of the highways. The class definition in the Statement of Claim makes this clear:

The Plaintiffs take this class proceeding on behalf of persons or the estates of persons who were admitted as inpatients to a hospital and on behalf of the estates of persons who are deceased as a result of a collision or near collision with a moose, while operating or occupying a motor vehicle on a highway in the island portion of Newfoundland and Labrador.

This is not about recovering money for property damage, or for soft tissue injuries, or even for serious injuries treated in Emergency. It is about help for those badly enough injured to be admitted to hospital, particularly those with serious head injuries like Hugh George, or spinal cord injuries like Ben Bellows. And it is about preventing injury and death to people like them in the future.

The first step in a class action is to apply to court for certification as a class action, and our *Class Actions Act* requires this application to be filed within 90 days. Once the class members and government have exchanged information, talks should commence within the next three or four months. The class action creates an institutional framework for a negotiated resolution of the moose/vehicle



collision problem this year. Government should look on the class action as a resource for problem solving, and welcome an early mediation to discuss solutions. There are many creative solutions possible with a win/win outcome – a win for class members, for public safety, and for government.

A starting point for talks is our proposal that government should implement a five year plan to reduce the rate of injury in moose/vehicle collisions by 50% or more. Moose fencing is a proven part of an effective injury reduction strategy. The elimination of problem moose near the highways makes sense. And a drawdown of moose densities to environmentally responsible levels is a part of the solution too. Both the safety of the highways and the ecological health of the island will benefit if our people and their people sit down and talk.

At the same time, it is fair and just that government make financial amends with some of the most tragically injured citizens in the province, namely those admitted to hospital with devastating injuries who will never walk again or work again, and the families of those killed in moose collisions – not by acts of God, but by acts and omissions of government itself.■

Check out www.ChesCrosbie.com for video coverage of the Moose Vehicle Collision class action.

The Fusion of Internet & Television

Speaking of the growth of web video, guess where else it is making an appearance? That's right, on your television!

Smart TVs have been rolling out, and should make quite an impact this year. What's different about a Smart TV? It has an internet connection, just like a smartphone. And just like smartphones, Smart TVs are going to change the way we consume video.

Gone are the days when you missed an episode of your favorite television show. Sites like Hulu and services like Netflix allow you to access television shows and movies for a

nominal fee or even for free. Smart TVs will provide access to both Hulu and Netflix right on your television screen. You will be able to sit on your couch to watch shows that you missed instead of at your desk. Also, you will be able to stream in HD, taking advantage of the great resolution of your television.

The Apple TV box can utilize your current television by connecting you to the iTunes store, where you can rent and buy shows and

movies. Google TV promises the same, and will include applications for Hulu, Netflix, and YouTube. It also will include a search bar that will browse video all over the web and on television. The goal is a total fusion of television and internet. With the way smartphones have taken off, this may be totally commonplace in the next year.

Video is the way to go.■

We Get Questions

Q. Is it better to settle an injury claim out-of-court?

A. Generally speaking, the answer is “yes”. Our judges are pretty conservative in terms of awards, so you can’t assume that you will get more money by going to trial. Plus, you are typically looking at higher costs if your case makes it all the way to court. Your legal fees will be greater, as well as other expenses associated with your lawsuit.

An experienced lawyer will be able to review your claim and come up with a settlement strategy. However, it is important that your lawyer still prepare your case as if you are going to trial. That will let the insurance company know that you are serious and will also ensure that you are ready to proceed if a settlement can’t be reached.

Q. Does it matter that I didn’t see the doctor right after my car accident?

A. Generally speaking, yes, it does matter. If you are in a car accident and fail to get medical

care right away, you may have a harder time recovering fair compensation for your claim. From the insurance company’s perspective, you must not have been hurt that bad; otherwise, you would have seen a doctor immediately after the accident. They could use this “delay in medical care” against you. Keep in mind that each case is different, so it would be best to talk with a lawyer about your situation.

It is important to seek medical attention after an accident for another reason besides the impact it could have on your case. Failing to see a doctor could put your health in jeopardy. Some injuries don’t surface right away and you are much better off getting evaluated by a physician before additional problems arise. ■



Dermot Flight turns into snow monster—Amy had to soak these snowballs off after a lunchtime walk.

Are You Concerned About Your Teen Drivers Becoming Distracted?

Check Out This Application

The task of driving requires your full and undivided attention. You have to operate the wheel and two pedals, check your mirrors and use signal lights—the list goes on and on. The stress level is multiplied when you add traffic into the mix. It is hard to imagine that on top of all that, people attempt to use their cell phones while driving. Illume Software Company recently developed a solution to combat this problem—iZUP. If you are the parent of a teen driver, you will want to hear about this one.

iZUP is an application for mobile phones that has the ability to virtually eliminate all cell phone-related distractions while driving. By holding alerts for calls and text messages, iZUP keeps the driver’s focus where it should be: on the road. The application automatically sends calls to voicemail, holds text messages, and disables any Web browsing or data usage while the vehicle is in motion.

Of course, there are some instances where a phone is needed, so iZUP allows for emergency calls to 911, three authorized phone numbers, and the use of one application, like

a navigation system, for example. A password-protected passenger override is also an option. However, if the driver tries to disable the application, tamper alerts are sent to the account holder.

iZUP is simple to use. There is no extra bulky hardware required, so it is as easy as downloading it onto your mobile device. Parents use it to make sure their kids stay safe on the road. Employers use it for their employees, too. You can check out the company’s website at GetIZUP.com for more information. ■

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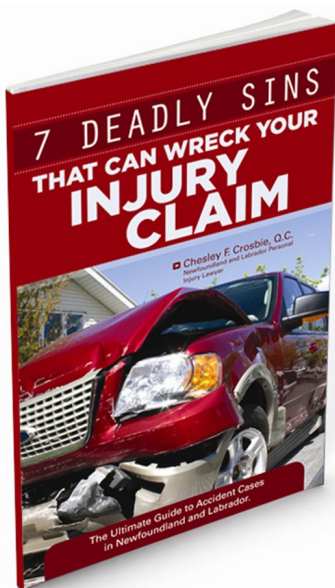
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