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# FULL DISCLOSURE

Summer | 2009

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## A NEW TEAM MEMBER:

*Paul Warnett*

Paul Warnett is the latest addition to Klein Lyons' legal team, having joined on May 4, 2009. The 34-year-old lawyer is certainly not new to the legal profession, however. For the past nine years, he did personal injury and insurance defence work at another Vancouver law firm. Says Warnett of the experience, "Having worked on behalf of ICBC, I have insight into how they evaluate claims, what they look for. I also have insight into defence strategies."

As for what prompted Warnett to become a lawyer, he says that he was drawn to the idea of being an advocate, of being able to assist people. After completing an undergraduate degree at Simon Fraser University, where he majored in history, Warnett went on to UBC to study law. He graduated with a law degree in 2000 and was called to the bar in 2001.

Until recently, Warnett was also involved with the local chapter of Mothers Against Drunk Driving (MADD), acting as a resource for legal matters and sitting on the board of directors. His involvement



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with MADD came after his own mother was killed in a motor vehicle accident four years ago. Although it's unknown whether or not the person who caused the accident was under the influence of drugs or alcohol (the suspect fled from the scene), he was subsequently charged with criminal negligence causing death.

Raised in Coquitlam, BC, Warnett currently lives in Vancouver with his wife and their 14-year-old mutt, Rocky. When he's not working,

Warnett enjoys running, golfing, gardening, and walking the dog.

To Klein Lyons Warnett brings experience in dealing with a wide range of injury, including catastrophic claims involving the brain and spine. He's looking forward to handling plaintiff work (helping those who have been injured in a motor vehicle accident) as opposed to defending those who are potentially at fault and are being sued for their role in an accident.

## CLASS ACTION UPDATE:

### *New Developments in Breast Cancer Case*

A class action in Newfoundland and Labrador is once again in the news. The case is on behalf of women who received incorrect results from breast tumour biopsies conducted by the lab at the General Hospital in the Health Sciences Centre in St. John's, Newfoundland, between January 1, 1997, and October 1, 2005.

In March of this year, after listening to the testimony of approximately 100 witnesses in the 2008 proceedings, Madame Justice Margaret Cameron of the Newfoundland Court of Appeal, presented a report to the Minister of Health and Community Services. In the report, she was highly critical of the hospital for its actions. Doug Lennox of Klein Lyons' Toronto office says, "the entire healthcare system had let down these patients." Lennox, supporting counsel for the class action, provides assistance to lead counsel Ches Crosbie Barristers of St. John's, Newfoundland.

According to Lennox, Eastern Regional Integrated

Health Authority, who operates the hospital in question, mishandled the tests of approximately 2800 women with breast cancer, resulting in a significant impact on the treatment options available to these women and their doctors. As a result of the mishandling, over 100 women may have died without receiving potentially life-saving medical treatment. Others had a recurrence of cancer, which could have been avoided had they received the appropriate treatment sooner.

Not only has the case been a matter of tremendous public interest in Newfoundland and Labrador, says Lennox, but it also speaks to the issues of the healthcare system across Canada. Despite the obvious tragedy to the victims and their families, the case has shone light on the need for increased resources, which are now being provided by the provincial government. "It's one example of how a lawsuit can help improve things," says Lennox.

*Continued on p3...*

## ARRIVE ALIVE

### *Smart Drivers Just Drive*

Driving is one of our most demanding tasks, and yet many drivers treat it as a secondary activity. Most of us have either observed, or been guilty of, multi-tasking behind the wheel. Drivers regularly eat meals, drink beverages, change radio stations, switch CDs, talk on the phone, chat with passengers, referee child disputes and read maps. Extreme driver distractions include personal grooming (using the rear-view mirror) and reading a newspaper or a book. To some extent, consumers have condoned multi-tasking while driving by demanding that their vehicles be equipped with such items as cup holders and complex entertainment and navigation systems.

### *Driver Distractions Have Serious Consequences*

If you run through a stop sign, have to slam on the brakes suddenly or can't remember driving from one place to another, chances are you are driving while distracted.

According to a 2006 study by the U.S.-based National Highway Traffic Safety Administration, some form of driver distraction took place within three seconds of almost 80 percent of crashes and 65 percent of near crashes. In three seconds, a car travelling at 60 kilometres per hour covers a distance of 50 metres — that's half the length of a Canadian football field! Three seconds is long enough to miss a car pulling out from a side road or to miss seeing a traffic light change. It may not seem like a lot of time but it's enough to change the rest of your life and the lives of the people around you. A split-second distraction can result in death or serious injury because it jeopardizes your ability to see, analyze and react to sudden changes on the road.

### *An Attitude Adjustment May Save Your Life*

If done safely, driving is a complex task that demands all of our concentration and attention. But if you perceive your



vehicle as a place to accomplish other tasks while travelling, an attitude adjustment is required for your own safety as well as the safety of others.

Here are several tips on managing driver distractions:

- Plan your route before putting your car in drive.
- Finish your personal grooming before you get behind the wheel.
- Pull over to eat or drink.
- Turn off your cell phone or personal digital assistant (PDA).
- Don't engage in heated discussions.
- Put your digital toys away.
- Drive defensively.
- Identify and preset your vehicle's climate control, radio and CD player.
- Ensure child passengers are comfortable and securely buckled up.

...Breast Cancer Update continued from p2

The media became very interested in the story leading up to the certification of the class action in May 2007, and have provided regular updates since. Mediation is set for October 2009. If a settlement is not reached at that point, the case will proceed to trial. *Full Disclosure* readers can read more about this class action at [http://www.kleinlyons.com/class/breast\\_cancer/](http://www.kleinlyons.com/class/breast_cancer/).



## PART 7 BENEFITS

### *What Are Your Rights?*

No-fault benefits are provided by ICBC under Part 7 of the *Insurance (Vehicle) Act of British Columbia* for those insured by ICBC who are injured or killed in a motor vehicle accident within Canada and the USA. Benefits include all reasonable expenses incurred by the insured as a result of the accident for necessary medical, surgical, dental, hospital, ambulance or professional nursing services, or for necessary physical, occupational or speech therapy, chiropractic treatment and prosthesis or orthosis. Coverage also includes compensation for temporary disability or death.

### **MEDICAL BENEFITS**

The maximum payout for medical and rehabilitation benefits is \$150,000. While this may sound like a large sum, it might not be enough for individuals suffering from very severe injuries.

Because ICBC imposes many restrictions on its medical coverage, disputes often arise around the interpretation of the terms “reasonable” and “necessary.” In the case of rehabilitative benefits, ICBC adjusters often use narrow definitions of what is an allowable expense for treatment or items that promote an injured person’s rehabilitation.

### **DISABILITY BENEFITS**

If an accident prevents a person from working, there is a provision for wage benefits called Temporary Total Disability (TTD) benefits. To receive these benefits, the injured person must have been employed at the time of the accident or have worked 26 of the 52 weeks preceding the accident. The maximum entitlement is \$300 per week, unless the insured had previously purchased additional insurance coverage.

### **HOMEMAKER BENEFITS**

If the primary homemaker in a household becomes disabled as a result of an accident, he or she can receive housekeeping costs of up to \$145 per week, on a reimbursement basis. The regulations state that payments do not cover housekeeping services performed by a family member; however, in 1992, the BC Supreme Court ruled that if the family member did not reside with the injured person before the accident and comes in specifically to help after the accident, then ICBC must pay.

### **DEATH BENEFITS**

If death occurs at the time of the accident or sometime afterward as a result of the accident, Part 7 benefits provide for the payment of funeral expenses up to a maximum of \$2,500.

THE AMOUNTS AVAILABLE FOR PART 7 BENEFITS HAVE NOT CHANGED IN ALMOST 20 YEARS. SOME GROUPS, INCLUDING THE BC COALITION OF PEOPLE WITH DISABILITIES, ARE ADVOCATING AN INCREASE IN THE AMOUNTS, PARTICULARLY WITH REGARD TO PAYMENTS FOR REHABILITATION EXPENSES. THEIR REPORT CAN BE FOUND AT: [HTTP://WWW.BCCPD.BC.CA/CAMPAIGNS/PART7.HTM](http://www.bccpd.bc.ca/campaigns/part7.htm).

When a parent dies as a result of a motor vehicle accident, the surviving family members can receive additional death benefits, the amount of which depending on whether the person killed was the “head in household” or the “spouse in household.” If a child dies, the surviving parents may also receive modest benefits. These benefits are in addition to the death benefits provided by the Canada Pension Plan (CPP).

### **SEEK LEGAL ADVICE**

If ICBC is refusing or neglecting to pay Part 7 benefits, or if you wish to maintain your right to seek these benefits at a later date, contact Klein Lyons for help. If you find yourself in the unfortunate circumstance of having to apply for Part 7 benefits, call us for a free consultation and we’ll outline your options and rights before you make an application. Details regarding the *Insurance (Vehicle) Act* are available at <http://www.bclaws.ca/>.

## RENTING IT RIGHT: Car Rental Safety Tips

While most of us make sure our own vehicles are well maintained and properly serviced, we tend to take it for granted that the cars we rent are as well. Here's a checklist to help you ensure that this summer's rental-car experience is a safe one.

- Find out the rental company's policy in the case of an incident such as a vehicle breakdown. Do they come to you to pick you up and return you to the place you rented the car? While this is a great option if you're staying in the city, it's not so convenient if you're driving to a remote location. In those cases, it's much better if the company brings you a replacement vehicle so that you can continue your journey worry free.
- Notice the details. If your rental car is dirty or doesn't have the fuel topped up, it likely hasn't been properly inspected since the last customer returned it. Best to request another car.
- Make sure that the tires are inflated properly. If you're traveling along the highway during hot summer weather, over-inflated tires can pose a serious risk because they can blow up. You might want to carry a tire gauge with you when you travel so that you can periodically check the pressure.
- Pay attention to the air conditioning. If it's not working, it could be a sign that something more serious is wrong with the vehicle.
- Do a check of the little things before leaving the rental site. Check the headlights, signal lights, and windshield wipers, as well as the oil and other fluids. Make sure that the vehicle comes with a spare tire and jack.
- When you're on the road, don't let your fuel level get too low. Each car is different, and while a quarter of a tank on your own vehicle may allow you to drive many more kilometres, a quarter of a tank in the rental car may not go as far. Also, when you're driving in unknown territory, it's best to fill up when you can, rather than wait until the last possible moment, only to find no service station nearby.
- Travel with a jug of water. Not only will this give you something to drink if you're stranded, but it also will come in handy if the vehicle's radiator overheats.
- Drive safely, following the rules of the road and any posted speed limits. Not only will you be less likely to be involved in an accident, but you also won't be getting tickets for traffic violations.



### *Klein Lyons is pleased to be part of the 16th Annual Davis Cup Charity*

hosted by Lance and Gloria Davis. The charity golf tournament will be held on June 27, 2009.

The beneficiary is the Union Gospel Mission's Send a Kid to Camp fund. The Davis Cup goal is simple: to have fun and raise funds for programs that feature children and families that don't receive government funding. Get involved, swing a club, make a donation or sponsor a hole.

For more information, please visit: [www.daviscupcharity.com](http://www.daviscupcharity.com).

# Davis Cup



## REFER A FRIEND

Many of our new clients come from referrals of satisfied clients just like you. We appreciate your business and your referrals. If you know someone who needs our help, please give him or her our phone number for a confidential and free consultation.

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