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Personal Injury

Mixed news for plaintiffs following coffee spill victory

By AdvocateDaily.com Staff



A woman's success in proving her entitlement to accident benefits following a coffee spill brings good and bad news for plaintiffs, Windsor personal injury lawyer [Gino Paciocco](#) tells [AdvocateDaily.com](#).

In a recent Court of Appeal [decision](#), the unanimous three-judge panel upheld a motion judge's ruling that the woman was involved in an "accident" as defined by the *Statutory Accident Benefits Schedule* (SABS) when the hot drink she ordered at a drive-through spilled all over her

lower body, causing serious burns.

Paciocco, a founding partner of [Paciocco & Mellow](#), says he was surprised by the outcome.

"I have mixed reviews on this decision. On the one hand, it is positive to give plaintiffs benefits or coverage for medical rehabilitation and therapy that they may not already have through work or private insurers," he says.

However, for accident victims who bring tort cases, Paciocco says the decision could have negative ramifications due to the statutory deductible that applies to all monetary awards against insured defendants. The deductible, which is adjusted annually for inflation, currently stands at just under \$40,000.

"Practically speaking, this decision eliminates resolutions for victims of minor burns who had coffee spilled on them because their damages would not exceed the statutory deductible, as the majority of these cases are under \$40,000," he says. "This is an unfair consequence, especially when you consider that those injuries and damages resulted from another's negligence — not securing a lid — which has nothing really to do with your operation of a vehicle."

The woman in the appeal court case made her claim following a 2014 incident at a drive-through window. While transferring her drink to a cupholder in her car, the lid became detached, spilling coffee over her thighs.

The car was not moving at the time, but the engine was on, and the vehicle was in gear. This was not enough to be considered an accident under the SABS, the insurer argued. However, a Superior Court judge disagreed, finding that it fell under the schedule because the woman's use of her motor vehicle was a direct cause of her injuries.

The province's top court backed up the motion judge's conclusion in a short decision issued earlier this summer dismissing the insurer's appeal.

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“The issue is not, what was the ‘triggering event’ of the incident, but rather, what caused the impairment. In this case, the use of a running motor vehicle in gear to access the drive-through and the seatbelt restraint were direct causes and dominant features of the impairment the respondent suffered,” the appeal court panel wrote.

The case may remind some lawyers of a famous U.S. [decision](#) in which a New Mexico woman was awarded almost US\$3 million for injuries suffered during a similar burn accident at a drive-through.

That jury award was almost entirely comprised of punitive damages and was dramatically cut by the trial judge. The public backlash over the size of the payout was also credited with spurring tort reform south of the border.

But Paciocco says there’s no need for Canadian plaintiffs to worry about a similar reaction.

“It’s more difficult to obtain awards in Canada than in the U.S. In Ontario, judges abide by caps for pain and suffering damages that are not present in the U.S., so that awards of that magnitude are not possible in Canada for that head of damage,” he explains.

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