



# Michael Kennedy

519.340.0492

[mkennedy@mccagueborlack.com](mailto:mkennedy@mccagueborlack.com)

## Profile

Michael is the head of the firm's Transportation Law Newsletter. His opinions on recent case law have also been quoted in The Lawyer's Weekly. His defence practice focuses on all areas of negligence law, including occupiers' liability, transportation law, products liability and workplace safety issues.

Michael has successfully represented clients and their interests at all levels of court in Ontario as well as various administrative tribunals, including the Financial Services Commission of Ontario and the Workplace Safety and Insurance Appeals Tribunal. His reported decisions include the precedent-setting case of Rampersaud v. TD General (FSCO) which defined "residence" within the context of the Statutory Accident Benefits Schedule, and Thayalan v. Wawanesa Mutual Insurance (FSCO), in which Michael successfully argued that an objective post-accident meniscus tear in the right knee would not prevent a claimant from returning to physical labour or household tasks. Michael was also the second chair on Ursus Transport Inc. et al. v. Bernad (WSIAT), which successfully removed a claimant's right to sue his employer.

Michael is experienced representing large, multinational corporations and their interests for both defence and subrogation matters. He is regularly retained to provide opinions with respect to risk management, liability defence and rights of subrogation. He has assisted clients with the investigation and risk management of potential claims, including representing clients in regulatory proceedings.

As Michael operates out of both Toronto and Waterloo Region, he is able to cost-effectively handle cases in all of Southern and Southwestern Ontario. His reasonable, personable and proactive approach yields proven results for his clients.

When not representing clients, Michael is an avid musician who plays the piano, saxophone and oboe. He is a member of the Guelph Concert Ensemble, for which he has served on its board of directors. He can also be found exploring the live theatre scene or relaxing at home with his partner, beloved dogs and cat.

## Partner

Bar Admission: 2009

## Practice Areas

- Accident Benefits
- Animal Law
- Automobile Fraud
- General Casualty & Special Risks
- Health, Life & Disability Insurance
- Marine Law
- Personal Injury
- Products Liability
- Professional Liability
- Property Insurance
- Sports, Recreation & Resort Liability
- Subrogation
- Transportation Law



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22 Frederick Street  
Suite 515

Kitchener, Ontario  
N2H 6M6

T: 519.340.0500

F: 519.571.8697

[www.mccagueborlack.com](http://www.mccagueborlack.com)

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Borlack**<sup>LLP</sup>  
Barristers & Solicitors

## Featured Cases

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- **Rampersaud v. TD General**, FSCO Arbitration, 2013-02-19, Reg 403/96: Precedent setting case defining “residence” within the context of the Statutory Accident Benefits Schedule.
- **Yu and Security National**, FSCO Arbitration, 2012-07-20, Reg 403/96: Preliminary issue hearing to determine whether the applicant was involved in an “accident” as defined by the Statutory Accident Benefits Schedule.
- **Ursus Transport Inc. et al. v. I. Bernad**, Workplace Safety and Insurance Appeals Tribunal Decision No. 2159/09 (<http://canlii.ca/t/2cjtz>): Right-to-sue application, for which Michael drafted the materials on behalf of Ursus and second chaired the hearing, which successfully extinguished the respondent’s right to sue for tort damages in a court action.
- **Thayalan and Wawanesa Mutual Insurance** - Michael Kennedy, MB Accident Benefits Newsletter, June 13, 2012

## Education

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Michael graduated from Carleton University in 2005 with high honours in Political Science and Law. He received his Bachelor of Laws degree from The University of Western Ontario in 2008.

## Publications and Speeches

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- **Mary Carter Agreements** by Michael Kennedy, First presented at an MB Client Seminar, June 16, 2014
- **There is no automatic duty of care between a diocese and students harmed by priests** by Michael Kennedy, March 22, 2013
- **FSCO orders insurer to fund medicinal marijuana purchase** by Michael Kennedy, Published in McCague Borlack’s Accident Benefits Newsletter , October 02, 2012
- **A “catastrophic impairment” requires only one (out of four) functions at the marked impairment (class 4) level** by Michael Kennedy, Published in McCague Borlack’s Accident Benefits Newsletter, October 01, 2012
- **UPDATE: Downer v. Personal Insurance** by Michael Kennedy, MB Transportation Newsletter, May 11, 2012
- **“Bad faith” is not a claim governed by the insurance contract** by Michael Kennedy, MB Transportation Newsletter, March 26, 2012
- **Attempted car-jacking qualifies as an accident pursuant to the Statutory Accident Benefits Schedule (SABS)** by Michael Kennedy, McCague Borlack Transportation Newsletter, October 23, 2011
- **Reckless driver solely at fault for single-vehicle accident despite poor road construction** by Michael Kennedy, McCague Borlack’s Transportation Newsletter, October 23, 2011
- **Repairing a vehicle is not an ordinary use to which vehicles are put** by Michael Kennedy, McCague Borlack’s Transportation Newsletter, October 23, 2011
- **Court holds there is no duty to defend when policy limits are exhausted** by Michael Kennedy, CLC Transportation Newsletter, March 01, 2011

## Professional and Business Affiliations

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Michael was called to the bar in 2009. He is a member of The Law Society of Upper Canada, Canadian Defence Lawyers, The Advocates’ Society and the Canadian and Ontario Bar Associations.