

# Failed Starbucks lawsuit highlights high burden of proof

By Jennifer Pritchett, Associate Editor



A B.C. woman's unsuccessful lawsuit against Starbucks after she burned her legs with tea reinforces that it's not enough to simply show a product is dangerous, says Toronto civil litigator [Sarah O'Connor](#).

"You have to prove that there was a defect and that it caused injury," she tells [AdvocateDaily.com](#). "It's not enough to say the beverage was hot.

"This case establishes that the burden of proof is high."

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), says the lawsuit turned on whether the woman could prove the cup was defective, which she failed to do.

The woman was in the passenger seat of her mother's car when they accessed the Sechelt, B.C. drive-through in September 2013 and ordered a tea, hot water and a panini, reports the [CBC](#). After receiving the order, the car travelled about 100 - 130 metres when it came to a stop; the woman testified the lid to her tea "popped off" and spilled onto her left thigh, says the article.

The woman was taken to hospital where she was treated for second- and third-degree burns, says the national broadcaster.

Court documents show the woman claimed the cup was defective, the lid improperly placed, and the temperature of the tea too hot, causing the cup to distort and for the cover to come off, says the article.

Starbucks testified that its staff is instructed to check lids before handing over beverages to customers, CBC says.

Provincial court Judge Steven Merrick said the woman did not prove the cup was defective and the tea served too hot, as she claimed, reports CBC.

"The reality is that products may be inherently dangerous and capable of causing injury but that does not mean that they are defective nor does it automatically mean that ... the manufacturer or seller is liable [if injury results]," Merrick wrote in his judgment.

"Extremely hot beverages are served in these types of cups and lids on a daily basis without incident."

O'Connor says that when people hear of a lawsuit like this they think of the landmark lawsuit against McDonald's — *Liebeck v. McDonald's Restaurants* — in New Mexico where a civil jury awarded \$2.86 million to a 79-year-old woman who suffered third-degree burns when she spilled coffee in her lap in 1992.

"But in this case against Starbucks, the woman received nothing," O'Connor says.

She points to how the Starbucks manager testified that the store's water heating machine dispenses water at 86 degrees Celsius and automatically shuts off when the water reaches 93 degrees.

O'Connor describes it as a combined product liability and employee negligence case.

"The allegation that the cup was defective is normally one you find in product liability cases and the claim that the lid was improperly placed and the temperature of the tea too hot would be negligence," she says.

O'Connor says the test for product liability is first, you have to prove that you were injured or suffered a loss, second, that the product was defective, and third, that the defect caused the injury, if you were using the product as intended.

"Sometimes there is a subset in the defect part of the test in that there was a failure to warn," she adds. "So to be successful in this case, the woman would have to prove there was a manufacturing error — if the cup wasn't sealed properly — or that there was a design flaw and that the danger created by this flaw was unreasonable and could cause injury."

The woman failed to meet that test.

"Though the judge was sympathetic, she received no damages and that sends a message," O'Connor says.