

PRESIDENT'S MESSAGE



October 2012

Thank you to everyone who participated in the Trade Show! We had another great year with a superb turnout from adjusters to visit all the different vendors at their booths. Congrats to everyone who won a prize!

The weather has finally turned on us and fall has arrived – I know all the contractors are hoping for a better winter then last year and to get a few more ice backup claims, but I have to say as an adjuster it was kind of nice not to have them!!

I hope that everyone enjoys their Thanksgiving weekend and is able to spend time with their families.

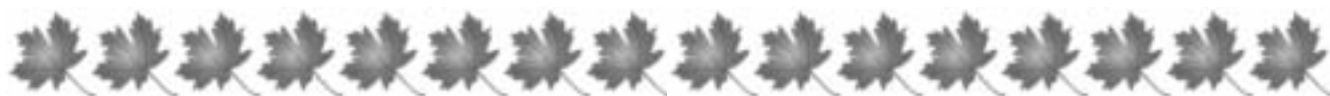
Halloween is following close behind – make sure your children are safe while out trick or treating. At what age is it considered too old to trick or treat?? I have “kids” at my door that I have to look up too!

Thank you to everyone who has visited our website, followed us on twitter and tweeted back at us, and liked us on Facebook!

Charlene Ferris, FCIP CRM

President

KW Ontario Insurance Adjusters Association



October 2012

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If you have any questions, concerns or comments, please do not hesitate to contact any of the above committee members.



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**TO SUBMIT YOUR TEAM WINNING CHILI, PLEASE CONTACT:
Dale Stuart or Mark Hale**

Please submit your team by Monday November 12, 2011

BE THERE!





K-W CHAPTER O.I.A.A. PRESENTS

THE ANNUAL KID'S CHRISTMAS PARTY!!

DATE: Sunday, December 9th, 2012

PLACE: Fun Works Indoor Playland
425 Bingemans Centre Drive
Kitchener, Ontario

TIME: 5:30 p.m. to 8:30 p.m.

CONTACT: Randy Higgins – Paul Davis Systems of Kitchener – Waterloo
519-570-0438 ext. 242
Dale Stuart – Cunningham Lindsay – Kitchener
519-578-5020

COME OUT FOR FOOD – FUN – AND A VISIT FROM SANTA!

**Please note: Only members and their immediate family/grandkids are eligible.
Children must be 12 years old or under.**

DEADLINE FOR REGISTRATION IS FRIDAY, DECEMBER 1, 2012

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Contact Number:	_____	Email:	_____
Child's Name:	_____	Gender:	_____
	_____	Age:	_____
	_____		_____
	_____		_____
	_____		_____
	_____		_____
	_____		_____
	_____		_____
	_____		_____



I am very pleased to announce effective September 1st, 2012 the opening of a new company **Access Restoration Services Kitchener Ltd. (“ARS”)**, its affiliation with **ARS Toronto**, and lastly my role as leader of this new entity in my capacity as Managing Director. The sole purpose of this new entity is to afford quality, emergency, restoration and construction services for the insurance sector and its customers, brokers/agents, loss adjusters, appraisers and associated professional service providers.

I have worked with many of you over all my years in the industry and I look forward to perpetuating the trust and confidence you have shown in me over these years. Our established team at the Kitchener/Waterloo location along with the combined resources and strengths of the global ARS will be able to service all your residential and commercial requirements.

I am truly excited to have the opportunity to lead our operations in the region and to be part of a shared vision for expanding our capabilities to more communities in Ontario.

The following are the present locations of ARS-Restoration Services in Ontario:

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31 Densley Avenue
Toronto, ON
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Phone: 416 244-9797

and

ARS – Kitchener/Waterloo
608 Weber Street North, Unit 5
Kitchener/Waterloo, ON
N2V 1K4
Phone: 519 279-1110

Please call our toll free number at 1-855-283-1864 and visit us www.arsrestoration.ca

We look forward to a mutually beneficial relationship and should you have any questions or concerns relative to this announcement please contact me.

Kevin Skjerpen – Managing Director Kitchener/Waterloo
kevins@arsrestoration.ca

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Schedule of K-W Chapter Monthly Meetings 2012-2013

Date	Topic	Contact
2012		
SEPTEMBER 27	TRADE SHOW	Charlene Ferris Cyndy Craig
OCTOBER 25	BAD FAITH	Stephanie Jermyn Laura Potts
NOVEMBER 29	CHILI COOK-OFF	Dale Stuart Mark Hale
DECEMBER 9	KIDS CHRISTMAS PARTY	Randy Higgins Dale Stuart
DECEMBER 13	CHRISTMAS PARTY <i>**NEW THIS YEAR**</i>	Stephen Tucker Charlene Ferris
2013		
JANUARY 31	CARGO THEFT	Lisa Dobson Dan Strigberger
FEBRUARY 28	PANEL DISCUSSION	Stephen Tucker Mike McLeod
MARCH 28	PROVINCIAL SEMINAR	Mike McLeod
APRIL 25	FUN NIGHT & ELECTIONS	Stephen Tucker Laura Potts
MAY	**NO MEETING AS PROVINCIAL CONFERENCE**	
JUNE 27	GOLF TOURNAMENT	Charlene Ferris Cyndy Craig

**** All meeting dates, topics and contacts are subject to change**

****Cost for meeting is \$35 per person**

Truss Damage - Repair or Replace?

By Jeff Udall P.Eng., M.A.Sc./Jason Nguyen

Jeff is a professional engineer at Caskanette Udall Consulting Engineers with a B.Eng. in Mechanical Engineering and M.A.Sc. in Structural Engineering. Jeff has over 20 years of experience in engineering. He was a structural steel design engineer before becoming a forensic engineer. For the past 14 years he has been investigating building envelope and structural failures, motor vehicle accidents, pedestrian vehicle accidents, fire investigation, and mechanical failures

Jason is a 4th year University of Waterloo Civil engineering student.

The standard pre-engineered truss is a cost effective way to construct a roof on most modern houses. They are easy to manufacture and save considerable time during construction, especially with the complicated roof arrangements of many large houses. But when these trusses are damaged from wind or fire losses, repairing them is not quite as easy as sticking in a new 2x4 and a sheet of plywood. These trusses are engineered to be a very efficient structural member, which means that if they are damaged in the slightest, they may not be as strong as what they should be and compromising the integrity of the roof.

It is often easiest to simply replace the damaged truss. Large sections of the roof are generally affected by the loss anyways, so spending a lot of engineering effort and on site labour to do the repairs may not be cost effective. But in some cases, the damage does not really justify tearing out the entire truss. Large complicated truss arrangements may mean that you cannot simply replace a single truss. Also, since the ceiling drywall for the top floor is screwed to the underside of the trusses, replacement also means additional drywall work, not to mention electrical wiring and other utilities that snake their way around the attic.

Truss repairs can be made that consist of sistered lumber sections and plywood plates. We have developed a method to simplify the design process for these repairs which will reduce your engineering costs. The plywood plates generally end up being considerably larger in size than the small metal plates that are stamped on in the factory. The plywood plates can also use a lot of nails. If there are a number of truss connection repairs to be made, the process can be somewhat labour intensive. But aside from being aesthetically different, the repair will return the truss assembly to its full original strength with minimal disturbance to the rest of the house.

There are pros and cons to repairing trusses over replacing them. Each individual case must be assessed to determine the merits and costs of either approach. If you have a damaged roof, give us a call and we will work with the contractor to develop the most cost effective and solid solution to fixing the house.



TORONTO DELEGATE REPORT

September 19th was our kickoff event at the Ballroom bowling lounge in Toronto. The meet and greet event was well attended and presented a great networking opportunity.

We hope to see you on October 10, 2012 as we celebrate the OIAA Past President and Honorary members' night at the King Edward Hotel located at 37 King Street East Toronto, ON. This is a great venue for this event which will feature guest speaker Frank O'Dea, the co-founder of The Second Cup.

In November please join us at the Sheraton Centre for a legal panel of plaintiff and defense lawyers for a discussion on "Raising the Bar Higher". Registration is at 1:45 and will be followed by a mix & mingle at 4pm.

You can register for any of these events online at www.oiaa.com under the events menu heading.

The OIAA now has a face book page so if you have a moment please take the time to visit: <https://www.facebook.com/OntarioInsuranceAdjustersAssociation?ref=hl> and "Like" us. Feel free to invite other industry friends to do the same.

Don't forget to "Like" the Kitchener OIAA new website at our new face book page <https://www.facebook.com/KwOiaa>

You can also join our LinkedIn group at: <http://www.linkedin.com/groups?gid=4578135> or follow our Twitter handle <https://twitter.com/KWOIAA>.

As always if you have any questions or comments please feel free to reach out at Michael.mcleod@crawco.ca.

Regards,
Michael McLeod
Kitchener Waterloo OIAA Chapter Toronto Delegate

ASSOCIATION CONTACTS AND INDUSTRY EVENT SCHEDULE

October 25th 2012KW-OIAA Monthly Meeting
November 29th 2012KW-OAA Chilli Cook Off
December 9th 2012.....KW-OIAA Kids Christmas Party
December 13th 2012.....KW-OIAA Adults Christmas Party

Insurance Brokers Association of Waterloo
Contact – Dianne Monteiro
dmonteiro@donovaninsurance.com

K-W Ontario Insurance Adjusters Association
Contact – Randy Higgins
randy@pdkw.ca

Insurance Institute-Conestoga Chapter
Contact – Heather Graham
hgraham@insuranceinstitute.ca



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SOCIAL CHIT-CHAT

PROSIT!! It's that time of year again!

But while you're out participating in the many festivities of German origin this month, please also consider the myriad educational opportunities available this fall:

If you missed the Property and Casualty Insurance Compensation Corporation (PACICC) Enterprise Risk Management (ERM) Seminar 1 in Sept, you still have a chance to participate in Seminars 2 and 3:

- Seminar 2: Risk appetite and risk tolerance: establishing clear guidance: Tuesday, October 16, 2012, 2:00 p.m. to 4:30 p.m., ET
- Seminar 3: Risk governance and risk management: resources and responsibilities: Tuesday, November 27, 2012, 2:00 p.m. to 5:00 p.m., ET

Participation is available at KPMG head office in Toronto as well as via webinar.

(DAILY NEWS Sep 11, 2012 "PACICC to offer enterprise risk management seminars this fall")

Other notable education sessions:

Head Injuries: The Diagnosis, the Law, The Case Manager (Oct 30) London, ON
<http://www.canadianunderwriter.ca/events/event-details.aspx?id=48615>

The Short Course on Fibromyalgia and Chronic Pain Claims (Nov 15-16) Toronto, ON
<http://www.canadianunderwriter.ca/events/event-details.aspx?id=48617>

Succeeding on Mediations and Arbitrations at Financial Services Commission of Ontario (Nov 23) Toronto
<http://www.canadianunderwriter.ca/events/event-details.aspx?id=48616>

Happy **Oktoberfesting** this month and please "arrive alive"!

Stephanie Jermyn, CKR Global

Social Director, OIAA



CHRISTMAS PARTY!!!

Date : December 13, 2013

Time: 5:30pm

Location: Golf's Steakhouse

Cost: \$35.00

Please come join us for a fun festive evening at our first annual Kitchener OIAA Christmas Party.

Please contact Stephen Tucker or Charlene Ferris for more information.

SAVE THE DATE!!!

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50/50 \$320 Winner – Peter Neufeld

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Access Restoration – The Co-operators Dave Hepburn
Economical Mary Meaney

Bay Medical – Curo Christine Fizell

Belfor – Intact Ron Stickel

Carpet Dept – The Co-operators Lynn Brombal

Caskanette Udall – Intact Jason Behling

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Economical Sandy Radman
Economical Kevin Shapcott

Direct IME – Economical Dina Pipilas

First General – Economical Jennifer Schmitt
North Waterloo Chris Lacroix

First Response – Cunningham Lindsay Colin Bailey

Focus Assessment – Economical Peter Neufeld

Ground Force – Cohen Highley Alexandra Rosa

Herrold & Vernon – Unifund Jessica Petteplace

IRG – Economical Sandy Radman

Kodsi Engineering – Economical Jenn Benham

Larrek – The Co-operators Kim Filer

Miller Thomson – North Waterloo Chris Lacroix

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Winmar – The Co-operators Kim Filer
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ASAP – Curo Jeff Cronk

BDO – Economical Carrie Keogh

Biosense – Guarantee Joanne Anderson

Carstar – Economical Beth Croucher

CBI Health – Economical Mary Meaney

Cohen Highley – Economical Vitoria Brszyenski

Conestoga Rovers – Crawford Tanya Glenn

Davis Martindale – Economical Susan Dosen

Evolve – Miller Thomson Katherine Waterston

First On Site – Intact Jason Goll

Granite John Ferguson

Flood – Economical Gillian Reain

Frontline Forensics – Economical Sharan Sangha

Gus Group – GCNA Ken Beringer

IME Plus – Economical Leanne Bast

ISB – Guarantee Angela Hill

KPMG – Intact Ron Stickel

MDD – The Co-operators Leeann Darke

Origin & Cause – Economical Peter Neufeld

Paul's Restoration – The Co-operators Kim Filer

Rapid City – The Co-operators Teresa Foster

Remark Med – The Co-operators Shirley Breig

Sibley – Economical Kevin Shapcott

Strone – Caskanette Udall Gail Tomka

Whitehall – Economical Jennifer Brown

Thank you to all of our vendors for participating in the 2012 Trade Show – we appreciate your involvement in the KW OIAA.

Thank you to the local adjusters for attending the trade show.

We look forward to seeing everyone again next year!!

OIAA Tradeshow

September 27, 2012





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Authored by:

Ashleigh Leon

Associate
Kitchener-Waterloo

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On September 20, 2012, Justice Stevenson of the Ontario Superior Court of Justice in the decision of **Wen v. Unifund Assurance Company**¹, ordered that the insureds in this case "must take responsibility for their own actions and for their own misrepresentations" thereby denying their right to recover indemnity from Unifund Assurance Company.

On December 6, 2006, Han Wen was operating a 2002 Acura RSX when she collided with a pedestrian, Mr. Yang, who suffered injuries as a result of that accident. Yang, et al. brought an action claiming damages for personal injury arising out of the accident. Wen was the registered owner of the Acura at the time of the accident. She and her common-law spouse, Jie Shen, were the defendants in the action initiated by Yang for personal injury. Unifund was a statutory third-party, having denied coverage to both defendants in that action. State Farm Mutual Automobile Insurance Company provided insurance coverage to Yang, and State Farm was added as a defendant in the action after Unifund denied coverage to Wen and Shen. State Farm was named as a defendant in the companion action for the purpose of claiming, if necessary, uninsured/underinsured coverage in the event that one or both of Wen and Shen are found to be uninsured without a right of indemnity from Unifund.

With respect to this action, the plaintiffs, Wen and Shen, assigned their rights to State Farm pursuant to an Assignment of Rights Agreement. State Farm and Unifund both contended that the other must respond to the claims for personal injury brought by Yang, et al. in the other action. Notably, Justice Stevenson made sure to acknowledge that Yang's tort recovery would be the same regardless of which insurer must respond to the claim.

Facts

In 2005, Wen purchased the 2002 Acura. Unifund issued an Owner's Policy to Shen with respect to a 2000 BMW 540. That policy was in effect for the period December 14, 2005 to January 1, 2007. Shen also had a policy with Unifund insuring his Toyota Previa motor vehicle which had a policy in effect for the period from June 1, 2007 to June 1, 2008. On the date of Wen's accident with Yang on December 6, 2006, Wen did not have any insurance with respect to the Acura and produced a fraudulent pink slip to the police officer attending at the scene of the accident. On December 7, 2006, the day after Wen's accident, Shen called Johnson

(Unifund's broker) requesting the addition of the Acura to the BMW policy. A Certificate of Automobile Insurance (Ontario) was issued for the period December 1, 2006 to January 1, 2007. Johnson's employee, Stewdell D'Acres added the Acura to the BMW policy.

Unifund alleges that Shen and Wen contravened a term of the contract and/or a committed fraud due to their failure to disclose Wen's accident of December 6, 2006, and the proper owner of the vehicle to Unifund such that their right to recover against Unifund was forfeited. They also contended that Shen failed to advise of a material change in risk and did not have an insurable interest in the Acura when he added it to his existing policy with Unifund.

Issues at Trial

- 1 Did Shen have an insurable interest in the Acura when he added it to his insurance policy?
- 2 Did Shen and Wen contravene a term of the contract and/or commit fraud or willfully make a false statement in respect of a claim so that their right to recover against Unifund is forfeited?
- 3 Did Shen fail to advise Unifund of a material change in the risk?

For the purpose of this article, Justice Stevenson's reasons under issues (1) and (2) will be highlighted.

With respect to whether or not Shen had an insurable interest in the Acura at the time he added it to his policy, Justice Stevenson applied the law as set out in **Kosmopoulos v. Constitution Insurance Co.**². In that case it was found that an insurable interest is "to have a moral certainty of advantage or benefit, but for those risks or dangers", or "to be so circumstanced with respect to the subject matter of the insurance as to have benefit from its existence, prejudice from its destruction". He found that Shen did not have an insurable interest because it was clear from his testimony that he did not have any monetary interest in the vehicle nor did benefit from the Acura's existence or was prejudiced from its destruction. He noted Shen's specific words at trial: "Because she had an accident she should handle it by herself." Justice Stevenson felt that there was no demonstration of concern by Shen nor any suggestion that he felt affected or prejudiced by the accident.

¹ Wen v. Unifund Assurance Company, 2012 ONSC 5274 (canlii)

² Kosmopoulos v. Constitution Insurance Co. 1987 CanLII 75 (SCC)

In terms of whether or not Wen and Shen contravened a term of the contract or committed a fraud, the relevant statutory provisions of the *Insurance Act* set out below were referenced:

233. (1) *Where,*

- (a) an applicant for a contract,
 - (i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or
 - (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;
- (b) the insured contravenes a term of the contract or commits a fraud; or
- (c) the insured willfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

Use of application as defence

(3) No statement of the applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application therefore or, where no signed written application is made, in the purported application, or part thereof, that is embodied in, endorsed upon or attached to the policy.

Idem

(4) No statement contained in a purported copy of the application, or part thereof, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to the applicant in the purported application, or part thereof.

Application of insurance money, 3rd party claims, etc.

258. (1) Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, even if such person is not a party to the contract, may, upon recovering a judgment therefore in any province or territory of Canada against the insured, have the insurance money payable under the contract applied in or towards satisfaction of the person's judgment and of any other judgments or claims against the insured covered by the contract and may, on the person's own behalf and on behalf of all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

Section applicable to purported policy

(5) It is not a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer and alleged by a party to the action to be such a policy is not a motor vehicle liability policy, and this section applies with necessary modifications to the instrument.

Defence to excess limits claim relating to s. 250 coverage

(9) Despite anything contained therein to the contrary, every contract evidenced by a motor vehicle liability policy shall, for the purposes of this section, be deemed to provide all the types of coverage mentioned in section 250, but the insurer is not liable to a claimant with respect to such coverage in excess of the limits mentioned in section 251.

Insured's liability to reimburse insurer

(13) The insured shall reimburse the insurer upon demand in the amount that the insurer has paid by reason of this section and that it would not otherwise be liable to pay.

Taking into consideration the applicable statutory provisions Justice Stevenson found that Shen and Wen's right to recover indemnity from Unifund was forfeited based on their actions. State Farm, not Unifund, must therefore respond to the claims for damages brought by Yang, et al. in the action arising out of the motor vehicle accident.

He noted that there were several instances of intentional misrepresentations made by both Shen and Wen. The consequence being that their right to recover against Unifund was forfeited. In Justice Stevenson's opinion, Wen and Shen had devised a scheme that was meant to intentionally defraud Unifund as they both knew had the accident been disclosed it would have affected Unifund's decision to add the Acura to the existing policy.

In discussing the issue of the backdated policy, Justice Stevenson was of the opinion that D'Acres would not have done this unless Shen requested that it be backdated. Therefore, State Farm could not rely upon the argument that an insurer issuing an instrument of insurance that purports to be a motor vehicle liability policy cannot validly defend an action on the basis of any misrepresentation by the named insured or that there is no exemption that allows an insurer to avoid the absolute liability flowing from the issuance of a policy and a pink slip, even when backdated, if the claim arises during the coverage period.

Of note, Unifund had already advanced the minimum limits of \$200,000.00 to Yang, acknowledging that the absolute liability provisions in the *Insurance Act* applied in this case.

The Lesson

Insurers need to ensure that their brokers/agents are being diligent when dealing with applications for insurance and/or additions to existing policies. While, thanks to Justice Stevenson, insurers can take some comfort in the fact that undeniable misrepresentations made to an insurer when adding an additional vehicle to a policy will invoke the protection of section 233 of the *Insurance Act*, it is less clear that omissions by an insured would bring about the same result if they were unintentional. Had Justice Stevenson believed Shen's evidence that D'Acres did not ask about the ownership of the vehicle or whether the vehicle had been involved in an accident and he had not requested the policy to be backdated, this case may have had a completely different outcome (of note many insurers/brokers now record telephone requests for policy amendments perhaps for this reason).

For now however, the general duty of an insured to disclose material facts under a contract of insurance has been upheld and insurers can breathe a little bit easier with the knowledge that insureds will be held responsible for their actions if they are found to be intentionally attempting to deceive their insurer.



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Each year, the Learning Partnership promotes the opportunity for grade 9 students to accompany a parent or guardian to the workplace to learn more about work and careers.

Each year, the Insurance Institute's Career Connections program hosts **Feed the Minds of Youth** luncheons for organizations who participate in Take Our Kids to Work™ Day.

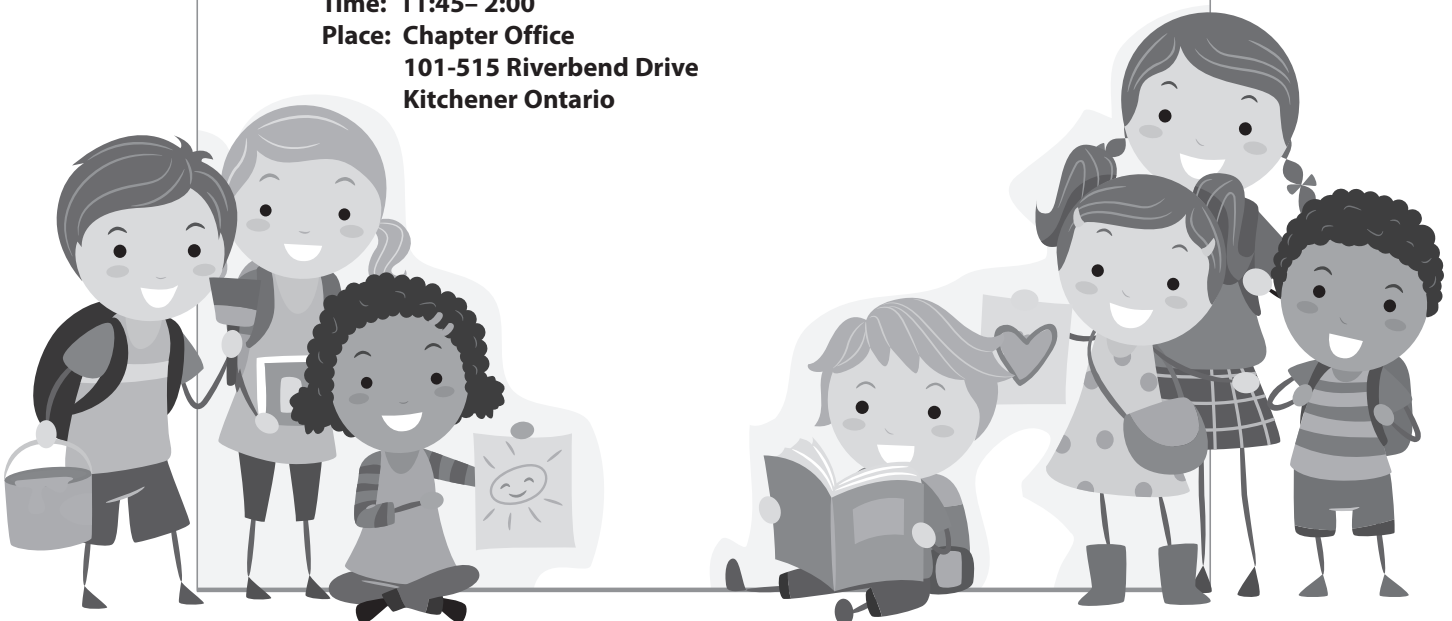
On **Wednesday November 7, 2012**, institutes and chapters across the country are opening their doors to youth and their parents/guardians to participate in a **free** lunch event that will provide a learning opportunity about property and casualty insurance careers. We encourage your organization to get involved. Join us for lunch and hear industry professionals talk about their career and education journeys.

To learn more or to register your company, please contact your local Insurance Institute or Chapter at Conestogamail@insuranceinstitute.ca.

This is a popular event that fills up fast! Register today!

The Conestoga Chapter is looking for volunteers to help plan and deliver an interactive presentation for the parents and students attending our Feed the Minds of Youth Event. If you have experience or would like to learn how to develop and deliver an interactive training session please contact Heather Graham at hgraham@insuranceinstitute.ca

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