

PRESIDENT'S MESSAGE



November 2013

Are we ready yet? Driving around the KW area, it's hard to tell it's November already. The grass is still green, and there are leaves remaining on some trees. The Farmer's Almanac is calling for a long, very busy winter with LOTS of snow.. and you know what that means.. we'll be busy again with auto losses, and property damage claims – not a bad thing for our industry! Now, if I can just convince the neighbour's kids to shovel my driveway.. for free...

Our last meeting on October 24th was a success with a very interesting presentation on Laser Scanning in accident reconstruction, by Ron Jadschke from McCarthy Engineering. November 28th is our annual Chili Cook-off – have you got what it takes to be crowned the tastiest winner? Please contact Charlene Ferris for entry information.

One of the things that the executive has been working diligently on is our membership list. If you have moved or changed positions, please let us know so that we can update our data base and ensure that everyone who is a paid OIAA or social member is receiving our bulletin as well as being included on our email blasts.

As you may not be aware, your KW OIAA has been working closely with the IIC and the IBAO to consolidate some of our chapter events, and to that end, I would like you to save Friday, April 4th for our joint annual Curling Bonspiel. More information to follow. Please check the bulletin and our website (kw-oiaa.ca – or follow us on Twitter @KWIOIAA) for all the upcoming events.

Although it is not a national holiday, this November 11th, please take time to remember all of those who have fought for our country, given the ultimate sacrifice for you and your children's freedom. Wear a poppy and support our veterans. Teach our children to remember "Lest We Forget".

I look forward to seeing all of you out to our next meeting.

Cyndy M. Craig, CIP CRM
KW OIAA President

November 2013

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

SOCIAL CHIT-CHAT

Now that the Halloween sugar rush has subsided we welcome the wet and cold weather of November as we move into the busy holiday season.

As the holidays approach the industry continues to support the community in many ways. One not to miss event is the Women in Insurance Cancer Crusade's 16th Annual Breakfast which is taking place November 6th at the Fairmont Royal York in Toronto. For more information on this event or to purchase tickets please visit www.wicc.ca.

Also as we move into this busy time of year we are being reminded of the importance of being diligent when assessing the legitimacy of reported car accidents, especially for fleet drivers. State Farm has provided some useful information on the signs of staged accidents in the article "Signs of a Staged Vehicle Crash" which can be found at the following link http://www.teletrac.com/fleet-management/topics/signs-staged-vehiclecrash?utm_source=outbrain&utm_medium=cpc&utm_campaign=Outbrain|2013-07&tc=Outbrain|2013-07&mc=Outbrain|2013-07

If you think you have the ultimate chili recipe we expect an entry in the annual KW-OIAA Chili Cook Off taking place November 28th. Don't miss the food and fun on this night! For more information and to register for the event visit the website at www.kw-oiaa.ca. I look forward to seeing you all there.

Cheers and have a happy and safe November,

Ashleigh Leon
KW OIAA Social Director

**If you have an ad or an article you
would like to place
in the KW OIAA bulletin
Please contact Randy Higgins –
randy@pdskw.ca -
519-570-0438 x 242**

Schedule of K-W Chapter Monthly Meeting 2013-2014

<u>Date</u>	<u>Topic</u>
October 24 th , 2013	Educational Meeting
November 28 th , 2013	Chili Cook Off
December 7 th , 2013	Kids Christmas Party
January 30 th , 2014	Educational Meeting
February 27 th , 2014	Educational Meeting
March 27 th , 2014	Provincial Conference
April 24 th , 2014	Elections and Fun Night
May 29 th , 2014	Educational Meeting
June 26 th , 2014	Annual Golf Tournament

Details of each event will be in that month's bulletin



**DO YOU THINK YOU'VE GOT WHAT IT TAKES?
ARE YOU READY TO TAKE ON THE
DEFENDING CHAMPS OF ARS AND CKR???**

**CHILI COOK-OFF
THURSDAY NOVEMBER 28, 2013
GOLF'S STEAK HOUSE @ 5:30PM**

**TO SUBMIT YOUR TEAM WINNING CHILI, PLEASE CONTACT:
Charlene Ferris at Charlene_ferris@cooperators.ca**

Please submit your team by Monday November 11, 2013

Good luck to all!!



ENTER TO WIN

BULLETIN NEWSLETTER PHOTO CONTEST

The Kitchener-Waterloo Chapter OIAA Bulletin publication is known for traditionally representing an historical monument or event on its cover as an icon of our Region's history. This year, we are inviting all KW OIAA members to take part in a **Photo Contest to find next year's cover photo for our 2014-2015 Bulletin newsletter**. Submissions can be made online or via email to any of our executive team members and should include a short bio explaining the significance of the photo to Waterloo Region and/or the OIAA (examples below). The selected photo will remain on the cover of the Bulletin monthly for the duration of the 2014-2015 year circulation and the winner will receive recognition in the Bulletin as well as a free year's subscription and a big bottle of Grey Goose. Please submit your contest entries here: _____(URL to upload)

DEADLINE FOR SUBMISSION IS MIDNIGHT ON TUESDAY DECEMBER 31st 2013 AND THE WINNER WILL BE ANNOUNCED AT THE JANUARY DINNER MEETING

Some examples for you to get into the spirit:

In 2012-2013, the Bulletin cover held an image of the West Montrose Covered Bridge (or "Kissing Bridge") which, according to the Waterloo Region Official Tourism Website, is: "recognized as an historic site by Ontario's Archeological & Historic Sites Board" and is "Ontario's last remaining covered bridge" with a "198' span across the Grand River. Visitors come from all over the world to see and photograph this picturesque bridge."

In 2013-2014, the Bulletin will show Woodside House on its cover, the Birthplace of William Lyon MacKenzie King and, according to Parks Canada's website (www.pc.gc.ca) was also "the boyhood home of William Lyon Mackenzie King, Canada's longest-serving Prime Minister. The house has been restored to the Victorian style of the 1890s. The importance of this residence is best reflected in King's own words: "The years that left the most abiding of all impressions and most in the way of family associations were those lived at Woodside."

What will the 2014-2015 Bulletin photo be?? WE NEED YOUR HELP!

Good Luck!!!
Your Executive Team
2013-2014



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Iceberg Claims – what are they, and how can they be managed?

Jim Walls, P. Geo. QPESA

The term “iceberg” conjures up images of the last minutes of the ill-fated Titanic. Similarly, when resolving insurance claims, it is the 90% that is below the surface that can sink you. For example, consider what first appears to be a straight forward insurance claim: A large tree toppled in a windstorm damages the roof, wall and porch of a 120 year old farm house. A large portion of the yard is torn up by the roots of the tree. At first glance the solution looks reasonably straight forward, cut up the tree, repair the wall and roof, back fill and sod the yard. A structural engineer is called to evaluate the damage and prepare drawings for the contractor to reinforce the roof and walls in accordance with the current building code. During the inspection the engineer notices the fitted stone foundation has been stressed and needs repair



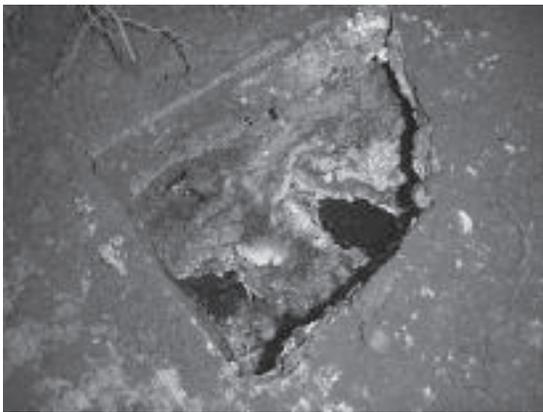
to support the wall. During the inspection of the attic vermiculite insulation and bat guano is noticed. The potential health and safety implications related to asbestos in vermiculite insulation and fecal matter (bat, bird, mouse etc) require an environmental scientist or health and safety specialist to advise on worker protection and clean up prior to reconstruction. The need to address environmental issues such as asbestos, fuel spills, damaged wells and septic systems require the input of a Geoscientist.

The impact of workplace hazards due to environmental conditions can be serious, as a result, the Occupational Health and Safety Act places an emphasis on the duties of employers to protect workers and the public from hazards and take all reasonable precautions. This assigns direct accountability to employers. Indirect accountability can also occur through a Professional Engineer or Geoscientist since they are bound by their governing bodies to protect the public. While this does not mean that one or the other will spend countless hours searching every nook and cranny for guano, it does mean that if they notice something while carrying out their site review, they have a duty to report on it.



Aside from hazards in the attic, damaged wells and septic beds can be both an environmental and health concern. A damaged well or septic bed may contaminate drinking water putting the health and lives of the users of the well at risk. Both must be assessed and repaired under the direction of a Geoscientist or an Engineer.

When dealing with buildings constructed under an old building code or before there were any building codes used, significant complications can arise when applying the current building code. Codes are typically updated and revised to reflect state-of-the-art knowledge. As a result, requirements for various construction items can change dramatically over a number of years.



Items that can be affected in an older house include:

- Structural components (beams, joists, posts, foundation walls, etc),
- Knob and tube wiring must be upgraded to the current electrical code,
- Wells and septic systems must comply with current environmental regulations,

This could mean considerable reconstruction and upgrading. It takes an innovative, experienced and knowledgeable team of professionals to resolve a claim in accordance with the law without having to rebuild an entire structure and completely replace infrastructure such as wells and septic systems.



In today's increasingly complex regulatory regime it is critical that the initial assessment is conducted with a multi-disciplinary focus to examine not just the readily apparent issues but, like the iceberg, the 90% hidden from view.



Effective iceberg management means having available a responsive multidisciplinary team that can quickly and cost effectively assess and resolve the issues regardless of their hidden complexity.

Jim Walls, P. Geo. QP_{ESA}
Environment Group Leader
R.J. Burnside & Associates Limited

Jim Walls, P. Geo. QP_{ESA}, is a Senior Geoscientist and leader of the Environment Group at R.J. Burnside & Associates Limited. His areas of practice for insurance clientele includes environmental assessment of spills, hazardous materials, groundwater supply and remediation. Jim is also a Qualified Person as per O.Reg. 153/4. Jim can be reached via email at jim.walls@rjburnside.com. R.J. Burnside & Associates Limited is a progressive Canadian-owned multi-discipline engineering and environmental consultancy firm with over 300 professional employees.

For more information contact: Nancy Orr
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8TH Annual Insurance Industry Christmas Food Drive

We are pleased to announce the upcoming 8th Annual Insurance Industry Christmas Food Drive.

December 2 to December 12, 2013

Join your insurance industry colleagues in collecting Non Perishable Food Donations.



We will be distributing boxes the week of November 25th to use for collecting the food.
The donations will be collected December 12th and 13th, 2013
Cash/Cheque Donations welcome.

Randy Higgins	Paul Davis Systems	randy@pdskw.ca
Pat Pearl	Cowan Insurance Group	pat.pearl@cowangroup.ca
Mary Riberdy	Lackner McLennan Insurance	mriberdy@lmicanada.com

Please contact Randy or Mary at the email address above and we will be happy to drop a box or two off at your office. We appreciate all your support, let's make this this biggest food drive yet!

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TORONTO DELEGATE REPORT

On October 9th 2013 we celebrated the OIAA Past Presidents and Honorary Members night at the King Edward Hotel in Toronto, ON. This is such a historic venue and a great event that honors so many great people who have given so much of their time to lead the association for over the last 80+ years.

On November 13th there is a great educational event that the OIAA is putting on in conjunction with the IBC. A panel of Industry Experts has been assembled and will be speaking to the group on the State of the Industry.

The State of the Industry from a Claims Perspective – an Expert Panel

November 13th, 2013 2:00 PM through 4:00 PM

One King West Hotel

1 King Street West

Toronto, ON M5H 1A1

Canada

Event Fee(s)

OIAA Member (\$45 + 5.85 HST) \$ 50.85

Non-member (\$60 + 7.80 HST) \$ 67.80

We look forward to seeing you at this event as well as the OIAA Holiday Party at the Westin on December 11, 2013.

As always you can find event details & registration at www.oiaa.com and you can stay tuned to OIAA events by following @PresidentOIAA on twitter and joining us on facebook

<https://www.facebook.com/OntarioInsuranceAdjustersAssociation?ref=hl>

Don't forget to "Like" the Kitchener OIAA new website at our face book page

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

Twitter handle <https://twitter.com/KWOIAA>.

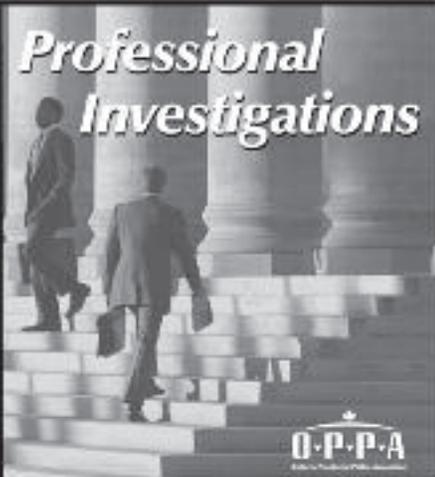
If you have any questions or comments please feel free to reach out to me at Michael.mcleod@crawco.ca.

Regards,

Michael McLeod

Kitchener Waterloo OIAA Chapter Toronto Delegate

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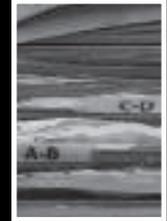
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Social Host Liability Update



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The landmark decision of the Supreme Court of Canada in *Childs v. Desormeaux*, 2006 SCC 18, appeared to put to rest the issue of whether a social host owes a duty of care to those who may be injured by an intoxicated guest of their party. In *Childs*, the court specifically assessed liability in respect of a third party injured on a public highway, and upon reviewing negligence law jurisprudence, determined that the social host context is much different than the commercial host context.

The Court held that a social host does not owe a duty of care to users of public highways, stating that the proximity necessary to establish a duty of care did not exist in the circumstances present in *Childs*. The Court specifically noted that the conduct at issue was nonfeasance, or the failure to act, rather than misfeasance.¹ Further, the Court analysed three situations whereby a duty of care could arise if the necessary factors exist to establish proximity between a plaintiff and defendant. They are as follows:

1. Where a defendant intentionally attracts and invites third parties to an inherent and obvious risk that he or she has created or controls;²
2. Where there exists a relationship of supervision and control, such as the relationship between a teacher and student or a parent and child;³ and
3. Where there exists a need for positive steps to be taken by an actor which exercises a public function or engages in a commercial enterprise.⁴

¹ *Childs v. Desormeaux*, 2006 SCC 18, at para 31

² *Childs v. Desormeaux*, 2006 SCC 18, at para 35

³ *Childs v. Desormeaux*, 2006 SCC 18, at para 36

⁴ *Childs v. Desormeaux*, 2006 SCC 18, at para 37

The reported cases since *Childs* are minimal. However, it is clear that *Childs* did not negate the possibility of liability attaching to a social host under all circumstances.

In *Oyagi v. Grossman*, 2007 CarswellOnt 1699, defendant Grossman, a minor, advertised his house party on the internet, provided beer to attendees, and charged an entrance fee. Further, he arranged for security personnel to monitor the party and collect the fee. The security personnel were unable to keep the party under control, and thefts occurred. An altercation ensued whereby the plaintiff Oyagi was the victim of a hit and run, allegedly by one of the thieves who attended the party.

Notwithstanding the decision in *Childs*, S.N. Lederman J. dismissed the defendant's motion for summary judgment, referencing section 3(1) of the *Occupiers Liability Act*, on the basis that "[i]t is possible that a trial court may conclude that it would be foreseeable that thefts would take place, that altercations would occur, and that injuries would result whether on or off the premises".⁵ Additionally, the court pointed to the possibility that parents of the minor defendant were negligent in leaving the then 17 year old defendant in charge of their home.⁶

Although not specifically stated, the facts before the Court in *Oyagi* can be said to fit within the scope of either category 1 or 1 stated above.

In *Hamilton v. Kember*, 2008 CarswellOnt 1012, the plaintiff Hamilton was injured by the defendant Kember after leaving the defendant Free's house party. Free's parents permitted the party to occur provided that no alcohol was served and the number of guests was not excessive. Free took steps to lock up her parent's alcohol and did not serve alcohol to any of her guests. However, she did consume alcohol herself and permitted the guests to bring their own alcohol.

The Court noted that "the plaintiffs, while not specifically invited to the party, were made aware of its open nature and having arrived, there was no indication they were not

⁵ *Oyagi v. Grossman*, 2007 CarswellOnt 1699, at para 9

⁶ *Oyagi v. Grossman*, 2007 CarswellOnt 1699, at para 10

welcome”.⁷ In dismissing the defendant Free’s motion for summary judgment, referencing section 3(1) of the *Occupiers Liability Act*, J.F. McGarry J. still found a deficiency in the conduct of Free and her parents. In particular, the Court pointed to:

- i) the fact that Free took no steps to control the party when it became excessive, such as calling the police, and
- ii) the evidence that, notwithstanding Free’s parents being aware of the risks associated with the party, they took no steps to supervise it or even contact defendant Free during the party.⁸

The same trend of permitting claims against social hosts to survive summary judgment has been seen in British Columbia. In *Sidhu (Litigation Guardian of) v. Hiebert*, 2011 CarswellBC 2779, the infant plaintiff was severely injured by the defendant Hiebert, an attendee of a party hosted by the defendant Rattan. Conflicting evidence as to Hiebert’s state of intoxication upon his arrival to and departure from Rattan’s party lead Johnston J., notwithstanding the decision in *Childs*, *supra*, to dismiss the motion for summary judgment brought by defendant Rattan.

Although the facts in issue did not fit neatly into one of the three categories pronounced in *Childs*, the court nevertheless stated “the evidence in existence or possibly available concerning the contribution to Mr. Hiebert’s intoxication from the alcohol Mr. Rattan supplied, could, if developed at trial, arguably support an argument that Mr. Rattan has a material role in the creation of the risk”.⁹

The case of *Lutter v. Smithson*, 2013 CarswellBC 185, is an example of where there exists a relationship of supervision and control, one of the three categories pronounced in *Childs* where a positive duty to act and corresponding liability may arise. In *Lutter*, the defendant parents permitted their daughter, who had reached the age of majority at the time, to host a party, and specifically allowed the guests to bring their own alcohol. A minor guest, after leaving the party, was involved in a motor vehicle accident which killed a taxi driver and injured his passenger.

Conflicting evidence existed as to i) whether the defendant parents knew or ought to know that the minor guest was intoxicated, thereby establishing proximity, and ii) whether a positive duty on part of the defendant parents existed given that some of the guests were minors and they were aware that alcohol was being consumed of their property. Accordingly, Macaulay J. dismissed the defendant’s motion for summary judgment.

The Courts have been reluctant to dismiss social host liability actions on Summary Judgment. There have not been any trials since *Childs* and insurers appear to be happy with said precedent. The lesson from the above cases is that you do not leave your adolescent child home alone without supervision and allow a party to take place. It may result in you being a defendant in a lawsuit.

Ted Madison is a Partner in the Insurance Litigation Group in our London office. Ted has also been an agent for the Attorney General of Canada for 24 years conducting prosecutions under the Narcotic Control Act, now the Controlled Drugs and Substances Act, the Income Tax Act, the Excise Act, the Excise Tax Act and the only prosecution in Canada under the Seeds Act.



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⁷ *Hamilton v. Kember*, 2008 CarswellOnt 1012, at para 15

⁸ *Hamilton v. Kember*, 2008 CarswellOnt 1012, at para 20

⁹ *Sidhu (Litigation Guardian of) v. Hiebert*, 2011 CarswellBC 2779, at para 48

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