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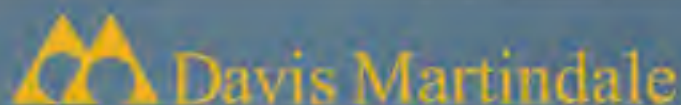
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# PRESIDENT'S MESSAGE

## APRIL 2017



Welcome,

Spring is in the air!! We have had some beautiful days and some surprise snow so far. On March 30, we hosted two brokers, a lawyer and a claims advocate for our monthly education meeting to talk about coverages. It was an informative panel on how the brokers deal with coverage issues with the clients, and what the brokers role is in the process.

The tri- association bonspiel was held on March 31 at the Westmount Golf and Curling Club. It was a successful and fun day. The United Way was presented with a cheque of \$3500. Thank you for your support of this event.



We are looking for volunteers for the executive board for next year, we have the following positions available: Social Director, Director, Secretary, Web Director, and Bulletin Director. Please contact [Jaime.Renner@economical.com](mailto:Jaime.Renner@economical.com) or myself if you wish to fill one of these positions.

We are still busy planning the year's biggest event, Maytoberfest May 4 & 5, 2017, and have many exciting things in store for the attendees. You can register TODAY at <http://www.kw-oiaa.ca/2017Provincial> for general attendance tickets and trade show booths. Maytoberfest is being held at the Inn of Waterloo which is booking up fast. If you would like a room on site, please register and book your room. The Inn of Waterloo is SOLD OUT so we are now booking at Delta Waterloo. Transportation will be provided to and from the hotel for you.

Sponsorship is the only way we will be able to pull off an amazing conference for all attendees, if you or your firm are interested in sponsoring this event please contact us at [sponsorship@oiaaprovincial.com](mailto:sponsorship@oiaaprovincial.com) for more information. Please join us on April 27, 2017 to be entertained by some Comedians and come vote for the new executive members for your board.

Jennifer Brown  
President of K-W OIAA

# K-W OIAA EXECUTIVE COUNCIL 2016-2017

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



# IN THIS ISSUE...

<b>President's Message</b>	<b>Page 1</b>
<b>2016-2017 K-W OIAA Executive</b>	<b>Page 2</b>
<b>Schedule of Events</b>	<b>Page 4</b>
<b>Social Chit Chat</b>	<b>Page 5</b>
<b>Provincial Delegate Report</b>	<b>Page 6</b>
<b>2017 Provincial Conference Info</b>	<b>Page 7</b>
<b>K-W OIAA Annual Election Info</b>	<b>Page 8</b>
<b>Caskanette Udall: Accident Reconstruction</b>	<b>Page 10</b>
<b>IBAWR Habitat for Humanity Broker Build</b>	<b>Pages 27-28</b>
<b>Miller Thomson: EXAMINING THE EXAMINERS: Judicial Oversight of Medical Experts</b>	<b>Pages 18-20</b>
<b>Advertisers' Index</b>	<b>Page 27</b>

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# EVENTS SCHEDULE 2016-2017

## **April 27, 2017- Election & Fun Night- Jennifer Mohr & Jaime Renner**

- Current Members move one position up, so we need some new members. This is your opportunity to help in the direction of the K-W OIAA.
- Be prepared for an exciting night of comedy and prizes!

## **May 4&5, 2017- OIAA Provincial Conference – The Inn of Waterloo**

- The Inn of Waterloo is SOLD OUT so we are now booking at Delta Waterloo. Limousine transportation will be provided.

## **June 22, 2017- John McHugh Memorial Golf Tournament: Jennifer Brown & Charlene Ferris: Ariss Valley Golf and Country Club**

**All events will be held at Golf's Steak House and Seafood unless otherwise noted.**



# SOCIAL CHIT CHAT

April 2017



We are so excited for this spring and all it is going to bring for our association.

Not only will we have the chance to welcome some new executive members to the association at Election and Fun Night this month, we also cannot wait for the Provincial Conference happening May 4th and 5th at the Inn of Waterloo. If you haven't registered yet, what are you waiting for? Be sure to visit our website at [www.kw-oiaa.com](http://www.kw-oiaa.com) for all the information about programs, events and registration.

We look forward to seeing everyone on April 27th at Golf's Steakhouse!

Cheers,

Your 2016-2017 Social Director  
Ashleigh Leon

## Articles



Do you have an article that you would like to submit to the bulletin? We are always looking for interesting articles relating to insurance that will help educate adjusters and vendors!!

Please submit your articles to Manish Patel at [mpatel@larrek.com](mailto:mpatel@larrek.com)

Are you hosting an event that you would like photos to be included in the bulletin? Please submit them to Manish Patel.





# PROVINCIAL DELEGATE REPORT



The 2017 Toronto Delegate Election took place at the Intercontinental Hotel on March 8<sup>th</sup>. Congratulations to Shawna Gillen and Johanna Rienzo who were re-elected as Toronto Delegates. Congratulations to Rhu Sherrard, Hamilton Delegate, who was elected Secretary for 2017-2018 and thus will be the OIAA President in 2021-2022. Once again John Scott was an MVP delivering an emotional and very funny talk about overcoming adversity and the 2016 NHL All-Star game. The highlight for me was John's account of the Phil Kessel altercation / stick swinging incident.

It is hard to believe that the next major provincial event is the Provincial Conference taking place in our own back yard in K-W. **Maytoberfest** is taking place May 4-5 at the Inn of Waterloo. The event will include a 70+ industry partner trade show, informative education sessions, numerous networking events and opportunities, fantastic food, hospitality events, and will be capped off with a traditional fest hall event. Networking, education and fun!

Tickets, hotel rooms and sponsorship opportunities are almost sold out.

The industry is coming together in Waterloo and you don't want to miss it. Please visit the Provincial Conference website for details – [oiaaprovincial.com](http://oiaaprovincial.com). Sponsorship enquiries can be directed to [sponsorship@oiaaprovincial.com](mailto:sponsorship@oiaaprovincial.com).

Please remember to follow OIAA events on Twitter, @OIAAOfficial.

Regards,

**Stephen Tucker**

**Kitchener-Waterloo OIAA Chapter, Provincial Delegate**



## **OIAA 2017 Provincial Conference**

Inn of Waterloo

**May 4-5, 2017**

Ticket prices include admission to all events on May 4 & 5  
\$140+HST until January 31, 2017 • \$175+HST from February 1, 2017

**Visit [www.oiaaprovincial.com](http://www.oiaaprovincial.com) or contact [info@oiaaprovincial.com](mailto:info@oiaaprovincial.com)  
for event details and registration**

### **May 4**

#### **Tradeshow 5-8 pm**

70+ Industry Partners will be in attendance

Food and beverages will be served at this event

Industry Partners can purchase an 8'x10' booth for  
\$800 + HST

#### **Mix and mingle 8-10 pm**

An opportunity to network with those in the Insurance industry

### **May 5**

#### **7 educational sessions**

SABS and LAT Panel Discussion — Is this what anyone expected?

Hoarding — Digging out from under the exposure

Casualty Update — The Year in review

Insurance 2.0: The Sharing Economy

Fort Mac Round Table Discussion

VP Claim Panel

Drones Presentation — Outside and Interactive

**The education seminars will be followed by a  
dinner and traditional fest hall.**



**We have the following positions that are up for election.**

- **Web Director** – Open to Industry Partners and Adjuster members in good standing. Position is a 2 year term.
- **Bulletin Editor** – Open to Industry Partners and Adjuster members in good standing. Position is a 2 year term.
- **Social Director**- Open to Industry Partners in good standing. Position is a 2 year term.
- **Director**- Open to Adjuster members in good standing. Position is a 2 year term.
- **Secretary**- Open to Adjuster members in good standing.



**To enter your nomination, please contact:**

**Jaime Renner**  
**Secretary**  
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**519-570-8500 ext. 43031**  
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## Accident Reconstruction

By Jeff Udall



Accident reconstruction is one of the many services that we provide for our clients. Reconstruction can involve many different types of investigations to develop an opinion regarding liability.

Speed of the vehicles involved is often a question that arises. High speeds increase the severity of an impact and reduce the amount of time available for the different parties to react. Other issues we are asked to address are signage on a roadway, lighting conditions, timing of an accident such as the opportunity to avoid, and seat belt usage.

It is advantageous to be at the scene of the accident shortly after it occurred in order to obtain as much evidence from the roadway as possible. Evidence on the road can include tire marks, gouges in the pavement, and debris from the damaged vehicles. These can disappear quickly with weather and continuous traffic that drives over the area. We are often asked to attend the scene quickly and obtain whatever evidence is available at the time to simply preserve the information for future use.

Collecting evidence from the vehicles themselves then provides a more complete picture of the nature of the impact. Exterior crush damage, interior body contact points, and data from the crash data recorder are all useful pieces of information that can help reconstruct the events leading up to the accident. Photographs, witness statements and the police file are invaluable in an investigation.

The analysis of the evidence when doing a reconstruction can involve using complex computer programs that simulate the movement of the vehicles before and after an impact, or sometimes a simple review of photographs and witness statements is sufficient to provide an opinion. Performing an accident reconstruction takes all the available evidence and uses the available tools at hand to complete a picture of the events that caused the loss. There are countless scenarios of different accidents with different circumstances. A reconstruction of the accident can provide lawyers and insurance clients with valuable information that assists with determination of liability.

***Jeff is a professional engineer with a Master's of Applied Science in Structural Engineering and a Bachelor in Mechanical Engineering from McMaster University and has over 20 years of engineering experience. With his Mechanical Engineering background, Jeff has investigated many motor vehicle accidents, including commercial vehicles, farm vehicles, and pedestrian accidents.***

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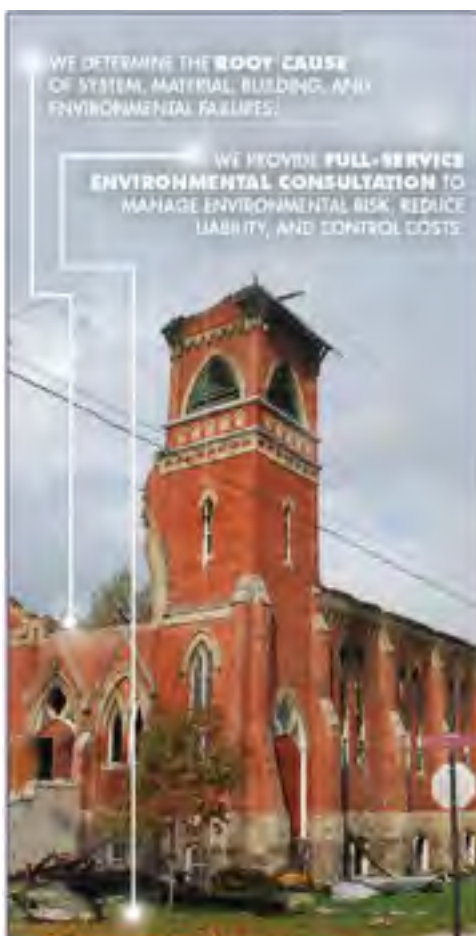
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## **IBAWR Habitat for Humanity Broker Build**

IBAWR is proud to announce that we will be working with our members and sponsors to give back to Waterloo Region by raising donations and volunteers to provide a local family with financial assistance and hard work at the job site that will be their future home!

We are reaching out to Brokerages and our key Insurance Company partners to help the IBAWR make this event a success, by teaming up to help us reach and exceed our goals!

In addition to helping a local family and well respected charitable organization build a home in our community, this event is designed to encourage the members and partners or our association to mobilize together to achieve a common goal in a major way!

We will be visiting our member brokerages to drop off a small information package to principals and to introduce the event to them and their staff, if desired.



In order for us to meet (and hopefully exceed) our goals we are asking for contributions and participation in the following ways;

## **Event Dates: May 31 and June 1, 2017**

### **Bronze Event Sponsor:**

\$250.00 to sponsor 1 staff member who will spend one day volunteering at a job site.

### **Silver Event Sponsor:**

\$450.00 to sponsor up to 2 staff members who will each spend a day volunteering at a job site. The volunteers can each work the same day, or volunteer on separate days.

### **Gold Event Sponsor:**

\$1,000.00 to sponsor up to 5 staff members to volunteer.

### **Platinum Event Sponsor:**

\$2,500.00 to sponsor as many volunteers as you can for each day of the event.

Please note that all contributors will be provided with a Charitable Donation Receipt and the event will be covered by Habitat for Humanity and their impressive social media team and photographers. We will also feature the event in the following months IBAWR bulletin.

Please contact Joe Dalton anytime by email ([jdalton@encoregrp.com](mailto:jdalton@encoregrp.com)) or cell phone (519-573-6682) to discuss in further detail.

Thank you in advance for your consideration and participation. We are looking forward to making this event a huge community and industry success together!





## EXAMINING THE EXAMINERS: Judicial Oversight of Medical Experts



Authored by:

Nawaz Tahir  
Partner, London

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While the issue of judicial oversight of medical experts is not a new topic, recent cases and the public spotlight have made this an increasingly discussed subject.

One of the tipping points seems to have been the decision in *Platnick v Bent*, 2016 ONSC 7340 (CanLII), <http://canlii.ca/t/gvx6g>. In that case, a doctor launched a lawsuit against a lawyer, claiming that she defamed him by publishing an email to her colleagues that claimed he altered reports and/or created a consensus “executive summary” that in fact was not based on consensus (*as one doctor had indicated he did not participate in any consensus meeting*). The motion in this case – to dismiss the doctor’s claim – focussed on the emerging area of Strategic Lawsuits Against Public Participation (“SLAPP”), lawsuits that are intended to silence critics through the use of litigation. Ontario amended its civil litigation statute to allow for the dismissal of these kinds of claims on the rationale that they infringe on freedom of speech in matters of public interest. But that is an interesting topic for a different article. In this article, the focus is on the underlying concern by the judge for what transpired in the Arbitration which formed the factual foundation for the defamation lawsuit.

### Concerns Raised in the Cases

In the underlying FSCO Arbitration, the issue in dispute was a catastrophic impairment designation. The insurer had sent the claimant to a

multidisciplinary assessment. A neurologist, under cross-examination, testified that large and important sections of his report that were seemingly favourable to the claimant did not make it into the final report. Production of draft notes and draft reports revealed that this had been done virtually across the board. Somehow, the insurer’s counsel was not aware of this and after the testimony of the neurologist, the insurer offered what the claimant’s counsel called an “obscene amount of money to settle...”

The facts raise two issues for litigants and their counsel which will be addressed below: a) the methodology for the creation of expert reports; and b) understanding the production obligations and nuances of trial/arbitration preparation and how that may impact the outcome of a case, and the settlement leverage one has.

The second case that involves a similar issue is that of *Kushnir v Macari*, 2017 ONSC 307 (CanLII), <http://canlii.ca/t/gx9g6> where a plaintiff resisted attending defence medicals without an order stipulating terms including that the report would be drafted solely and entirely by the examining doctor; and that the research and medical record review would be conducted solely and entirely by the examining doctor. The plaintiff raised a concern that “ghost-writing” was happening and thus the terms requested were needed to guard against this phenomenon. The court noted that there were examples of cases where an expert had testified that part of their report was in fact written by someone else. However, the court was not prepared to go as far as the plaintiff requested and reiterated that the report be compliant with the *Rules of Civil Procedure*.

The case again raised the issue of the methodology for the creation of expert reports and also the role of counsel in ensuring that expert reports meet the objective of providing evidence that is compliant with the *Rules*.

The third case is *Daggitt v Campbell*, 2016 ONSC 2742 (CanLII), <http://canlii.ca/t/gpqm3> where the plaintiff opposed a request by the defendant to have an independent medical examination with Dr. Monte Bail, psychiatrist. While the judge made some unfavourable comments about Dr. Bail, the real – stated – reason for the denial was twofold: a) the judge did not feel that a psychiatric opinion was necessary since the plaintiff had not served any new reports and her psychological condition had improved and she was no longer being treated; and b) ordering an examination at a later stage of the lawsuit would all but guarantee a delay in the upcoming trial;

However, the comments of the trial judge about Dr. Bail cannot be ignored, even though the judge stated that it was not necessary to decide that issue and any comments were being made incidentally to the actual decision. The judge examined past decisions involving Dr. Bail, and judicial commentary that was critical of Dr. Bail. The judge commented that to deny having a “biased” expert conduct an examination was something worthy of consideration.

While I sympathize with the underlying rationale, this case does not overrule the current state of law that a defendant gets to choose their expert, subject to the applicable rules of admissibility (particularly that the expert is duly qualified). Furthermore, and with the greatest of respect, the commentary on Dr. Bail in the case goes against a key principle that someone’s past conduct must not be used to “convict” the person for present or future conduct. The better approach is the one that puts the risk on the litigants and their counsel to select the expert(s) they feel are best for their case and then to subject that expert to the gatekeeping function of a trial judge, and the adversarial fact finding that happens at a trial. Dr. Bail, in comments made to the National Post, felt he was unjustifiably attacked by the courts. He noted that if his opinions seem to align with insurers, it was because he was asked to examine a minority of cases that have already raised suspicions (*Interestingly, in a case that the Judge cited in his critique of Bail, the jury awarded the plaintiff nominal compensation – seemingly accepting Dr. Bail’s opinion*).

And to be fair, this issue is not unique to assessors hired by defendants or insurance companies. In the case of *Ali v. Consalvo*, 2009 CanLII 4241 (ON SC), <http://canlii.ca/t/22d9p>, the judge made the following comment about Dr. Ogilvie-Harris, an orthopaedic surgeon retained by the plaintiff (paragraph 25):

*In my view, Dr. Ogilvie-Harris during his testimony was clearly*

*an advocate for Mrs. Ali and seemed unwilling to consider other possible explanations for her complaints of pain, apart from the car accident.*

So where does this leave us?

### Analysis and Commentary

Medical experts testifying in personal injury actions are not going the way of the dodo bird. They are here to stay. And so, while some may suggest that this increased scrutiny is changing the way litigants and their counsel must do business, in reality, what the above cases demonstrate is that litigants and their counsel need a reminder of their role in ensuring that their case is being assembled with due care and consideration.

While it is true that litigants and counsel rely on opinion witnesses for their expertise (in their discipline), we cannot forget that the experts rely on litigants and their counsel to ensure that their opinions are formulated in a way that lends itself toward being admitted (and hopefully accepted) in a court of law. This process starts from the moment of retention, through draft reports (the appropriateness of which was discussed in the Court of Appeal’s decision in *Moore v. Getahun*, 2015 ONCA 55 (CanLII), <http://canlii.ca/t/gg3lt>), to preparation and presentation of the expert in front of the trier of fact. An expert needs to understand their role, understand the nuances of litigation, understand their duty as a witness and understand that all or part of their file may be produced in open court.

The retainer letter must be clear about what the expectations are of the party retaining the expert, and the responsibility that the expert has to the court system. Any specific questions that the expert needs to address must be clearly outlined. Furthermore, counsel need to take a proactive approach in understanding what is in the file of their experts well before the trial/arbitration begins and that the expert has been appropriately prepared for the adversarial nature of being a witness in a trial.

By adopting some proactive protocols in the retention and preparation of experts, counsel and litigants can do a lot to make sure that there are no surprises at trial which may result in a bad verdict, or emergency “obscene” settlements.

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Meet Nawaz Tahir. He's a legal quarterback specializing in complex motor vehicle litigation claims, including bodily injury accident benefits claims and subrogation matters. Clients who engage Nawaz retain him for his strategic outlook on files, negotiation skills and trial acumen. His leadership extends beyond his practice. Nawaz is a high school football coach, author, volunteer for local charitable and political causes, and former adjunct law school professor. We're glad he's on our team and in our huddle.

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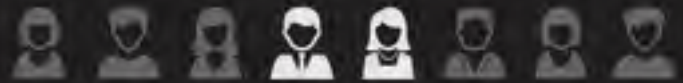
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