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# PRESIDENT'S MESSAGE

## MAY 2018



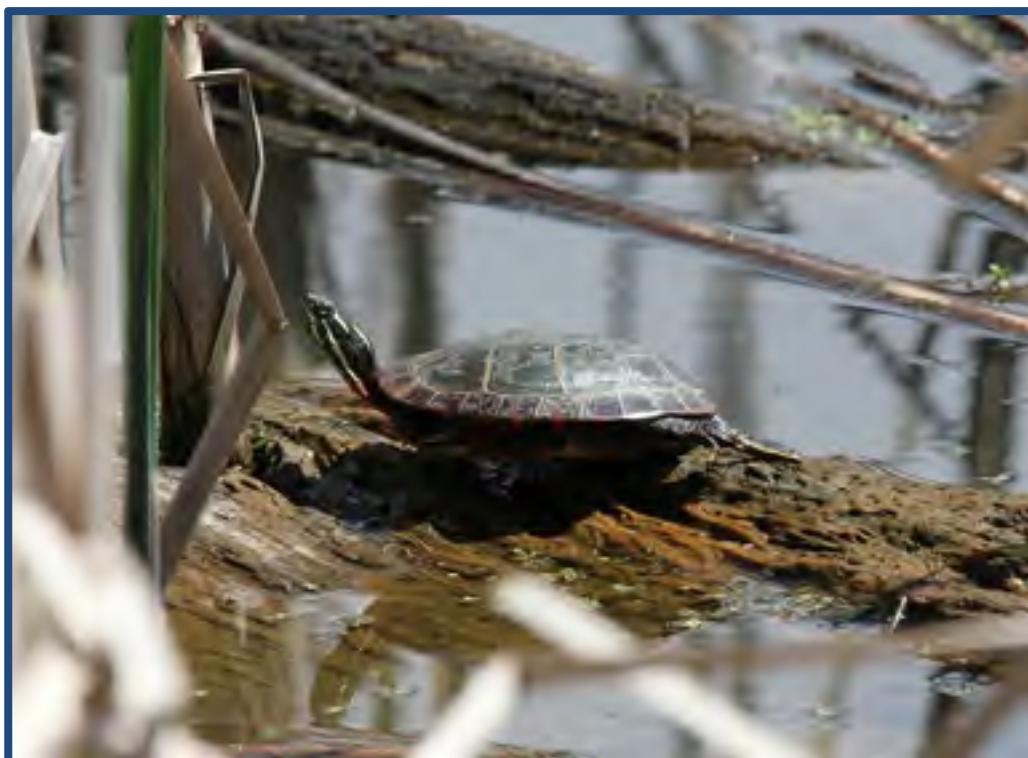
As you are aware, we experienced a very large Major Event in Ontario on Friday May 4. An extremely large windstorm impacted Ontario and has resulted in damage to a lot of homes and businesses. We recognize that because of this – a lot of our property industry partners and insurance adjusters will be extremely busy over the coming weeks handling these claims.

Because of this, we made the decision to postpone our May Innovation Tech Meeting – it will take place in the fall of 2018. Thank to everyone for understanding.

Don't forget that we have our Golf Tournament in June at the Ariss Valley Golf Course! Information can be found in this bulletin and you can register your foursome or hole sponsorship online!

To our industry partners, the general contractors and roofers, who are working tirelessly to ensure that people's homes are water tight and drying out basements that flooded due to power outages – thank you for being there.

Thank you,  
Charlene Ferris  
President of K-W OIAA



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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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The K-W OIAA is pleased to be hosting the John McHugh Memorial Golf Classic at Ariss Valley Golf and Country Club. Please join us for a day of golf and fun among your industry friends. Every year the K-W OIAA president chooses a charity to be the beneficiary of a generous donation that will greatly assist that organization. This year the chosen charity is [7northwest.com](http://www.7northwest.com).

PLEASE REGISTER ONLINE: <http://www.kw-oiaa.ca/>. REGISTRATION DEADLINE IS WEDNESDAY JUNE 1<sup>st</sup>, 2018.

#### **Itinerary for Thursday June 21<sup>st</sup>, 2018 :**

8:30am	Registration Opens - Breakfast
10:00am	Shot Gun Start
12:00pm	Lunch on the turn
4:00pm	Approximate time for dinner

#### **Players Golf Package**

\$155 HST inclusive per person, Fees include one round of 18 holes of golf, use of a cart, breakfast, lunch and dinner. A team of 4 will be \$620.00

#### Other Options:

All Day Food Tickets: \$50 (Breakfast, lunch and dinner)

Dinner Only Tickets: \$35

#### **Sponsorship**

A generous donation will be made to [7northwest.com](http://www.7northwest.com) from all hole sponsorships.

**Hole Sponsorship** (2 types) is available for \$225 A prize hole (longest drive/ closest to the pin) requires sponsors to bring both a male and female prize in addition to sponsoring the hole. A non-prize hole has no additional requirements. **\*\*Please note:** You are responsible for providing your own tent, table and chairs.

**Title Sponsorship** is also available should you be interested:

You may display your banner at this portion of the event should you sponsor these.

Breakfast Sponsor- \$500

Lunch Sponsor- \$1000

**Door Prizes** are also welcomed and are drawn for at the dinner. If you are donating a door prize please advise Charlene Ferris ([charlene\\_ferris@cooperators.ca](mailto:charlene_ferris@cooperators.ca)) or simply bring it with you with a businesscard attached to it.

**Questions?** Please contact:

Charlene Ferris ([charlene\\_ferris@cooperators.ca](mailto:charlene_ferris@cooperators.ca)) or by phone 877-682-5246 Ext 272280

Carrie Keogh ([carrie.keogh@economical.com](mailto:carrie.keogh@economical.com)) or by phone 519-570-8332 Ext 43220





## **Who wants to win a \$500 Visa Gift Card?!**

From September 2017 to April 2018 we will be running a contest to increase adjuster attendance at our meetings. Not just any adjuster – adjusters who are not currently members of our Chapter! Every time you bring a new adjuster to a meeting your name is entered into the draw!

### **Rules:**

1. Contest is open to current adjuster members, Industry Partners in good standing and Board Members of the K-W OIAA.
2. An adjuster can only be “brought” once to a meeting, the same adjuster cannot come every meeting with the member and qualify for the contest.
3. If current adjuster members, Industry Partners and Board Members of the K-W OIAA bring more than one new adjuster to a meeting, their name is entered into the draw equal to the amount of people they brought! (This is the equivalent of stuffing the ballot box!)
4. The adjuster member that is brought does need to have a ticket to attend.

### **FAQ:**

1. Do I need to be in attendance to win the prize? ANSWER – if you are not able to make the May meeting when the announcement is done, you can still win the prize and arrangements will be made to get the prize to you.
2. Who keeps the list until May? ANSWER – the list of current adjuster members, Industry Partners in good standing and to Board Members of the K-W OIAA and the adjuster that they brought will be kept with the current President- (Charlene Ferris)
3. What happens if the same adjuster is brought a second time? ANSWER – the second person who brought them will not be eligible to enter the draw with that adjuster, they would need to work to bring someone else out!

# SOCIAL CHIT CHAT

May 2018



Spring is finally here and with it, some amazing OIAA KW events! Many of you enjoyed two amazing performances at the Battle of the Bands thanks to longtime KW social members from Golden Triangle Restoration and Xpera. I've heard that both will be back next year to renew the rivalry but, in the meantime, on June 21st is the annual charity golf tourney – registration for

sponsors and golfers is now available through the web site. Let's make this the best year ever for raising funds for local charities.

While many of us are blessed to be quite busy recently, it's important to make time for family and yourself – industry events are a great opportunity to relax and share some stories with others that are in a similar situation.

Well, time to go watch some those May flowers bloom!

Kindest regards,  
Your Social Director,  
Randy Henderson





# PROVINCIAL DELEGATE REPORT



It is hard to believe that a year has passed since the Maytoberfest Provincial Conference. Ironically, I remember the conference committee's concern, and to be honest, sense of panic with regard to whether people would actually show up due to the heavy rainfall and resulting CAT. Fast forward 12 months and the industry is mobilizing once again to respond to yet another May weather event and resulting CAT. This is a big one with wind damage stretching across the entire province. As a litigation claims guy I am always in awe of how property adjusters and service providers mobilize so quickly to respond to what often seems like an insurmountable volume of claims.

Thank you to all of our members and industry partners who are working tirelessly to fulfill our promise to our customers when they need us most...

Congratulations to new and returning members who were recently elected to the Kitchener-Waterloo OIAA executive for the 2018/19 term. Jeff Cronk of Curo Claims is your new Secretary, Lisa Dobson of the Co-operators is your new Director, Jennifer Brown of Economical Insurance is your new Provincial Delegate and Ashleigh Leon from Miller Thomson is returning for another term as Social Director. Congratulations to the Hazmats who killed it at our first annual battle of the bands competition.

Upcoming events and need to know information:

If you have not yet tuned into WP Radio it is time to check it out and see what all of the hype is about. WP radio will be expanding in 2018/19 to include a library of educational articles hosted by industry experts. You can find links to the WP Radio on the OIAA website.

Finally, a reminder that the annual OIAA Golf Tournament takes place on June 8 at the Cardinal Golf Club in Newmarket.

As always OIAA Provincial event details are available at [oiaa.com](http://oiaa.com).

Regards,

**Stephen Tucker**

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





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## The Deductibility of Collateral Benefits in Tort MVA Claims



Authored by:

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A negligent defendant is only required to return a plaintiff to the financial position that s/he would have been in had the accident not occurred. A plaintiff should be neither over nor under compensated for injuries sustained as a result of the negligence of another. For example, if an injured person is unable to work, but continues to receive full payment from his or her employer, that injured person cannot recover damages at trial for past income loss against a negligent tortfeasor, as this would result in the plaintiff receiving double recovery. This is known as the rule against double recovery, or the collateral source rule.

The collateral source-rule, sometimes referred to as the collateral benefits rule, states that if an injured party receives compensation for his/her injuries from a source independent of the tortfeasor, that payment should not be deducted from the damages that the tortfeasor must pay. Over time, this rule has evolved to allow tortfeasors and/or their insurers to deduct certain amounts already received by the plaintiff in order to ensure that the plaintiff does not receive double recovery.

In practice, parties often disagree over which amounts should be deducted from tort awards, especially in the area of income loss. The purpose of this article is to provide a summary of the present state of the law concerning the deductibility of

collateral benefits from tort damages for income losses arising out of motor vehicle accidents. The common law principles regarding collateral benefits have been modified by statute for tort claims arising from motor vehicle accidents. Common law principles still apply to all non-motor vehicle related injuries in Ontario.

The governing legislation regarding the deductibility of collateral benefits is s. 267.8 of *Insurance Act*, R.S.O. 1990, c.l.8. This section and its subsections provide that any damages awarded by a Court to a plaintiff who has been injured in a motor vehicle accident shall be reduced by amounts received to the date of trial, or which were available for various types of collateral benefits. Section 267.8(1) of the *Insurance Act* sets out the manner in which collateral benefits are deducted for an award for income loss and loss of earning capacity in a motor vehicle action. This section reads as follows:

### Collateral Benefits – Income Loss and Loss of Earning Capacity

*In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the damages to which a plaintiff is entitled for income loss and loss of earning capacity shall be reduced by the following amounts:*

- 1. All payments in respect of the incident that the plaintiff has received or that were available before the trial of the action for statutory accident benefits in respect of the income loss and loss of earning capacity.*
- 2. All payments in respect of the incident that the plaintiff has received or that were available before the*



*trial of the action for income loss or loss of earning capacity under the laws of any jurisdiction or under an income continuation benefit plan.*

3. All payments in respect of the incident that the plaintiff has received before the trial of the action under a sick leave plan arising by reason of the plaintiff's occupation or employment. 1996, c. 21, s. 29.

The collateral benefits that are most common encountered in motor vehicle accident injury claims are set out below, with commentary on their deductibility.

#### Short and Long Term Disability Benefits

DEDUCTIBLE. Section 5.2 of O. Reg. 461/96 provides that short and long term disability benefits are deductible from a tort award for income loss after October 1, 2003.

#### Income Replacement Benefits

DEDUCTIBLE. The tortfeasor must receive a credit for all income replacement benefits received or available from the statutory accident benefits insurer prior to the trial of the action.

#### Ontario Works

DEDUCTIBLE. Ontario Works benefits used to be called welfare benefits. They are a form of wage replacement and are deductible from damages for lost opportunity to earn income. Refusing deduction would amount to double recovery.

#### Ontario Disability Support Program Benefits

NOT DEDUCTIBLE. Section 8 of the *Ontario Disability Support Program Act, 1997* provides for repayment to the Ministry of any damage award allocated to income loss or loss of earning capacity. By virtue of the repayment provision, ODSP payments are not credited to the tort defendant.

#### WSIB Benefits

NOT DEDUCTIBLE. Section 267.8(15) of the *Insurance Act* provides that any payment of benefits received or that were or may become available to

a person under the *Workplace Safety and Insurance Act, 1997* do not reduce damage awards for income loss, health care or other pecuniary losses. The WSIB has a right of subrogation. Benefits paid to a worker are not deductible.

#### Employment Insurance Benefits

NOT DEDUCTIBLE. Employment Insurance benefits are subject to repayment upon the settlement of a tort claim.

#### Severance Packages

DEDUCTIBLE. The defendant must prove which part of the severance package is considered to be payment of income (as opposed to other heads of damages).

#### Sick Leave benefits

NOT DEDUCTIBLE. This employment benefit will not be deductible if paid for by the employee directly or indirectly.

#### Non Earner Benefits

NOT DEDUCTIBLE. The Court of Appeal's decision in *Walker v. Ritchie* held that non-earner benefits (paid under s. 12 of the SABS), are not deductible from any tort damages, pecuniary or non-pecuniary.

An Insurer must make certain that full credit is received when assessing and paying MVA claimants for damages attributable to past and future income losses. In doing so, it is imperative to account for collateral benefits received (or available) to a claimant. The end result could result in a reduced exposure, and a corresponding lesser payment. Recognizing the collateral benefits that may be available to a claimant, and seeking a reduction for such benefits, is a critical step in adjusting and assessing any file.

*James Bromiley is a partner in the Waterloo office of Miller Thomson. He has a diverse practice encompassing all areas of civil and commercial litigation.*

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## FORENSIC ENGINEERS

## The Importance of Vehicle Examinations

*Why spending a little money now could save you a lot of money later.*

Jillian Leblanc, H.B.Sc., P.Phys.



Cycle time and adjusting costs are always key considerations when adjusting a claim. When the claim arises as a result of a Motor Vehicle Accident (MVA), ownership of the claims resolution process is often shared by two or three adjusters (Property Damage, Accident Benefits, Bodily Injury), each with their own set of performance metrics and guidelines. This unique claims resolution arrangement can create an environment where;

- fraudulent claims can slip by, or
- liability settlements are higher than they could have been.

With no specific individual having overall responsibility for all aspects of the file, an individual adjuster may not have any reason to have vehicle examination performed shortly after the initiation of the claim. However, investing a little money at that time can make a big difference in the final settlement.

Think of the vehicle examination as a form of “insurance”. The information gleaned from the exam can have a significant impact on the success of fraud proceedings and establishing equitable liability settlements. There is critical information regarding the dynamics of the MVA and resultant injuries that is only available through an examination of the vehicle(s) involved. Once a vehicle has been disposed of, this information is lost forever and resolution of the claim can take longer and cost more. Without access to vehicle documentation and site information, Collision Reconstructionists are often operating at a disadvantage when engaged years after an MVA. Their findings can be inconclusive, and thus the return on investment from their services can be significantly diminished. The investment in a vehicle examination is typically a small percentage of the overall claim costs once physical damage, accident benefit and bodily injury payments are taken into consideration.

The following sections explain the types of information that can be obtained through a vehicle examination and the questions that the information can help to answer.

### “Black Box” Data Download

This may answer:

- *How fast was the driver travelling in the seconds prior to the collision?*
- *When did the driver apply the brakes? (Did the insured act as a typical attentive driver?)*
- *Does the data match the driver’s statement?*

The vehicle's "black box", or more generally known as the Event Data Recorder or Airbag Control Module, can contain a wealth of information. It will generally record up to 5 seconds of pre-crash data, including speed and accelerator pedal usage, and up to 8 seconds of brake data. We can usually estimate speeds based on the damage or post-impact travel paths that the vehicles took, but this is only a snapshot of what happened at impact.

Unless there are documented, measured skid marks, which only occur with emergency (hard) braking (and anti-lock braking systems do not always leave obvious skid marks), there would not otherwise be any evidence of what was going on before impact. It could not objectively be determined whether a vehicle was speeding, accelerating or using non-emergency braking. This could be important in liability issues. For example, in a left-turn collision, if it is not known that a through vehicle was speeding in the seconds before impact, it may be assumed that the fault rests entirely on the left-turning vehicle. In reality, it may turn out that the speeding vehicle reached the area of impact much sooner than a left-turning driver would have anticipated.

Black box data can also contain seatbelt usage from the driver and front passenger, as well as the severity of the impact, which can help refine a collision reconstruction. Other data may include the outside air temperature, the weight classification of the front occupants, the seat position of the driver, and even steering inputs, to name a few.

***Important note: Do not depend on black box data alone!*** The amount and type of data recorded varies widely among different makes, models and years, and not all vehicles have retrievable data. The black box is also only monitoring accelerations for the purpose of deploying restraint systems, so if the vehicle does not have side airbags, rollover airbags or active head restraints (deployed for rear end collisions), it probably will not be monitoring side or rear accelerations and therefore may not record anything during these types of impacts. Narrow and minor impacts also may not be recorded. It is therefore best to have a full inspection done so that all pieces of evidence can be documented.

### **Seatbelt Examination**

This may answer:

- *Was the occupant wearing a seatbelt?*
- *How many belted occupants were there?*
- *Was there actually a front seat passenger?*
- *What was the likely size of the occupant?*

It is highly unlikely for there to be any close-up photographs of the seatbelts available. At a vehicle examination, the seatbelts can be inspected for signs of loading marks which would indicate that the seatbelt had been worn at the time of the collision. Loading marks are generally seen as striations in the plastic latch plate and/or D-ring seatbelt components where the friction between the seatbelt webbing and the plastic, caused by the occupant loading the belt during a collision, results in localized melting of the plastic. Marks may also be seen in the seatbelt webbing itself. Loading marks are more likely to be found in moderate to high severity frontal collisions, where the occupant is thrown forward and directly loading the seatbelt. The likelihood of loading marks also increases with increasing occupant weight, which affects the amount of force loading on the seatbelt.

Another telltale sign of seatbelt usage is what position the seatbelt webbing is found in if the seatbelt pre-tensioners have deployed (generally in moderate to severe collisions). Pre-tensioners tighten and permanently lock the seatbelt during a collision to help keep the occupant in position. If the seatbelt webbing is found locked and tight against the B-pillar, the pre-tensioner fired when the seatbelt was not



being worn. If the seatbelt webbing is locked in the unspooled position, the pre-tensioner fired while the seatbelt was being worn.

Sometimes, the pre-tensioners and airbags may not deploy if the sensors detect that the seat is empty, which can be significant in cases where multiple people are claiming to have been in the vehicle. How much the seatbelt is unspooled in its locked position can also give us an idea as to the size of the occupant, which may be important not only in suspected staged collisions, but also in cases involving a drunk driver where none of the occupants will admit to driving the vehicle.

### **Crush Measurements**

This may answer:

- *What was the severity of the impact?*
- *What was the impact speed? (Was the insured speeding?)*

If the vehicle is not available to be examined, reconstructionists often need to estimate the severity of the crash based on a visual comparison of the damage to standardized crash tests. While this can still be accurate, wider ranges need to be used in order to account for the uncertainty involved in this method. In more unique collisions, there may not be exemplar crash tests, or the tests may be much less or much more severe than the subject collision. This leads to a broader range in the estimate of impact speeds, which may result in a weak answer for you. (*"The collision could have been avoided at this range of speeds...but it could not have been avoided at this range of speeds..."*).

If, on the other hand, the crush to the vehicle can be measured exactly, the severity can be calculated directly from these measurements, which will give a much narrower range of possibilities. This can more definitively determine whether or not a driver was speeding, or whether or not an alert driver could have avoided the crash.

### **Occupant Contact Marks**

This may answer:

- *What did the occupant strike inside the vehicle?*
- *Where was the occupant sitting?*
- *If the occupant was ejected, where were they ejected from?*
- *Given the location of impact to the vehicle, are the injuries consistent with the reported seated position?*

If a biomechanical analysis is needed, examination of the interior of the vehicle may reveal damage or trace evidence on components that the occupant struck during the collision, or as they were ejected from the vehicle. This can include scuff marks, compression marks to the dashboard, spider web fractures to the windows, blood stains, hair or clothing fibres. Knowing the location of these marks or evidence can help confirm or dispute injury claims, or enable a biomechanical engineer to better compare injuries with the likely seating position of the occupant.

Depending on the collision dynamics, and possibly information about where the occupant was found after the collision, the contact marks could also be used to determine whether the occupant was wearing their seatbelt. For instance, it is very unlikely for the average person to strike their head on the windshield if they are wearing their seatbelt. These contact marks are especially important to look for in the absence of black box data or definitive signs of loading marks on the seatbelt latch plate or webbing.

### **Hidden or Very Minor Damage**

This may answer:

- *How did the vehicle travel after impact?*
- *What was the impact orientation?*
- *What was the impact speed?*
- *Do the impact speeds, orientation and final rest positions match the reported information?*

Photographs do not always show the full picture. The photographer may not have taken pictures of all of the damage. There can also be structural damage to the vehicle that may not show up in photographs. A common problem is that the flexible, plastic bumper cover can rebound to its original shape after impact, potentially hiding a dent in the structural bumper rebar behind it. Without seeing the vehicle, there may not be a way to confirm the extent or severity of the damage.

Secondary damage (resulting after the initial impact) can illustrate how the vehicles travelled after impact. For example, in a very offset T-bone collision, the vehicles can “side slap” – they rotate towards each other as a result of the first impact and their sides can contact in a second impact. This type of damage is typically minor and may not be visible in provided photographs of the vehicles. In other cases, the vehicle may have hit or scraped a pole or other roadside objects as it travelled to its final rest position. This may only be evident from a small scrape mark or tiny bit of paint transfer.

Knowing what the vehicle contacted after the initial impact can tell us its travel path, which in turn can help us narrow down impact speeds when we conduct computer simulations. Additionally, in suspected fraudulent collisions, it can help to confirm or refute the reported sequence of events. Other very minor marks, such as license plate screw imprints, can assist in narrowing down the impact orientation of the vehicles. Knowing how the vehicles contacted within a few centimeters will reduce the uncertainty in the remainder of our analysis.

In summary, vehicle exams provide access to additional evidence, and the more evidence there is to work with, the better that experts can determine what actually or plausibly could have happened. The more definitive the analysis, the better able an insurer or plaintiff is to decide how to proceed with the claim. The end result is ideally a reduction in both the cycle time and the overall adjusting and legal costs associated with the claim.

-----  
Jillian is a Senior Collision Reconstructionist at Arcon Forensic Engineers specializing in collisions involving personal injury and those where fraud is suspected (staged collisions). She has extensive experience with automobile black box data retrieval and analysis. She regularly shares her knowledge through articles in industry periodicals and presentations to insurers, lawyers and industry groups.



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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 of 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 22 and May 23, 2018**

### **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!





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On behalf of the K-W OIAA we would like to thank all of our Industry Partners for their continued support of the events held throughout the year.

In recognition of all that you do for the K-W OIAA Chapter, for the 2017-2018 we are waiving the social membership fee for all of our industry partners. We would ask that you still register through the website so that you receive emails notifying you of the upcoming meetings and events.

\*please note that the monthly meeting charges will still apply







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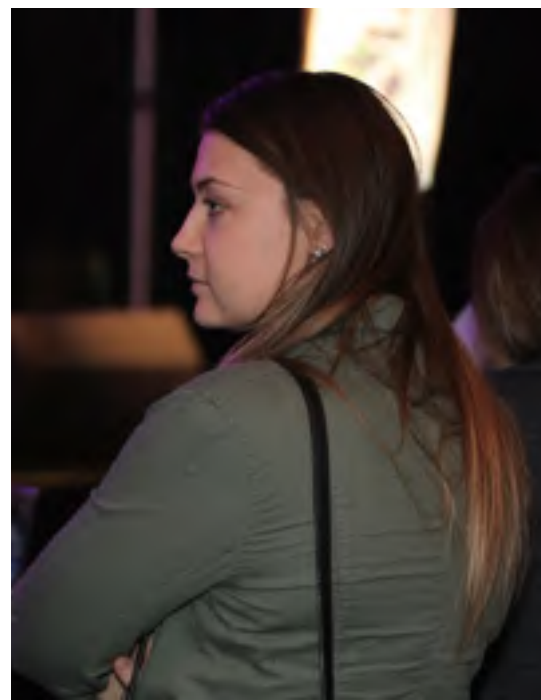




















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