



**Thank you to all the Canadians assisting in the aftermath of
Hurricane Dorian in the Bahamas!**



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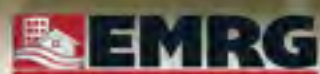
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PRESIDENT'S MESSAGE

SEPTEMBER 2019



Where did the summer go? It seems to have flown by! Hopefully everyone got to enjoy the warm weather while it lasted. We have some new and exciting things planned for the 2019-2020 year. Your K-W OIAA executive team have been working hard to make sure this year is another success. We are planning some great education sessions, events and to start the year out, our newly revamped

September Kickoff Event!

Please join us on Thursday September 26, 2019 at Bingemans Conference Centre with registration beginning at 3:30pm. We have changed things up a bit this year and we are happy to offer a choice of 2 education sessions followed by a key note speaker. After the key note speaker, we invite everyone to join us for a mix and mingle, mini trade show, entertainment, food stations and much, much more!

If you haven't already purchased your ticket, please visit our website
<https://www.kw-oiaa.ca/Events>

This Kickoff event is designed for everyone to be able to network, socialize and meet your fellow claims adjusters and industry partners. We want this event to be both fun and informative.

If you have an interesting topic you want us to feature at one of our monthly education dinner meetings, please contact anyone on the executive team to share your thoughts and ideas. We welcome all feedback! A big thanks goes out to all of you who continue to support the K-W OIAA, we would not be as successful as we are without each and every one of you! I look forward to seeing you at one (or all) of our K-W OIAA events this year.

Thank you,
Jaime Renner
President of K-W OIAA

K-W OIAA EXECUTIVE COUNCIL 2019-2020

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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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EVENTS SCHEDULE 2019-2020

September 26, 2019 **Kick Off 2019-2020**

Jaime Renner & Ellie Celestine

Educational Seminars, Keynote speaker, Mix & Mingle
Bingeman's Conference Centre

October 24, 2019

Fraud

Jennifer Brown & Kayla Helmond

Interactive Panel Discussion

January 30, 2020

Chili Cook-Off

Manish Patel & Lisa Dobson

Challenge the winners from the 2019 Chili Cook-off by bringing your best chili,
or your trivia knowledge.

February 27, 2020

Educational Seminar

Carrie Keogh, Matthew Bowker & Kayla Helmond

March 26, 2020

Educational Seminar

David Bushell & Stephanie Klages

April 30, 2020

Election night & Battle of the Bands

Jennifer Brown, Carrie Keogh & Matthew Bowker

Election for positions available on the board, Members wishing to join the
board must be in good standing with the K-W OIAA.
Any member of the OIAA with a Band is encouraged to sign up to play and see
if you can beat the two time defending champs the Haz-Mats

May 28, 2020

Educational Seminar

Jeff Cronk & Randy Henderson

June, 2020

John McHugh Memorial Golf Tournament

Date and Location TBD

Jaime Renner & Ellie Celestine

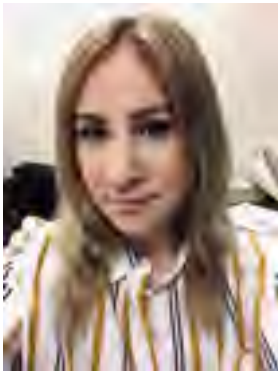
All events will be held at Golf's Steak House and Seafood unless otherwise noted.

MEET YOUR NEW 2019-2020 EXECUTIVE MEMBERS



Director: Stephanie Klages, Crawford & Company (Canada) Inc.

Stephanie is a property adjuster at Crawford & Company (Canada) Inc. She has worked at Crawford since 2003 and has been an adjuster since 2011. She completed the CIP designation and graduated from Conestoga College with a General Business certificate. Outside of work she likes to camp, read and spend time with her two children (if they are being good).



Secretary: Kayla Helmond, Crawford & Company (Canada) Inc.

Kayla is a field adjuster with Crawford and Company. She has been with Crawford since 2014. Kayla graduated from Wilfrid Laurier University in 2014 with a degree in English and is currently in the process of obtaining her CIP designation. Outside of work, Kayla enjoys snowboarding, golfing and playing baseball. In the summer, she can often be found outside on a patio.

Currently, Kayla is in the Bahamas, assisting with the aftermath of hurricane Dorian. Here's what she had to say: "In terms of what I am doing down here, we are working on behalf of Technical Adjusters Bahamas and there is a group of about 20 of us from Crawford with a local command centre made up of adjusters, management and administration at the hotel in Freeport. To date, we have begun handling claims in Freeport and across Grand Bahama and a few other adjusters have also been on the ground in Abaco. They have been boating in and out each day from Nassau to Abaco as there are extremely limited resources on the island. Upon arriving in Freeport from Nassau, the damage was immediately visible with the damaged and in some cases, missing roofs. Once we landed and left the airport, there were a few boats, planes and cars misplaced along the side of the highway. It was quite the immediate eye-opener. The group here is handling a wide range of claims from large commercial losses to residential losses. We are still in the early stages of claims intake and handling however the process has started quite quickly. Clean up has begun on the island and everyone is working hard to restore hydro and water where possible. As of now, it is still so early in the process to begin restoration on the islands however we are glad to be here helping and assisting in any way possible. In my discussions with insured's and other locals it is so clear how everyone is hurting. It is such a wonderful community of people and what they have experienced is unimaginable. The damage from this storm is unprecedented and there is no way anyone could have been prepared for this, but we can see firsthand the resilience of the people here, it is quite admirable." For updates on how the Crawford team is assisting with this effort, please visit: <https://www.crawco.com/cat/events/hurricane-dorian>

SOCIAL CHIT CHAT

September 2019



Welcome back everyone!



We hope all of you have had some time off with family and friends to re-energize and just simply relax. It's shaping up to be another exciting year with a new format seminar / social event planned for the end of September rather than the traditional tradeshow and dinner. Matt Bowker from Golden Triangle DKI has joined the executive as Social Director – ask him some rock music trivia questions the next time you see him! As the evenings inevitably get cooler and darkness falls earlier, what better way to warm up and bring some light and laughter into your month than with a K-W OIAA event. We hope to see you on September 26th!

Don't forget to visit the chapter web site and renew your social membership – it's free!

Socially yours,
Randy Henderson



Bianca Andreescu, of Canada, holds up the championship trophy after defeating Serena Williams, of the United States, in the women's singles final of the U.S. Open tennis championships Saturday, Sept. 7, 2019, in New York. (AP / Adam Hunger)



PROVINCIAL DELEGATE REPORT



Am I the only one that felt like January to March was so slow and then BAM it is September? Summer was beautiful, I hope everyone was able to spend some quality time with their friends and families. I always find September to be a fresh start, its always been full of change. I always end up evaluating my goals, and priorities in the fall. It's time to slow down, take it all in and take time for self care. Summer is a busy season, if you need to evaluate, prioritize and take time to recharge.

The 2019 / 2020 OIAA term is upon us. Congratulations to Leanne Hardman who is the Provincial OIAA President and congratulations to Jaime Renner who is your K-W OIAA President. The OIAA is in good hands and I am excited to see you out at all the events these executive committees have planned.

This year I am honoured to continue to be the provincial delegate and represent you at the OIAA. As a member of the K-W OIAA, I will chair some educational seminars and act as a resource for the board. I am the editor of the WP and the chair of the holiday party, and committee member for numerous other committees on the provincial OIAA.

Please remember to renew your OIAA membership for 2019 - 2020. Your membership provides you with a subscription to WP Magazine and access to many excellent education and networking events throughout the year.

Finally here is a list of upcoming Provincial OIAA events for 2019/2020.

September 18, 2019

September Kick-Off – Archeo Trattoria, Toronto

October 23, 2019

Past President Night – King Edward Hotel, Toronto

December 11, 2019

OIAA Holiday Party*–Royal York, Toronto

***Sponsorship opportunities available**

January 22, 2020

Claims Conference- Metro Toronto Convention Centre

You can sign up for Provincial events at www.oiaa.com



Regards,

Jennifer Brown

K-W OIAA Chapter, Provincial Delegate



Invites you to our Annual SEPTEMBER KICKOFF EVENT

THURSDAY, SEPTEMBER 26, 2019
4:00 PM—8:00 PM
BINGEMANS CONFERENCE CENTRE



The KW– OIAA are switching things up this year! We invite you to attend 2 of 3 educational seminars followed by a Mini Tradeshow and an open concept Mix & Mingle with food stations & entertainment.

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"Tools and Techniques to Aid in a Staged Water Loss Investigation"

Ben Desclouds, B.Eng.Mgt., P.Eng.

Intermediate Associate, Materials Failure Group

30 Forensic Engineering



"Biomechanics: Current Science in Concussion and Head Injury"

Robert Parkinson, B.Sc., M.Sc., Ph.D.

Vice President & Practice Lead, Biomechanics and Personal Injury Assessment

30 Forensic Engineering



"PTSD, Peer Support and Resiliency"

Natalie Harris, BHSc, (RET) AEMCA, ACP -

Barrie City Councillor - Ward 6

Founder of Wings of Change Peer Support

Author of Save~My~Life School

Host of the Podcast Brainstorm

Space is limited: www.kw-oiaa.ca/events



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Defining an “Accident”: Two Recent Decisions from the Ontario License Tribunal



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The Ontario Statutory Accident Benefits Schedule has determined coverage for accident impairments for nearly a decade. Two decisions issued this year by the Ontario License Tribunal addressed the boundary of when an assault is considered a covered “accident” for the purposes of the Schedule. These cases confirm that a case-by-case and fact specific approach will be used to determine what qualifies as an “accident” under the Schedule.

The Facts

This year, the Tribunal in both *18-002501 v. Intact Insurance Company*, 2019 CanLII 43895 (ON LAT) (“002501”) and *L.L. and Intact Insurance Co., Re* 2019 CarswellOnt 3604 (“*L.L.*”) addressed two cases of physical assault in close proximity to a motor vehicle.

In *002501*, the applicant was an Uber driver who attended a location for a requested mid-afternoon pick up. He messaged the requesting passenger after a few minutes of waiting. Two men walked up to the vehicle and asked the applicant if he was the Uber driver, which the applicant confirmed. The two men proceeded to kick the vehicle, scream at the applicant, and open the driver’s side door. The men forcibly removed the applicant from the vehicle and assaulted him.

The applicant in *L.L.* was working on a film set. She was assigned to keep three marked and designated parking spaces available for the film production. The respondent parked his vehicle in one of the designated film production spaces. The applicant

informed the respondent that he could not park there. The respondent intentionally struck the applicant with his vehicle door, injuring her knee and left forearm. The applicant backed away, but the respondent exited his vehicle and continued to assault her, punching her three times in the face. The respondent was subsequently convicted of assault.

The applicants in each case suffered injuries and sought benefits pursuant to the Statutory Accident Benefits Schedule.

The Legal Tests

The two-part test developed in *Chisholm v. Liberty Mutual Group*, 2002 CanLII 45020 is used to determine whether an incident constitutes an “accident” under the Schedule. First, it must be determined whether the “purpose” test is met. Namely, did the incident arise out of the use or operation of a motor vehicle?

Second, the “causation” test must be applied:

- a. whether the incident would have occurred “but for” the use or operation of the motor vehicle;
- b. whether there was an intervening cause that cannot be said to be part of the ordinary course of the use or operation of the motor vehicle;
- c. whether the use or operation of the motor vehicle was a dominant feature of the incident.

The Tribunal in both *L.L.* and *18-002501* held that the purpose test was satisfied, but differentiated on application of the causation test.

The Distinctions

Despite first blush similarities, the Tribunal ruled that only the incident in *L.L.* met the Statutory definition of accident. Section 3(1) of the Schedule defines an “accident” as “an incident in which the use or

operation of a motor vehicle "directly" causes an impairment...", and "Impairment" is defined as "a loss or abnormality of a psychological, physiological or anatomical structure or function." The importance of motor vehicle use and the factual circumstances of every step of the assault were crucial components in each determination.

The Tribunal in 002501 held, in keeping with a well-established area of jurisprudence, that the applicant's injuries did not meet the definition of "accident" under the Schedule. The Tribunal applied the two part "purpose" and "causation" tests. The Tribunal held the incident did arise out of the use or operation of a motor vehicle. However, the application failed the second step of the causation test.

While it was determined that the applicant would not have received his injuries but for the use of his vehicle, the assault was determined to be an intervening cause in the ordinary use of his Uber taxi. Adjudicator Johal held that even if the applicant was targeted for an assault specifically because he was an Uber driver, the vehicle was not the direct cause of his injuries and did not meet the Statutory requirements. Adjudicator Johal's decision is in keeping with the decisions in *Greenhalgh v. ING Halifax Insurance Co*, 2004 CanLII 21045 (ON CA) and *Martin v. 2064324 Ontario Inc.*, 2013 ONCA 19 (CanLII). In each case an individual was assaulted and received impairing injuries within or beside a vehicle, but not as a result of use of that motor vehicle. Neither of those cases were held to be an "accident" under the Schedule.

Conversely, the Tribunal in *L.L.* ruled the incident an accident under the Schedule. The order of the applicant's injuries was a crucial factual distinction. Adjudicator Flude held that the assault could not be divided into two distinct attacks, as was argued by the respondent. Many of the applicant's complaints related to fear, anxiety and distress – and it was held that the applicant began manifesting said fears immediately upon being struck by the car door and throughout her subsequent assault. Despite the punches taking place away from the vehicle, this unfortunate event was held to be a "continuous affront to the applicant's well-being" from which she emerged with psychological impairments (*L.L.*, *supra*, at paragraph 18).

Key Takeaways

The decisions in both *L.L.* and *18-002501* make it clear that the purpose and causation analysis in accident benefits cases is extremely fact-driven. *L.L.* in particular makes clear that given the right fact

pattern, impairing injuries that occur outside of a vehicle may qualify as an "accident" under the Statutory Accident Benefits Schedule.

Emily Compton is an associate in the Waterloo office of Miller Thomson LLP. She practices within the Litigation group, focusing on insurance defence.

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 And new wishes

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