



Special Bonus Photo Issue



PAUL DAVIS

RECOVER • RECONSTRUCT • RESTORE

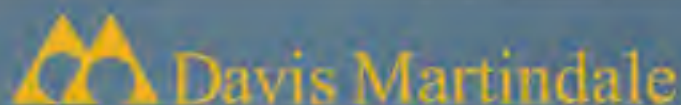
Property Damage?

Call 1.877.570.0438



Kitchener-Waterloo
Guelph-Wellington
Grey and Bruce Counties

pauldavis.ca



Accountants with Personality!®



Advisory Services

*Leader in Providing Insurance &
Litigation Accounting Services in Ontario*

Jessy Hawley CPA, CGA, CFF

Gary Phelps CPA, CMA, CFF, CFE

advisoryservices@davismartindale.com

Call 1.800.668.2167 today!

SABS Claims
Dependency Analysis

Commercial Losses
Economic Loss Claims

Litigation Experts
Fraud Investigation

davismartindale.com

London, ON | Toronto, ON
373 Commissioners Rd. W., N6J 1Y4 | 20 Bay St. - Suite 1100, M5J 2N8





PRESIDENT'S MESSAGE

SUMMER 2017



Hello,

Welcome to Summer!

Thank you to all of our members and industry partners for this amazing year! The 2016- 2017 year has been a successful year. Without our members and industry partners we would not have had the successful year we had.

To start our year we held our tradeshow at the Crowne Plaza as a trial run for the Provincial conference. After the Tradeshow we changed venues and started planning the 2017 Provincial conference again. We have had large turn outs at all of our monthly events, thank you to those who planned the monthly meetings for bringing out some great speakers.

Maytoberfest was a blast, it saw over 700 people attend the tradeshow and mix and mingle. 325 people attended the educational events and traditional fest hall. This event would not have been as great as it was without the amazing executive team, volunteers, sponsors and industry partners. Thank you to everyone for this event. It was my honour and privilege to be a part of it.

In June, we held the annual John McHugh Charity golf tournament at Ariss Valley Golf Course. We were able to raise \$9090 For Kidsability. This is an exceptional accomplishment and I am proud to be a part of this chapter that is able to give so much to the community.

This was my second term as president, it has been an honour. I am grateful for having been given the opportunity to return as your president. I am now passing the reigns back to Charlene for her to have another term as President. The executive team in place for the coming years is a amazing, having provincial conference strengthened our bond and made us a better group and I look forward to seeing what this group can accomplish next year and in the years to come.

Thank you,

A handwritten signature in black ink, appearing to read 'Jennifer Brown', written in a cursive style.

Jennifer Brown
President of K-W OIAA

It's time for our own 'Game of Drones'!

Join us on Thursday, September 28, 2017 as we kick-off our 2017-2018 OIAA year! The Crawford drone team will be joining us with a drone presentation and providing information on how drones can be used with insurance claims. Dinner will be a catered BBQ. This is a casual outdoor event so please dress for the outside weather (we will move inside should weather not cooperate with us).



Location: Wilmot Rod & Gun Club (2607 Bleams Rd, New Hamburg, ON N3A 3J2)

Time: 5:30pm social time, dinner at 6:30 with presentation to follow.

Space is limited. As such, we will not be accepting any ticket purchases at the door

Purchas your tickets today at <http://www.kw-oiaa.ca/>



IN THIS ISSUE...

President's Message

Page 1

September 2017 Dinner Meeting: "Game of Drones"

Pages 2 & 71

2017 Provincial Conference Sponsorship Pages

Pages 4-8

ARCON: Everyday Safety Hacks from Forensic Engineers

Pages 26-28

**Miller Thomson: Case Comment: Duty of Care Under
the *Occupier's Liability Act***

Pages 40-41

Advertisers' Index

Page 72

Click here to Like us on Facebook →



Click here to Join us on LinkedIn →



Click here to Follow us on Twitter →





Thank you to our PLATINUM SPONSORS



MILLER THOMSON
AVOCATS | LAWYERS



SAMIS+COMPANY
Toronto | Waterloo



Thank you to our GOLD SPONSORS



HARRIS LAW
PERSONAL INJURY LAWYERS
PROFESSIONAL CORPORATION

www.HarrisHurtLine.com

519-725-8000



INVESTIGATIVE SOLUTIONS NETWORK INC.

PAUL DAVIS
RECOVER • RECONSTRUCT • RESTORE

LERNERS
LAWYERS

HCRYCAY
CONSULTING ENGINEERS INC.
www.hcei.ca

esm
EMERGENCY SECURITY MANAGEMENT



HELP ME HOST
EVENTS

Management * Design * Planning

INFO@HELPMEHOST.CA



Thank you to our SILVER SPONSORS





Thank you to our
BRONZE SPONSORS



Cohen Highley
LAWYERS



Newtron Group



BURNSIDE





Thank you to our other
SPONSORS & PARTNERS



HARRIS LAW
PERSONAL INJURY LAWYERS
PROFESSIONAL CORPORATION
www.HarrisHurtLine.com
519-725-8000



Franklin Physiotherapy
Massage • Orthotics



RELECTRONIC-REMECH Inc.
Electronic & Mechanical Loss Recovery
Assessments • Communications • Recommendations







CORPORATE OVERVIEW

ESTABLISHED IN 1980, LARREK INVESTIGATIONS HAS SINCE GROWN STEADILY THROUGH WORD-OF-MOUTH AND REFERRALS. WE PROVIDE PREMIUM INVESTIGATIVE AND RESEARCH SERVICES FOR THE CORPORATE, LEGAL, AND INSURANCE INDUSTRIES – INCLUDING SURVEILLANCE, SPECIAL INVESTIGATIONS, BACKGROUND INVESTIGATIONS, AND LITIGATION SUPPORT. OUR CLIENTS FREQUENTLY COMMEND US FOR PROVIDING THE HIGHEST QUALITY IN DISCRETION, EFFICIENCY, AND THOROUGHNESS, AS WE REPEATEDLY SURPASS THEIR EXPECTATIONS, AND PROVIDE A SUPERIOR FINAL PRODUCT.

PROFESSIONAL SERVICES:

SURVEILLANCE

ACCIDENT BENEFIT CLAIMS
BODILY INJURY CLAIMS
LIFE AND HEALTH CLAIMS
INDUSTRIAL SURVEILLANCE
CORPORATE MATTERS

LITIGATION SUPPORT

PLAINTIFF INTERVIEWS
WITNESS INTERVIEWS / LOCATES
DEFENDANT LOCATES
STATEMENT TAKING
PERSON AND PROPERTY LOCATES
CORPORATE AND FINANCIAL BACKGROUND INVESTIGATIONS



DISCREET | ETHICAL | PROFESSIONAL







Samis+Company is a leading insurance litigation firm serving Canada's property and casualty insurers and institutions that self-insure property and casualty risks.

EXPERTISE

We know insurance! Our lawyers have a wealth of experience in the following areas:

Commercial General Liability Claims

We defend your policy-holders in commercial general liability claims spanning a wide variety of areas, including fire losses, oil spills and construction losses. Claims of this nature require significant technical skills over a broad range of losses. We have the experience and expertise to manage claims of this nature, as well as a deep bench of experts to call on as needed.

Subrogation

Subrogation requires a distinct and different skill set from the defence of liability, coverage or property claims. Our firm has a strong track record in advancing subrogated claims on behalf of its clients, bringing a practical and common-sense approach to subrogation. Above all else, we ensure that insurers don't throw good money after bad in pursuing claims where liability facts are poor and target defendants cannot satisfy a judgment.

Bodily Injury Litigation

Our lawyers have experience in all aspects of motor vehicle bodily injury litigation in Ontario. We have a thorough understanding of the threshold for pain and suffering damages in Ontario, the large body of law interpreting the threshold over the last twenty years and the interplay between first- and third-party compensation systems. We work with recognized science and medical experts to obtain opinion evidence where necessary and provide strategic counsel to help our clients manage risk.

Coverage

We have experience acting as coverage counsel for both insurers and corporate policyholders. We provide coverage opinions with respect to a variety of types of insurance coverage, including liability, property, errors and omissions, automobile, and fidelity bonds. We have also litigated insurance coverage cases at the Ontario Superior Court of Justice and Ontario Court of Appeal, addressing a diverse range of coverage issues. Our coverage lawyers also publish and speak regularly on the interpretation of insurance policies.

First-Party Accident Benefits Claims

Ontario's first-party auto compensation framework has undergone major change on several occasions since 1990. Our lawyers have skillfully guided Ontario's property and casualty insurers through those changes.

Priority and Loss Transfer Disputes Between Insurers

Ontario's Insurance Act contains priority and loss transfer rules that address which insurer is responsible for paying first party benefits to a claimant in any given case. Disputes between insurers are resolved through private arbitrations pursuant to the Arbitration Act, 1991. This is an active area of insurance-related litigation unique to Ontario and our lawyers have expertise and a strong track record in this area.

Premises Liability

We act for a number of different insurers and institutions who self-insure property and casualty risks in premises liability matters. Claims of this nature require general bodily injury law expertise as well as an understanding of commercial leasing contracts and overlapping injury reparation systems. We understand the legislative framework, common law principles and contractual risk shifting that inform the defence of premises liability claims.

Property Losses

We act for insurers in first-party claims advanced by their insureds when disputes arise in the course of adjusting a loss, whether the issue is one of coverage or valuation. We understand that claims advanced by insureds can present special risks to an insurer for extra-contractual damages. We keep this issue at the forefront in handling claims of this nature.

Additional Expertise

In addition to expertise in specific areas of insurance law, we also provides clients with counsel on issues such as policy wording and endorsements, underwriting strategies, government relations and media information requests.

LEADERSHIP

Samis+Company provides our client community with in-house training and education on developing issues and trends. We also share our legal knowledge with the broader insurance community. For example, we regularly serve as instructors for the Insurance Institute of Ontario and have developed and presented programs that lead the industry on issues such as personal injury compensation, environmental law and insurance, and subrogation trends and best practices. In addition, the insurance community frequently calls on us to present on current legal issues to organizations such as:

- Canadian Insurance Claims Managers Association
- Insurance Bureau of Canada
- Ontario Mutual Insurance Association
- Ontario Insurance Adjusters Association
- Canadian Insurance Adjusters Association
- Ontario Risk and Insurance Management Society
- Insurance Institutes of Canada and Ontario
- Improving Insurance Services

SAMIS+COMPANY
Toronto | Waterloo





SERVPRO®

 CANADA

SERVPRO® is a fire and water restoration and mould mitigation company providing 24-hour restoration and construction services to residential and commercial property owners in Canada. What started in the states as a small family-owned business in 1967 now supports a network of over 1,700 Franchises in Canada and the U.S., with system-wide annual revenues approaching \$2 billion dollars. At the heart of the SERVPRO® System's impressive growth is a team of well-trained, quality restoration professionals. We focused on serving the needs of property managers, insurance companies, and their insureds who call upon us when disaster strikes. Servpro Industries Inc., our affiliate in the U.S., is now celebrating 50 years of success and SERVPRO® knows the importance of being, Faster to any size disaster. SERVPRO® has been named the #1 Brand in the restoration industry in the U.S. according to Entrepreneur Magazine, and is still a family owned business.

Sue Steen, SERVPRO® CEO says, "The SERVPRO® Brand has been meeting the needs of people since my parents started the business in 1967. As long as people continue to need assistance recovering from disasters, we plan to keep growing to meet that need."

In 2016, SERVPRO® became a first responder to the Fort McMurray wildfires in Alberta, that have been described as one of the largest fire disasters in the history of North America. In fact, Fred Edwards, owner of SERVPRO® of Calgary South, and SERVPRO® of Edmonton Southside, says; "SERVPRO® was a first responder in charge of disinfecting and sanitizing the barracks of the RCMP. Within two weeks of the onset of fires, the SERVPRO® System had mobilized over 400 people on the ground, flying them in from the Calgary and Edmonton marketplace. I felt relieved to know the SERVPRO® Franchises in the U.S. were on standby with over a dozen semi-trucks and literally hundreds of workers to assist in case backup was needed. I am honoured to be part of such a team-oriented company."

When fire and water damages occur, commercial or residential properties, you can be sure the professionals from SERVPRO® are Here to Help® make it "Like it never even happened."

Call our National Call Centre

1-800-SERVPRO

Fire & Water - Cleanup & Restoration™



**WATER
DAMAGE**



**FIRE
DAMAGE**



**MOULD
REMEDIATION**



**STORM
DAMAGE**



**COMMERCIAL
SERVICES**

*Services in Canada provided by Independently Owned and Operated Franchisees
of Servpro Industries (Canada) ULC.*

Like it never even happened.®







MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP - CANADA'S INSURANCE LAWYERS

Experience

With over 30 years' experience, our Insurance Group is one of the largest insurance defence practices in Canada. We represent a wide variety of insurers and self-insured entities in the defence of claims nationally and internationally. Our lawyers have developed practices focusing on specific areas of law, including:

- property, casualty claims
- life & disability claims
- coverage opinions and claims
- automobile liability
- government and road liability claims
- accident benefits
- bad faith and punitive damage claims
- priority / loss transfer / subrogation
- aviation claims
- commercial & host liability claims
- surety & bonding
- farm / agri claims
- errors & omissions
- professional liability
- product liability
- regulatory conformity / compliance
- risk management
- employment practice liability
- alternative dispute resolution
- establishing captive and reinsurance placements

For you:

We offer a full range of services to:

- Insurers
- Governments / Regulators
- Brokers
- Captive Companies
- Reinsurers
- Associations
- Self-administering deductible programs
- Advisory bodies

For more information, contact:



Helen Friedman

Industry Lead, Insurance & Risk Management
519.593.3223
hfriedman@millerthomson.com



Dan Rabinowitz

Leader, Insurance Defence Group
416.597.4363
drabinowitz@millerthomson.com



MILLERTHOMSON.COM







Davis Martindale
Accountants With Personality![®]

50
YEARS

Davis Martindale Advisory Services

Insurance Claims | Litigation | Valuation | Corporate Finance

INSURANCE CLAIMS

Statutory Accident Benefits
Business Interruption
Stock Loss
Employee Dishonesty/Fraud

LITIGATION

Expert Loss Accounting Reports
Preparation for Examination for Discovery
Mediation
Expert Witness

VALUATION

Disputes – Shareholder/Matrimonial
Succession and Estate Planning
Purchase and Sale Preparation
Damage Quantification

CORPORATE FINANCE

Bank Negotiation and Financing
Business Plan Support
Cash Flow Management
Purchase of Sale or Businesses



GARY

JESSY

RON

Gary Phelps CPA, CMA, CFF, CFE
gphelps@davismartindale.com | x1229
Accounting loss expert for commercial & economic loss claims, & litigation support.

Jessy Hawley CPA, CGA, CFF, CIP
jhawley@davismartindale.com | x1218
Quantifying income replacement benefits, dependency analysis & commercial insurance claims.

Ron Martindale BASc, CPA, CA, LPA, CBV, CFF
rmartindale@davismartindale.com | x1209
Business valuation, income for support calculations, damage quantification, litigation support and corporate finance.





Everyday Safety Hacks from Forensic Engineers



By Randy Henderson, Arcon Forensic Engineers

As insurance adjusters, you likely see on a daily basis the truth in the old adage that most accidents happen in and around our homes. In the area of forensic engineering, we often see claims that could have been prevented had people been a little more patient, careful and observant in their daily lives. The purpose of this article is to share with you some wisdom gleaned by forensic engineers through their investigations of the causes of insurance claims. We'll begin with simple 'hacks' to prevent property related claims, and then provide suggestions for avoiding collisions and personal injuries.

Fires

We've all heard it a million times but **replace your smoke detector batteries** with every change in season, regardless of whether they are hard wired or not. While they don't prevent fires, alarms often prevent loss of life and can reduce the severity of a loss.

Don't power window air conditioners with extension cords. Extension cords are designed to provide temporary power and are not meant to be a long term wiring solution. Even if you are using a cord that is suitable for the electrical load, it is still only meant for temporary power supply.

Clean the lint trap in your dryer after every load and periodically (depending on frequency of use) check the dryer exhaust to ensure that there is no build up of lint. Airborne particles of lint can lead to dryer fires.

Only use candles for ambience during a romantic dinner and never as a light or heat source. **Be sure to extinguish the candle** regardless of the dinner result.

Floods

A common but often overlooked use of batteries in a home is the thermostat. Batteries provide back-up in the event of a power outage. You might ask, who cares? If you are on vacation the first week of February and there is an **extended power outage and your thermostat is offline because the batteries are dead...**you might come home to burst pipes and water damage.

Toilet supply lines are a common point of failure in a home's plumbing system. **Consider replacing the supply line every 10 years** with a good quality replacement. The problem with toilet supply lines is that there is usually no local shut-off valve, and the damage resulting from a second floor toilet failure can be extensive. If you are a DIY plumber and the instructions say "hand-tighten", don't apply a pipe wrench and as much force as you can muster just to "make sure". Excessive force can cause parts to weaken, fracture and eventually break.

Floods can also originate from a washing machine or dishwasher. Consider only running such appliances when you are at home, just to be on the safe side.

Winterize your outdoor hose bibs by **turning off the water supply to the external bib and then draining any residual water** by opening the external tap. The internal shut-off should be in the basement just inside the wall from the external connection.

Never, never, never turn the heat off when you go on vacation during the winter and make sure that all of your windows are shut!

Collisions

Focus and patience are often found to be lacking by at least one of the drivers involved in a collision. A lack of focus lengthens the perception-reaction time of a driver which in turn decreases the ability to avoid a collision. One of the greatest sources of distraction is the general use of a handheld or mounted device such as a phone or GPS unit. **Even talking on a hands-free enabled device is just as distracting as talking on a hand-held phone.** I'm sure we've all missed a turn-off because we've been talking on the phone while driving.

Don't speed. It's obvious, the faster you drive, the longer the distance required for safe stopping. The greater the distance to stop, the less chance you have to avoid a collision. For example, driving 10 km/h over the posted speed in a 60 km/h zone will increase your dry-road braking distance by over 30% - from 18 metres to 24 metres.

Always allow for a 2 second following distance between you and the car ahead. This gap is related to the typical perception-reaction time of a driver and braking capability under ideal conditions. The faster you're travelling, the bigger the gap. In inclement weather, allow for an even longer gap to account for slowness in driver reactions and reduced friction, control and visibility.

Wear your seatbelts. In nearly every instance they can significantly reduce the rate of severe injury (and are responsible for twice the reduction in head & spine injuries).

When turning left, never assume that drivers approaching from the opposite direction are planning to stop. If you are one of those drivers, **don't use an amber light as a signal to speed up.** Also don't try and "shoot the gap" between cars when turning left. As an indication of whether you routinely cut it too close when you turn left, look in your rear-view mirror after you complete your turn and count the seconds that pass until you see the oncoming car that you turned in front of. If it's less than three seconds, you might want to wait for a bigger gap in the future.

When it comes to transport trucks, buses and specialty vehicles such as cement mixers, size matters. Drivers of these vehicles can not react as nimbly or brake as quickly as someone in a car and do not have the same field of vision as drivers of cars. Give way and stay alive. The same logic exists with pedestrian and vehicle interactions. **As a pedestrian, do not text and walk, especially at intersections.** Wear

reflective clothing when walking or cycling at night. When walking in the dark, people often assume if they can see the car, the car's driver can see them. Quite often, this not the case.

Personal Injuries

Pedestrians can reduce their chances of a slip, trip and fall by minding the following suggestions. **Always watch your step** to account for step heights and even changes in seemingly level surfaces in order to detect slight variations that could spell danger. By extension, don't shuffle your feet when you walk. This can cause you to catch minor variations caused by heaving between poured concrete on the sidewalk or changes in surfaces, such as between carpet and tile. **Do not wear Crocs on wet surfaces** – their sponginess makes them conform to the walking surface, trapping water and becoming very slippery. Do not wear running shoes in sub-zero weather on snow/wet surfaces; the sole material hardens at these temperatures and loses ability to grip the surface.

We hope that you find these “hacks” useful. Completely random “accidents”, where the confluence of variables leading to the incident are essentially unpredictable or beyond control, are rare. There is usually a pretty simple decision point leading up to the “accident” where a human made a poor decision.

Randy is responsible for client management and business development at Arcon Forensic Engineers. This article contains input from forensic investigators Jillian Leblanc, Daniel Couture and Alan Morris.

Forensic engineering is our business...

...and for the past 50 years, Arcon has been a trusted name in the business of forensic engineering. We've gained this trust by consistently performing benchmark quality, on-basis origin and cause investigations of property loss and personal injury claims on behalf of our insurance, legal and corporate clients.



HELP ME HOST
EVENTS

Management * Design * Planning

INFO@HELPMEHOST.CA





At CARSTAR, we understand that cars are more than just metal. They are our best friends and our workhorses. They are our security and our freedom. Our cars prove to us that sometimes life isn't about the destination, but the journey.

CARSTAR offers:

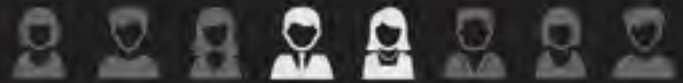
- Collision repair
- Auto glass repair & replacement
- AIR MILES reward miles



CARSTAR Cambridge 519-623-2100
 CARSTAR Elmira 519-669-3373
 CARSTAR Kitchener 519-653-2540
 King Street (Kierseyville)
 CARSTAR Kitchener 519-571-7800
 Shirley Drive
 CARSTAR Waterloo 519-888-9522



Not all accountants are MDD Forensic Accountants.



With 42 offices on 4 continents, over 30 language fluencies, 16 distinct professional designations and a work history that spans more than 130 countries and 800 industries, we are truly world-class experts with a global reach.

To find out how we can help you, contact us today.

Sheri Gallant, CPA, CMA, CFF
 sgallant@mdd.com | 519.432.1123

• mdd.com

VANCOUVER • CALGARY • EDMONTON • WINNIPEG • LONDON
 HAMILTON • TORONTO • KINGSTON • MONTREAL • HALIFAX



STRONE™

Your Complete Emergency Solution

24/7 EMERGENCY
 1-866-877-5834



THROUGH TOUGH TIMES, WE HELP RETURN LIVES BACK TO NORMAL

Flood & Water Damage Restoration
 Fire & Smoke Damage Restoration
 Storm Damage Restoration
 Document Recovery & Restoration
 Mould & Asbestos Abatement
 Vandalism • Vehicle Impacts
 Break & Enter • Post Disaster Renovation



www.STRONE.ca



We may not always tell you what you want to hear.

But we always tell you what you need to hear.

Call the experts,

ARCON
 FORENSIC ENGINEERS

888.272.6671

info@arconforensics.com

www.arconforensics.com







THE CHOICE IS CLEAR



Larrek Investigations has gained a reputation as one of the leading investigative companies in the province, as we are committed to continually improving the quality of products and services available within the investigative industry.

When you choose Larrek Investigations, you will be working with a team of experts, who handle each assignment in the upmost discreet, ethical and professional manner, and ensure that our clients receive the best results.

Our Professional Services Include

Accident Benefits Claims
Bodily Injury Claims
Subrogation Claims
People & Property Locates
Corporate Investigations

Surveillance Investigations
Priority Investigations
Witness & Claimant Interviews & Statements
Online Presence & Social Media (OSINT)
Special Investigations (SIU)

SERVING ALL OF ONTARIO

1-888-576-3010

FOLLOW US:



LARREK.COM





Put your mind at ease

Claims. Litigation. Investigations.

Challenges of daily life in the insurance business.

You don't need to confront these alone. At KPMG we provide independent, objective and credible advice to help bring claims, litigation and investigations to successful conclusions for you and your clients.

KPMG can help put your mind at ease when dealing with difficult and sensitive issues.

Let's start the conversation.

Karen Grogan

T: 519-747-8223

E: kgrogan@kpmg.ca

David Bushell

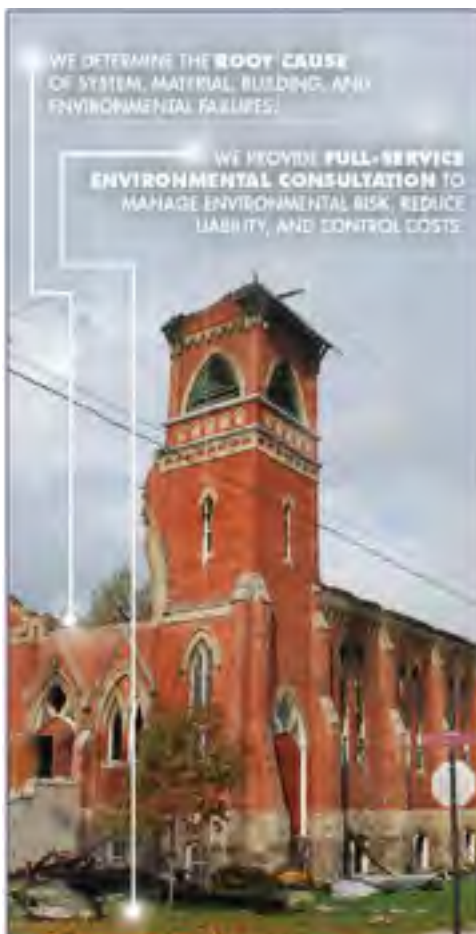
T: 519-747-8882

E: dbushell@kpmg.ca

kpmg.ca/forensic



© 2017 KPMG LLP, a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. 16104



WE DETERMINE THE **ROOT CAUSE**
OF SYSTEM, MATERIAL, BUILDING, AND
ENVIRONMENTAL FAILURES!

WE PROVIDE **FULL-SERVICE**
ENVIRONMENTAL CONSULTATION TO
MANAGE ENVIRONMENTAL RISK, REDUCE
LIABILITY, AND CONTROL COSTS.

pario 
ENGINEERING & ENVIRONMENTAL SCIENCES

When it happens,
find out why.

Pario Engineering and Environmental Sciences is a multi-disciplinary team of specialists with the scientific analysis and technical expertise to get the job done. Pario's team consists of more than 30 highly qualified experts, many of whom are senior in their field of Electrical, Mechanical, Material, Chemical, Environmental and Civil Engineering. Our clients trust in Pario to consistently deliver the highest quality of service that we are known for.

Pario Engineering and Environmental Sciences
When knowing matters

888.762.4667 • pariosciences.ca







Case Comment: Duty of Care Under the *Occupiers' Liability Act*



Authored by:

James Prior

Partner, Waterloo

519.593.2429

jprior@millerthomson.com

In this case, the plaintiff, a parishioner of the defendant church, volunteered to paint the church's interior walls and ceilings. After assuring a supervisor of the defendant that he was comfortable painting from a ladder and had previous experience doing so, the plaintiff attended for painting duty on multiple occasions over several weeks using an eight foot stepladder. Unfortunately, while working from the stepladder, the plaintiff fell, resulting in a head injury and coma for 25 days. He subsequently commenced an action against the defendant church, arguing that it breached its duty to ensure his reasonable safety while he was voluntarily working on the premises. In response, the defendant brought a motion for summary judgment.

In granting the defendant's summary judgment motion, the Court considered subsection 3(1) of the *Occupiers' Liability Act*, which imposes on an occupier a duty to take reasonable care so that persons entering on its premises are reasonably safe, such that conduct is negligent if it creates an objectively unreasonable risk of harm. In reviewing the governing principles under the *Occupiers' Liability Act*, the Court reiterated the principle that the duty of occupiers to make their premises reasonably safe for people entering on them is not absolute and that occupiers are not insurers liable for any damages that may be suffered by people entering their premises.

After a thorough consideration of all the evidence, the Court granted the defendant's summary judgment motion, finding that it provided a reasonably safe environment that ensured the reasonable safety of the plaintiff. In making this determination, the Court was mindful of the fact that the integrity of the stepladder in question was confirmed through expert evidence, as well as the fact that the floor on which it was placed was flat, solid and clear of debris. As such, the stepladder was suitable for its purpose, which was supported by the fact that there were no complaints about it by the plaintiff or others. The Court specifically noted that the use of a stepladder itself does not inherently constitute an objectively unreasonable risk of harm.

In addition, the Court indicated that even if it could have been said that the stepladder presented an objectively unreasonable risk of harm, the plaintiff, due to his head injury and amnesia, could offer no evidence as to the cause or mechanics of his fall. As such, the requisite causal nexus could only have been made by speculation and conjecture, which the Court was not prepared to do.

After an extensive consideration of all relevant factors, the Court, putting aside its sympathy for the unfortunate plaintiff, held that the defendant provided a reasonably safe environment for the plaintiff. As such, it granted the defendant's motion for summary judgment dismissing the plaintiff's claim.

The decision in *Baltadjian* reminds us that the *Occupiers' Liability Act* does not create a standard of perfection or presumption of negligence against occupiers whenever individuals are injured on their premises. Rather, a plaintiff must

be able to point to some act, or failure to act, on the part of the occupier which caused or contributed to his or her injury before liability will be established. Unfortunately, this fundamental principle is frequently forgotten by many plaintiffs, who too often presume that when an accident occurs on an occupier's premises, the occupier is automatically negligent.

James Prior is a Partner in the Waterloo office. His legal practice focuses on insurance defence, including the defence of personal injury and property damage claims, as well as commercial general liability and subrogated recovery matters.

www.millerthomson.com



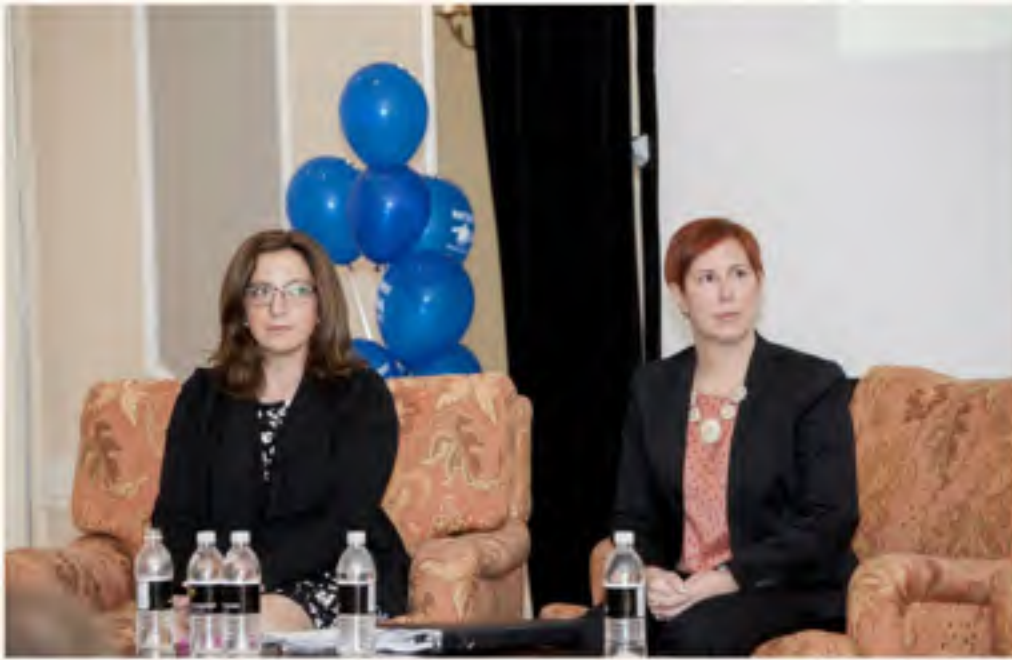
Follow us on:



Vancouver Calgary Edmonton Regina Saskatoon London
Kitchener-Waterloo Guelph Vaughan Toronto Markham Montreal









OUR PEOPLE

Michael Prosia

519.931.3504 | mprosia@millerthomson.com

Meet Michael Prosia. Michael has spent the better part of the last decade honing his skills in Brazilian JiuJitsu. If his time on the mats has taught him anything, it's that making the right decision is only half the battle – the right decision needs to be executed properly. That's why he is a valued member of our insurance defence group – another lawyer who takes great pride in making sure all of our clients' cases are handled with the care and precision you've come to expect from Canada's law firm.



MILLER THOMSON

AVOCATS | LAWYERS

MILLERTHOMSON.COM

VANCOUVER CALGARY EDMONTON SASKATOON REGINA LONDON KITCHENER-WATERLOO GUELPH TORONTO VAUGHAN MARKHAM MONTRÉAL

Restoration

WATER DAMAGE EXPERTS



WATER * FIRE * SMOKE * MOULD

We work with all
**INSURANCE
COMPANIES**



519-505-4785 • kitchener.restoration1.ca

Residential • Commercial







Samis+Company provides insurance related legal services to many of Canada's leading property and casualty insurers and businesses.



**YOUR
PROBLEM
SOLVING
PARTNERS**

We solve your technical and legal issues. Our lawyers have a wealth of experience in a variety of areas.

**YOUR
DISPUTE
RESOLUTION
PARTNERS**

We specialize in resolving/litigating all types of injury, property and general insurance liability claims.

**YOUR
CLAIMS
HANDLING
PARTNERS**

In the fast-paced world of insurance claims handling, we provide practical and cost-effective solutions to help you investigate claims.



CGL + BODILY INJURY + COVERAGE + SUBROGATION + SABS + PROPERTY LOSSES
DISABILITY + PRIORITY + LOSS TRANSFER + PREMISES LIABILITY





WINMAR®



PROUD TO BE CANADIAN OWNED AND OPERATED



FOR MORE INFORMATION VISIT WWW.WINMAR.CA

GUELPH

Darrin Drake

519-826-000

KITCHENER/ CAMBRIDGE

Peter Douwes

519-895-0000

ORANGEVILLE

Darrin Drake

519-940-8400

STRATFORD

Chris Craigan

519-273-0000







We Know Coverage.

Our lawyers have developed extensive expertise in determining coverage under an insurance policy. This expertise includes investigations, policy interpretation, and examinations under oath, as well as drafting position and reservation of rights letters. From the claims stage to litigation, we have you covered.

We understand issues facing the industry and are able to assist our clients in achieving success. Whether the route is negotiation, appraisal, mediation, arbitration or trial, our skills are formidable and our reputation is untouchable. **We love a challenge.**

INSURANCE DEFENCE | Lemers LLP | London | Toronto | Lemers.ca

LEMERS
LAWYERS



THE NATION'S LARGEST CONSULTING FORENSIC ENGINEERING AND FIRE INVESTIGATION FIRM

With over 25 forensic experts in 10 locations across the country, we are always here to assist you!

- FIRE & EXPLOSION INVESTIGATION
- STRUCTURAL ENGINEERING
- ELECTRICAL ENGINEERING
- MATERIALS AND METALLURGICAL ENGINEERING
- MECHANICAL ENGINEERING
- CHEMICAL ENGINEERING
- FORENSIC LITIGATION SERVICES

ORIGIN AND CAUSE

DISCOVERING THE TRUTH BY DETERMINING THE FACTS

For more information about our services and expertise please visit our website at www.origin-and-cause.com







INVESTIGATION SERVICES

ADVANCED TECHNOLOGY • INNOVATIVE SOLUTIONS

Xpera is Canada's premier provider of **Risk Mitigation & Investigation**. We offer innovative solutions that reduce risk, minimize loss, and increase human safety.

Xpera prides itself on its use of advanced technology and procedures, up to date research, and the most detailed and factual reports in the industry. With more than 500 investigators nationwide, we provide over 100 services to a diverse base of clients.

A sampling of our investigation services include:

- Surveillance
- Open Source Intelligence
- Social Media/Cyber Research
- Location of Individuals
- Interviews and Statements
- Special Investigation Unit (SIU)
- Primary Insurance
- Liability Investigations
- Photographic Evidence
- Litigation Support
- Neighborhood Inquiries
- Subrogation and Recovery



INVESTIGATION: 1.888.842.8112

XPERA.CA





Trust Our Expertise and Experience for Your Claims Investigations.



Click Here

www.hcei.ca

Forensic Engineers Specializing in:

- Motor Vehicle Accident Investigation & Analysis
- Extraction & Interpretation of Electronic Data Recorders
- Fire Origin & Cause of Mobile Equipment
- Product Failures of Mobile & Industrial Equipment
- Injury Biomechanics
- Scientific Visualizations (Animations)
- Transportation Safety Studies
- Road & Bridge Evaluation, Design & Maintenance
- Traffic Signal Analysis & Design
- Construction Zone Layout, Signing & Analysis

Toll Free: 1.866.440.4493
info@hcei.ca

Offering 24 Hour, 7 Days a Week
Emergency Response









The Textile Experts at CRDN respond immediately to the needs of adjusters and homeowners alike.

We deliver peace of mind and restore life's irreplaceable treasures.

Saving textiles...
Salvaging precious memories.

CRDN of Western Ontario
855-702-CRDN (2736) or crdn.ca

Respond. Restore. Resume.™



Ground Force is equipped to handle all soil remediation, whether it is emergency spill response or cleaning up a brownfield site with hydrocarbons, oil, fuel, other petroleum products, VOCs, chlorinated and non-chlorinated solvents, heavy metals, paints, PCBs, lead, mercury or any other pollution / contaminants that may be on site due to either a spill or previous use of the land.

24 HOUR EMERGENCY RESPONSE
1.855.664.0767 www.gfei.ca

HOW LONG BEFORE I CAN REOPEN?

Our **RELECTRONIC -REMECH** team will minimize restaurant down time and losses with expertise in all commercial-grade restaurant equipment.



RELECTRONIC-REMECH Inc.
Electronic & Mechanical Loss Recovery
Assessments - Communications - Recommendations

www.relectronic-remech.ca
Emergency Service 1-800-465-9473





ars ACCESS RESTORATION SERVICES

24 HR. EMERGENCY SERVICES

Toll Free: 1-855-848-5127

COMMERCIAL & RESIDENTIAL

- Restoration to Fire/Smoke/Water Damage
- Moving and Storage Facilities
- Environmental Remediation and Restoration for Mould/Asbestos/Oil Spills
- Structural Dehumidification
- Content Recovery and Restoration
- Odour Control and Elimination
- Document and Electronics Recovery

• **ENVIRONMENTAL**
• **WATER**
• **WIND**
• **FIRE**



Access Restoration Services Locations

Toronto (Corporate Office)

31 Densley Ave.,

Toronto, ON M6M 2P5

Tel: 416-244-9797 Fax: 416-247-6309

Kitchener/Waterloo

608 Weber St., Unit 5,

Waterloo, ON N2V 1K4

Tel: 519-279-1110 Fax: 519-279-1113

New Market (GTA)

1160 Kerrisdale Blvd., Unit 7,

New Market, ON L3Y 8Z9

Tel: 905-895-1717 Fax: 905-830-1118

Hamilton

70 Unsworth Dr., Unit 16,

Hamilton, ON L8W 3K4

Tel: 905-218-6009 Fax: 905-218-6011



www.arsrestoration.ca





• Fire • Flood • Wind • Contents



First General

Property Restoration Specialists

Waterloo Region

227 Riverbend Drive, Kitchener

519.584.7000

Grey - Bruce

540 1st Street, Hanover

519.364.1317

A **Durree** Group Inc. company



PARKWAY AUTO RECYCLERS

Your Best Choice for Quality Late Model Auto Parts Since 1963



- Thousands of Parts In Stock!!!
- Guaranteed Delivery on All In Stock Parts
- Fast Friendly & Reliable Service
- Nation Wide Parts Locating
- Large Selection of Refurbishable Wrecks



www.parkwayautorecyclers.com

info@parkwayautorecyclers.com

On Time As Described Delivery, All Day Everyday
90 Day Guaranteed Parts • One Year Extended Warranties

519-894-1450

Fax: 519-894-1948

21 Manitou Drive, Kitchener Ontario N2C 1K9





It's time for our own 'Game of Drones'!

Join us on Thursday, September 28, 2017 as we kick-off our 2017-2018 OIAA year! The Crawford drone team will be joining us with a drone presentation and providing information on how drones can be used with insurance claims. Dinner will be a catered BBQ. This is a casual outdoor event so please dress for the outside weather (we will move inside should weather not cooperate with us).



Location: Wilmot Rod & Gun Club (2607 Bleams Rd, New Hamburg, ON N3A 3J2)

Time: 5:30pm social time, dinner at 6:30 with presentation to follow.

Space is limited. As such, we will not be accepting any ticket purchases at the door

Purchas your tickets today at <http://www.kw-oiaa.ca/>

2016-2017 K-W OIAA ADVERTISERS DIRECTORY

Access Restoration Services	65
Arcon Engineering	26
Carpet Department	Inside Back Cover
Carstar	26
Caskanette Udall	Outside Back Cover
CRDN	62
Davis Martindale Advisory Service Inc	Inside Front Cover & 23
First General Services	68
First Response Restoration	Inside Back Cover
Golden Triangle DKI	Outside Back Cover
Ground Force	62
Hrycay Consulting Engineers	59
KPMG	37
Larrek Investigations	11 & 34
Lerners	53
MDD	26
Miller Thomson LLP	20 & 44
Origin & Cause Inc.	53
Pario	37
Parkway Auto Recyclers	68
Paul Davis Systems	Inside Front Cover
PwC	Inside Back Cover
Relectronic-Remech	62
Restoration 1	44
Samis+Company	14 & 47
SERVPRO	17
Strone Restorations	26
Winmar	50
Xpera Risk Mitigation & Investigation	56



**Building Relationships
One Floor at a Time**



www.carpetdepartment.com

271 Shoemaker Street, Unit 2,
Kitchener, ON N2E 3B3

Tel: (519) 894-7162
(888) 894-7162

Fax: (519) 894-0642

www.pwc.ca/en

Independent, objective, expert claims quantification and trusted advice

PwC offers strategic assistance to insurance companies, policyholders and their legal counsel.

- Commercial insurance claims review and preparation
- Personal injury claims loss quantification
- Expert witness testimony and assistance at mediation, arbitration or court hearings
- Educational seminars
- Software for Net Weekly Income Calculations

pwc

Contacts

Chris Gray	Zainab Walji
Jim Forbes	Blake DeClark
Caitlin Harris	

Telephone

519 570 5700

© 2014 PricewaterhouseCoopers LLP. All rights reserved. "PwC" refers to PricewaterhouseCoopers LLP, an Ontario limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, which is not a member firm in a separate legal entity. 2014-04-01-0000



TIME TO CALL THE DRYING EXPERTS

1-888-647-3334



FIRST RESPONSE
Restorations Inc. ESTABLISHED 1997

Providing Emergency Services 24 hrs a day, 7 days a week

Email: 1respond@firstresponserestorations.ca

www.firstresponserestorations.ca

2 Locations to Serve You!

- 172 Washburn Dr., Kitchener N2R 1S2
- 126 Malcolm Rd., Guelph N1K 1J1

Service with Commitment and Integrity



Caskanette Udall

CONSULTING ENGINEERS

EXPERIENCED • TRUSTED • PROMPT

Fire Investigations

Accident Reconstruction

Personal Injury

Environmental Services

Structural Design

Building Science

Property Claims

Mould & Asbestos

248-675 Queen St. S., Kitchener, ON N2M 1A1
www.caskanette.on.ca 1-800-920-5854
info@caskanette.on.ca



**Service you need,
by people you trust.**



Serving the Waterloo region
and surrounding areas

2302 Dumfries Road Units 2&3
Cambridge, ON N1R 5S3
PHONE: 519.624.4487
FAX: 519.624.4484
TOLL FREE: 1.877.458.4487

www.GTRS.ca