

### PRESIDENT'S MESSAGE AUGUST 2014

Summer has finally arrived! After a long cold winter I hope that I don't hear anyone complaining about the heat.

I would like to start off thanking the 2013/14 executive committee, especially our outgoing president Cyndy Craig. Without your hard work and dedication this past year would not have been such a success. We have some members that are leaving the committee this year. A special thank you to Mike McLeod, Dale Stuart and Randy Higgins, we appreciate everything you have contributed during your time on the executive committee. I would like to welcome the new committee members, Secretary- Ryan Potts and Directors- Michelle Manolache and Gillian Reain.

We just completed the 2014 KW-OIAA Golf Tournament, which was a huge success. We raised over \$6000 for our charity, KidsAbility. I am so thankful to our executive committee, adjusters and vendors who have all helped to make this event a success. With that being said our annual Trade Show will be held at The Concordia Club on September 25th. The registration forms are available in this bulletin, as well as online via our website www.kwoiaa.com. If you have any questions regarding the upcoming trade show, I will be happy to answer them. The trade show is a great way to meet other members in the insurance industry in Kitchener Waterloo and surrounding areas. Please tell all of your co-workers about the event. We always like to see new members come out to our events.

Don't forget to check out our website, Facebook and Twitter to see the upcoming events that will be taking place this year. We are always looking for good articles regarding all aspects of our business and I would encourage our members to come forward with any ideas for our educational meetings.

As for myself, as your new President I am always looking for comments, suggestions or concerns to make our committee the best it can be. I will be working closely with our new executive and look forward to a successful year. Please let me know if there is anything I can do for you.

I am looking forward to the upcoming year and hope that everyone has a safe and happy summer. See you all at the Trade Show!

Laura Potts, TD Insurance KW OIAA President

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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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#### Schedule of K-W Chapter Monthly Meeting for 2014-2015

Date	Торіс
September 27	Trade Show – Concordia Club Laura Potts and Mark Hale
October 30	SIU – Educational Meeting Stephanie Storer and Jennifer Brown
November 27	Chili Cook-Off Cyndy Craig and Charlene Ferris
December 6	Kids Christmas Party *Please note this is a Saturday Cyndy Craig and Jennifer Brown and Randy Higgins
December 18	Christmas Party and Past President's Night Laura Potts and Ryan Potts
January 29	Educational Meeting – TBA Michelle Manolache and Dan Strigberger
February 26	Educational Meeting – TBA Stephen Tucker and Gillian Reain
March 26	Provincial Seminar Ashleigh Leon and Stephen Tucker
April 30	Election and Fun Night Ryan Potts and Michelle Manolache
Мау	Out of Town Meeting
June 25	Charity Golf Tournament Laura Potts and Mark Hale

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# K-W O.I.A.A.TRADE SHOW DINNER REGISTRATIONWHEN:THURSDAY, SEPTEMBER 25, 2014WHERE:CONCORDIA CLUB<br/>429 Ottawa Street, KitchenerDOORS OPEN:4:00 P.M.DINNER:7:00 P.M.

DINNER PRICE: \$35.00 (HST \$4.00 included in price) HST#: 89331 1217 RT 0001.

To order your meal(s) please cor	mplete the following:	
Name:		
Company Name:		
# of Dinner Tickets:	_ X \$35.00 = \$	Amount Enclosed
Cheques Payable to: KW OIAA		

Mail cheque and Registration form to: KW O.I.A.A. P.O. Box 40079 – Waterloo Square 75 King Street South Waterloo, On N2J 4V1 Inquiries can be directed to: Laura Potts via (519) 884-6976 or laura.potts@tdinsurance.com

#### \* PLEASE NOTE – NO MEALS CAN BE PURCHASED ON THE DAY OF THE TRADESHOW \*





## KITCHENER WATERLOO CHAPTER O.I.A.A. TRADE SHOW BOOTH REGISTRATION WHEN: Thursday, September 25, 2014 WHERE: CONCORDIA CLUB, 429 Ottawa Street FEES: Single booth: (10' x 10', including tablecloth) BOOTHS WILL NOT BE HELD WITHOUT PAYMENT Booth price \$265.00 + \$34.45 HST = \$299.45 Dinner: \$35.00 per meal (HST \$4.00 included in price) HST#: 89331 1217 RT 0001

#### IMPORTANT TIMES: 12:00 pm - Booth Set Up 4:00 pm - Guests Arrive 7:00 pm - Dinner

Company Name:		
Contact Person: Phone:		
Email:		
Do you require electrical outlet: Do you require a vegetarian meal:		
# of Booth(s) at \$299.45 = \$		
# of Dinner(s) at \$35.00 = \$		
Cheque Total \$ Cheque payable to: KW OIAA		

Registration must be accompanied by full payment

#### MEALS MUST BE ORDERED IN ADVANCE

Mail cheque and copy of Registration to: KW OIAA, P.O. Box 40079, Waterloo Square – 75 King Street South Waterloo, Ontario N2J 4V1 Inquiries can be directed to: Laura Potts, laura.potts@tdinaurance.com (519) 884-6976

Please RSVP by September 1, 2014

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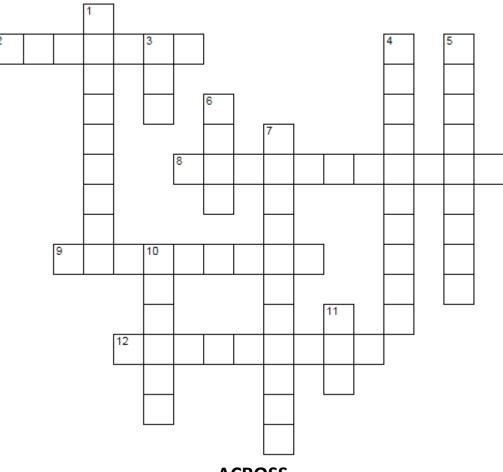


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#### Insurance



#### ACROSS

- 2 What major Ontario town flooded summer of 2013
- 8 Winner of the photo contest

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- 9 What charity got the proceeds from the curling bonspiel
- 12 The name of the town where the massive fires took place in 2011.

#### DOWN

- 1 If you have an at-fault accident
- 3 How many months are bulletins printed in
- 4 Current president
- 5 First event of every year
- 6 Short form for our association
- 7 Charity supported by the annual golf tournament
- 10 The number of board members
- 11 What company does one of the social directors work for?

#### Answers will be in the September Issue.

#### Have you met our new executive members??

Gillian Reain works as an Accident Benefits Claims Representative at Economical Insurance, she has worked as an AB representative since 2010, but has been at Economical for 8 years. She is an active member of the KW Humane Society and has been involved with them for the past 8 years. Gillian enjoys to travel and spending time at amusement parks. Her fun fact is that she owns, and still uses, an ipod that is older than her entire career at Economical!!

Michelle Manolache has worked for Economical Insurance for the last 6 years in various roles and is currently an Accident Benefits Adjuster. Michelle enjoys hiking, camping, tennis and most of all travelling to new destinations. She received her Bachelor's degree(s) in Criminal Justice and Public Policy as well as Political Science from the University of Guelph and is currently pursuing a CIP designation.

Ryan Potts has been in the insurance industry for 3 years and is currently working as a field adjuster with Cunningham Lindsay. He is excited to be joining the committee and looks forward to the many adventures. He is also an avid golfer and snowboarder.



#### **CONGRATULATIONS TO MANISH PATEL!!**

Congratulations to Manish – he is the 2014 KW OIAA Cover Photo Contest Winner! His amazing photo, will grace our cover for the 2014-2015 term.

Thank you to our other contributors Ryan Potts and Peter Neufeld.

We will be having another contest for the 2015-2016 cover, so get your camera ready! It's never too soon to start taking pictures!



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#### SOCIAL CHIT CHAT

#### Articles! Articles! Articles!

Please send us informative insurance related articles for the monthly Bulletin and our website! http://www.kw-oiaa.ca/

A hot topic in Insurance today is cyber-crime, information leaks, cyber breach, and general ignorance to reducing exposure and mitigating risk to cyber-crime. According to Crawford Canada's paper "The Future of Cyber Insurance", mentioned in an article in the Canadian Underwriter July 11<sup>th</sup> 2014, "Insurers currently lack the data and claims history to build an accurate picture of the exposure, and in lieu of this, are reluctant to offer broad coverage wording and capacity to fully indemnify against first and third party cyber risks" (*Cybercrime still evolving, many breaches uninsured: Crawford & Company).* The paper also mentions "A dialogue between risk managers, information officers, their brokers, insurers and claims professionals is essential in building a distinct methodology for coping with cyber claims".

For the full article: http://www.canadianunderwriter.ca/news/cyber-crime-still-evolving-many-breachesuninsured-crawford-company/1003154150/

**Let's discuss:** We can start our own dialogue on Facebook. If anyone has helpful information for insurers and insureds on Cyber-Crime, please post on our Facebook page!

Looking forward to seeing all of you at our annual tradeshow this fall! Concordia Club, Sept 25<sup>th</sup>.

Cheers, Stephanie Storer, CKR Global Investigations KW OIAA Social Director







#### **2014 GOLF TOURNAMENT!!!**

Another great day for the John McHugh Memorial Golf Tournament! We were able to raise an amazing \$6,250 for KidsAbility!!

Thank you to everyone how came out to participate and to all of our Hole Sponsors. Thank you also to everyone who donated a door prize, it is greatly appreciated. Our putting contest winners were Trish Stuart and Rob Reynolds. Rob graciously donated his prize back and we gave the cash equivalent to KidsAbility...then we auctioned off the prize and gave that money to KidsAbility too!!

Our 50/50 winner, Donald Perry from Ground Force, also donated the winnings back to KidsAbility!! Thank you to Winmar Kitchener for their generous donation to KidsAbility of \$500!

Thank you to Larrek for taking the team photos and to Marlene Pike from Relectronics for helping to sell 50/50 and Raffle tickets!

We hope to see everyone back out again next year !!









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#### Qualifying EDR Data -

Even with new regulations not all recorders are created equal

#### BY: JAMES R. HRYCAY, M.A.Sc., P.Eng, ROGER BORTOLIN, P.Eng, MATTHEW ARBOUR, B.A.Sc.





Light vehicle event data recorders, or what has come to be known as "black boxes," has been a bit of a hot topic in the

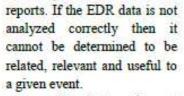
accident reconstruction world for some time and has now found itself gathering even more attention as the regulations of the US Department of Transportation National Highway Traffic Safety Administration (NHTSA) 49 CFR Part 563 have taken effect 49 CFR Part 563 mandated that any vehicle produced after 2012 SEPT 01 which has an Event Data Recorder (EDR) installed would need to comply with specific outlined requirements for data elements, data capture and format, data retrieval and data crash survivability. It is important to remember that to date

EDRs are not mandated in all vehicles, however, as recently as 2012 DEC 07 the NHTSA has given notice of proposed rulemaking regarding 49 CFR Part 571 which would mandate the installation of EDRs in most light vehicles manufactured after 2014 SEPT 01.

EDRs themselves have been around for quite some time having been first

introduced by GM in 1994. Since then, the majority of automakers have introduced their own versions of EDRs. As is natural in the progression of technology between competing original equipment manufacturers (OEMs) the information captured and available in EDR modules is ever increasing and differs not only between companies but even between some makes and models within the same company. As the information from EDRs became available (outside of the OEMs) using commercially available tools the use of EDR information in accident reconstruction has also increased.

To date, a very optimistic 5% of vehicles on the road are designed to meet the new US NHSTA EDR regulations, so there remains a large percentage of vehicles which contain varying types and forms of data and some vehicles with possibly no data available at all. Even for the 2014 model year vehicles which meet the data regulations laid out in 49 CFR Part 563, there are many differences between OEMs regarding additional information that is made available within the EDR reports. As one can imagine this results in a large amount of interpretation and data analysis of what are really individualistic EDR



The first and most important element of the analysis is of course confirming that the event captured by the EDR is complete, accurate and for the event in question. Luckily,

with newer vehicles there is a requirement for the EDR to display whether or not a full event was captured, but for vehicles manufactured prior to 2012 SEPT 01 this may not be as easy to determine. The analyst needs to be able to interpret the available data and conclude with certainty that the recording in question provides sufficient information to properly reconstruct the accident. There are some tried and



Retrieving the EDR from a crashed vehicle may not always be simple, in this case the front passenger seat needed to be dismantled to gain access

tested methods to work through this step relatively easily and a trained and experienced analyst should be able to reach the proper conclusion regarding whether or not the recorded event is complete and is related to the event in question.

After confirming that a report is complete and accurate, some would argue that the most important section of all reports to review and understand is the data limitations section. This section outlines the various "need-to-know" pieces of information regarding the specific vehicle being downloaded. Anything from event storage priorities, to length of recordings captured before and after the system triggered, to whether or not some data values are reported opposite to common conventions is captured in this section. In many cases the data

limitations will be able to assist the analyst in determining why a certain aspect of the report may not make sense.

Once it has been confirmed that the report is complete and is related to the event in question and all of the data limitations have been reviewed and understood it is time to start the actual data interpretation of the event. Typical values that are generated by the report include longitudinal (forward) and lateral (side) deltaV, wheel speed prior to algorithm enable, accelerator or

throttle percentage and brake pedal status. Of course, properly interpreting all of these values takes some training, practice and experience. Items such as time delay between data points, buffer speeds, data clipping and both underreporting and overreporting of values are all common issues that the analyst of the data needs to be able to recognize and deal with in order to reach the proper conclusions.

Along with the many typical values that are now regulated to be captured by EDRs there is also additional information that some OEMs choose to include in their reports. For example, brake pressure which is reported in newer Toyota reports appears as though it may turn out to be useful in determining how hard a brake pedal is pressed, but to date no tests have been run to confirm whether or not a definite correlation can be made. Additional OEMs provide stability control information which can lead to



Staying current with EDR firmware and software updates is key to ensuring the data collected is as accurate and complete as possible

determining the actual drag factor experienced by the vehicle and others provide yaw rate which can assist in confirming whether or not a vehicle was out of control prior to the collision.

As with any first time experience, things do not always go perfectly and OEMs and users are constantly finding idiosyncrasies and anomalies in the reports which need to be reviewed and corrected for future software versions. One method to protect from gathering possibly misreported data is to ensure that you are always reading information using the most recent software release for any given EDR reader. Training is also available from various recognized engineering authoritative bodies on the subject which will assist with proper utilization of the available data, tools and software.

> This may seem like a lot to consider and remember but the important thing to keep in mind is that no matter what the vehicle's make or model is, the information obtained from an EDR is all just data. A trained and experienced expert should have no issues taking EDR report data from any of the commercially available tools and be able to draw appropriate conclusions from the data. At this point EDRs cannot fully replace scene evidence and they act primarily to supplement traditional

reconstruction methods. As EDRs and other safety devices continue to advance and be installed in vehicles it is important for the experts in the accident reconstruction field to stay on top of the learning curve and be able to use any potentially relevant data to assist in ensuring the most accurate conclusions are reached.

HRYCAY Consulting Engineers Inc. is based out of Windsor, Ontario with additional offices in Guelph, Ontario and Dartmouth, Nova Scotia. The firm has investigated and analyzed many types of motor vehicle accidents in all of the Canadian provinces, the Northwest Territories and in 47 of the 48 contiguous US States. The firm's engineers have been qualified and have given expert testimony for both the defense and plaintiff in various cases in 3 Canadian Provinces and 14 different States.



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#### **Reporting a Spill**

#### Dave Marks, P.Geo. QPESA

Chemical spills or releases happen on a routine basis in Ontario. A summary report prepared by the Ministry's indicates that 5,154 spills (14 a day) were documented in 2009 and that 45% of the spills were related to petroleum products.

Spills occur through equipment failure, human error, automotive accidents, natural disasters, vandalism or illegal dumping. The release of even a small amount of a chemical into the natural environmental can cause significant issues for property owners and their insurance companies. In the insurance industry adjusters would be familiar with spills from fuel oil tanks or automotive accidents. It has been our experience that there is some confusion on the spill reporting requirements and the following provides some direction on contacting the appropriate agencies.

The key spill reporting provisions are found in Part X of the Ontario Environmental Protection Act (EPA). The EPA defines a spill as a discharge of a pollutant i) into the natural environment; ii) from or out of a structure, vehicle or other container; and iii) that is abnormal in quality or quantity in light of all the circumstances of the discharge. Under Ontario Regulation 675/98 there are several classes of spills that are exempt from reporting including releases of less than 100 L from motor vehicles (Class VI), less than 100 L of gasoline or associated products (Class VIII) on private properties (restricted public access) or less than 25 L of gasoline or associated products on public accessible lands (also Class VIII). The Class VIII spills relate to the petroleum sector and include storage tanks. The exemption only applies as long as the spill does not enter any waters, is not likely to cause an adverse effect and arrangements for remediation are made and carried out immediately.

Two of the key provisions in Part X include a duty to report and a duty to clean up and restore. The duty to report a spill is described in Section 92 of the EPA and states that every person having control of a pollutant that is spilled and every person who spills, causes or permits a spill of a pollutant shall "forthwith" notify the Ministry and the municipality. Basically the "discharger" is responsible for notifying the Ministry that a spill has occurred. In the case of fuel oil tank leak this responsibility will ultimately fall to the home owner although there may be extenuating circumstances (i.e. fuel delivery) where the owner is not considered the discharger. Regardless of the circumstances, property owners should be directed to report the spill immediately. Spill reporting is considered a serious matter by the Ministry of the Environment and failure to meet the regulations has resulted in heavy fines and even jail time for offenders.



In Ontario spills are reported to the Spills Action Centre (SAC) 1-800-268-6060. This is a 24 hour provincial service for receiving and coordinating responses to spills or other environmental matters. SACs responsibilities include a need to evaluate each incident and (if required) to initiate and coordinate a response. SAC is also responsible for warning other potentially affected parties (i.e. water plants, health agencies, etc.). The term "forthwith" means that the spill must be reported immediately upon discovery.

When calling SAC, property owners or dischargers should be prepared to provide the date, time and location of the spill. The location should include the municipal address as well as a description of the affected area of the property. Other information would include the type of contaminant, the quantity and the cause of



the spill. SAC will also want to know if the spill has stopped and what actions were taken (or are planned) to cleanup and dispose of the contaminat. They will also require the name of the property owner, the name of the person or company in charge of the contaminat at the time of the spill and the name of a contact person.

SAC will notify the local Ministry office (both regional and district levels) as well as the local municipality. If the spill involves a fuel oil tank the Technical Standards and Safety Authority (TSSA) are notified and will be the lead agency involved in the investigation. Depending on the quantities and types of contaminants involved an environmental officer may attend the spill within a few hours; however typically if the quantities are small, the environmental risk is low and/or the process is being managed by a consultant / contractor the remediation will be left to the owner or discharger. A follow-up phone call is usually made by the local environmental officer within a week or two of a spill to verify the information and confirm that the remediation process is being completed. In some cases a remediation report will be required by either the Ministry of the TSSA.

We have been involved in situations where the proper spills reporting process had not been followed. Fortunately once the calls were made no charges were laid by the district or regional offices, despite the fact that several hours had elapsed. Insurance adjusters, as one of the main points of contact after a spill, should ensure that their clients are informed of the regulatory requirements for reporting. An owner, or discharger, can request that a consultant or contractor make the call. Over the past 25 years I have made many calls to SAC, and can report that the staff at SAC is both helpful and professional.

Dave Marks, P.Geo. QPESA

Senior Hydrogeologist / Burnside's Contaminant Hydrogeology Group Manager R.J. Burnside & Associates Limited

During the past 25 years David has provided clients with solutions to various environmental challenges and has developed extensive project related experience in hydrogeologic investigations, development impact analysis, site assessment and remediation, brownfield redevelopment, pollution prevention, compliance auditing, and landfill assessment. Throughout his career, Dave has completed assignments for a diverse group of clients from both the public and private sectors.



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#### FINALITY AND CLARITY IN THE ACCIDENT BENEFITS CONTEXT (CASE COMMENT—COMPTON and STATE FARM)



Authored by: Nicholaus de Koning Partner, Kitchener-Waterloo 519.593.3212 ndekoning@millerthomson.com

A three-judge panel of the Divisional Court has provided some welcome guidance in the limitation period context pertaining to accident benefits disputes. The Court overruled a May 31, 2013 Motions Court Decision which had dismissed State Farm's motion for summary judgment on the basis of an apparently expired limitation period. In reversing the Motions Court Decision, the Court allowed the summary judgment motion and dismissed the action.

The Plaintiff, Compton, was involved in an accident of September 30, 2003. He was working as a factory worker for a company called Cancoil. Interestingly, he remained employed on a full-time and continuous basis from November 2003 until January 2006 (more than two years after the accident). State Farm might have, but didn't, attempt to rely on the statutory eligibility criterion for income replacement benefits that the insured person must have a "substantial inability" to engage in his or her usual occupational tasks "<u>arising as a result of, and</u> <u>within, 104 weeks</u>" of the accident. Income replacement benefits were paid for a period from early 2006 until September 20, 2007. State

Farm obtained an insurer's examination report from Dr. Gavin Shanks of August 27, 2007. The OCF-9 Explanation of Benefits was dated September 13, 2007 (effective September 30, 2007). Importantly, Mr. Compton mediated the denial through FSCO but didn't take any further steps following the Report of Mediator dated February 28, 2008.

On or about August 20, 2010, the Plaintiff obtained some medical evidence stating that he had been diagnosed with fibromyalgia and submitted a new Disability Certificate. State Farm then sent a further OCF-9 Explanation of Benefits on or about September 14, 2010, referring to the previous insurer's examination of Dr. Shanks in 2007 and the previous denial. The OCF-9 inadvertently referred to Dr. Shanks' report being authored on August 27, 2010, not August 27, 2007.

The Plaintiff submitted an Application for Mediation to FSCO dated February 21, 2011 and the Report of Mediator was issued April 24, 2012. The Court action was commenced May 4, 2012.

State Farm brought a summary judgment motion on the basis that the income replacement benefits claim was statute-barred and out of time. However, Justice Scott, the Motions Court Judge, dismissed the motion. Note that he did not determine that State Farm was not entitled to rely upon the limitation period, but took the view that he was unable to have a "full appreciation" of the issue in order to make a determination at the motions stage. Justice Scott stated "Generally speaking, I agree the limitation period would have commenced on September 13, 2007...However, I have concerns notably about the errors contained in the second OCF-9 dated September 14, 2010, which have not satisfied me as to the date of the limitation commenced in this unique situation." The Motions Judge also expressed "concerns about additional fresh medical findings."

The Divisional Court stated that the Motions Court Judge fell into error. The typographical error regarding the date of the medical report in the second OCF-9 did not confuse anyone and was, essentially, a red herring. There was no question that the second OCF-9 in September 2010 referred the reader back to the earlier stoppage of benefits in 2007.

Additionally, even if it was established that the Plaintiff became unable to work long after the initial 104 weeks from the date of the accident, or even 104 weeks after the earlier stoppage, he would not be able to reactivate the limitation period by making a fresh claim for further benefits. The Divisional Court confirmed that there is no "discoverability" concept in the analysis of the limitation period as it pertains to statutory accident benefits (reiterating Court of Appeal authority on this point). The Divisional Court also dismissed the Plaintiff's argument that the second OCF-9 in September 2010 created confusion (presumably as the OCF-9 would have contained standard verbiage about the two year limitation period running from the date of denial). The Divisional Court confirmed that there ought not to be confusion where subsequent correspondence refers back to an earlier stoppage.

Additionally, by the time of the second OCF-9 in September 2010, the income replacement benefit claim would presumably have been statute-barred and out of time already, as at this point it would have been about 3 years beyond the first stoppage in 2007.

The Decision is a useful illustration that the new "full appreciation" test for summary judgment may be appropriately utilized in accident benefits cases pertaining to an apparently expired limitation period. Additionally, a subsequent reiteration of the earlier denial (even one using the standard OCF-9 containing dispute resolution and limitation advice) does not reactivate the earlier limitation period.



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## cargo theft crackdown



IBC announces national cargo theft reporting program

#### Industry update from Insurance Bureau of Canada

#### Cracking down on cargo theft

Organized criminals have found a lucrative new way to defraud insurers and their customers.

Estimated to be a \$5 billion problem in Canada, cargo theft involves stealing trucks or trailers full of merchandise, often worth millions, to sell for a quick profit. Unfortunately, southern Ontario has recently become a hot spot for cargo crime.

Because drivers and trucking companies fear damaging their reputations and businesses, cargo theft often goes unreported, making it difficult to recover goods and prosecute criminals.

But the property and casualty insurance industry is taking action. In the spring of 2014, Insurance Bureau of Canada (IBC) and the Canadian Trucking Alliance (CTA) launched a national reporting program that lets insurers and trucking association members report cargo loss details online.

"Sharing information quickly is the key to recovering stolen goods and bringing criminals to justice," says Garry Robertson, National Director of IBC's Investigative Services. "This program lets us do that, and will provide valuable data to help quantify the cargo theft problem and develop ways to fight it," he adds.

Insurers can report cargo theft and claims information directly to IBC via an online reporting form on ibc.ca. Trucking association members can also submit anonymous tips online at ibc.ca or report information to the CTA or their provincial association.

IBC will analyze the data and share it promptly with a national network of law enforcement partners that includes Canadian and U.S. border agencies. Law enforcement can ask IBC to search the database to help identify property and to speed its recovery.

Organized cargo theft is a sophisticated operation. Robertson gives the recent example of a tractor-trailer load of T-shirts. The trailer was stolen at 3 a.m. north of Toronto, and by 6 a.m. some shirts were for sale at discount stores in small towns on Georgian Bay. By 9 a.m., the rest of the shirts were on another truck crossing the Peace Bridge, bound for Los Angeles with a final destination of India.

"To fight cargo theft, we must be as organized as the criminals," Robertson says.

For more information, visit the Insurance Crime section at <u>www.ibc.ca.</u> Follow us on Twitter @InsuranceBureau.

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#### Storm Drainage in Rural Ontario

#### Jeff Dickson, P.Eng. & Paul MacIntyre, LEL, C.E.T

Rural Ontario typically does not have storm sewers systems (funded by Tax Payers) per se to drain away rain water, surface runoff and melt water as you might expect in a built up (urbanized) area or a city. Alternatively rural municipalities often rely on a user pay process to establish drainage systems for the protection of its assets and for the improvement of lands used for agricultural purposes. That user pay process was initiated almost 200 years ago and has evolved and changed into what we refer to today as the Ontario Drainage Act.

The Drainage Act provides a Municipality with the ability to create and maintain a drainage system. There are 3 key elements to



a municipal drain: (a) it is a Community Project or a "communally accepted" project; (b) it has Legal Existence supported by a by-law adopting an engineer's Report; and (c) once constructed, the drain is considered to be Municipal Infrastructure.

Although there are many drainage systems in Ontario, not all of them are "municipal drains". Further, municipal drains can be open systems such as ditches, channels, etc. or they can be closed systems such as buried pipes, tiles, etc. They can include structures such as dykes, berms, buffer strips, pumping stations, grassed waterways, stormwater ponds, culverts and bridges; even creeks and watercourses or rivers can be municipal drains. Many were constructed to improve the drainage of agricultural land and they are a vital component of the local rural infrastructure. However, they can also be the outletting system for water collected by roadside ditches, residential lots, churches, schools, industrial & commercial lands and other property.



Once a drain becomes part of a Municipality's infrastructure, the Municipality is then responsible for repairing and maintaining it, usually through an appointed Drainage Superintendent. The Superintendent's job is also to provide landowners with guidance on how to address concerns associated with a drainage or a water problem or perhaps an existing system. They can outline some of the law relating to drainage and can provide options that a landowner may wish to investigate in order to resolve their drainage issues.

It has often been said that good drainage makes for good neighbours. Unfortunately, drainage of water is one the most common areas of dispute between rural neighbours,

whether they be farmers or not. When a dispute does arise, resolution to the issues may be found through two different legal processes, (1) Statute Law or (2) Common Law.

The Act most frequently used in rural Ontario to resolve drainage matters under Statute Law is The Drainage Act, Revised Statutes of Ontario, 1990, Chapter D.17 (last Amendment). Other possible statutes are the Planning Act or the Municipal Act.

If resolution of a dispute cannot be found under Statute Law, owners may resort to the Civil Courts and a solution under Common Law. To obtain a ruling by a Court, a civil action must be initiated by a damaged party. Only a Court or a Judge can make the final decision in the dispute and decide who is right or wrong through a lawsuit. There is no distinction in the Common Law between the rights of a corporation and the rights of a private landowner. A Municipal corporation at Common Law has no greater rights or obligations than other landowners. Furthermore, landowners are considered to be equal under the Common Law, whether they be private citizens, companies, road authorities, municipalities or Provincial and Federal governments.



If the system is not a municipal drain, then it may be any one of the following: a natural stream or watercourse; ravine; gully; private ditch/channel; etcetera; or, it may simply be surface drainage water. It could also consist of a feature(s) that is sometimes part of a municipal drain but that is (presumably) privately owned. If it is one of these "other" systems, it will more than likely fall into the realm of Common Law.

As noted, if landowners cannot mutually agree on how to resolve the problem, a final solution can be determined through the courts. However, there are other options available to landowners to resolve drainage matters:

- 1. Do nothing.
- 2. Fix it yourself. Under this scenario you would be responsible for any costs unless you can solicit other landowners to financially assist you or you obtain assistance through a funding program. You may also be limited to work on only your own property unless you receive permission from the other involved property owners. It should be noted that any proposed work within a regulated area i.e. adjacent to shorelines, watercourses, ravines, wetlands, etcetera requires review and approval of the local Conservation Authority.
- 3. Try to resolve the matter (if possible) as a Mutual Agreement Drain in accordance with Section 2 of The Drainage Act.
- 4. Try to resolve the matter by submitting a proper and complete "Petition for Drainage Works by Owners" for a municipal



drain in accordance with Section 4 of The Drainage Act. The Council of the Municipality would presumably appoint an engineer and, at the On Site Meeting, it is the duty of the engineer to determine if the petition is valid. If the petition is valid, a process under The Drainage Act would commence to, in the end, create a new municipal drain and a "communally accepted" project. The new drain could consist of all or portions of any existing natural watercourse, gully, drainage system or any other natural features that are deemed by the engineer as appropriate to be included as part of the drainage works as well as the construction of any new features such as piping, structures, etc. Once a municipal drain has been created under The Drainage Act, the Municipality is responsible for maintaining it but at the expense of all of the lands and roads assessed and in accordance with the manner determined by the engineer in the Report which must be adopted by a By-Law.



An owner may wish to contact their local Conservation Authority to determine if it has any programs that might help offset the cost of the work. Also before any work begins on any natural stream or watercourse, ravine, gully, private ditch/channel, etcetera, proper permits as issued by the various governing agencies (such as the local Conservation Authority, the Ontario Ministry of Natural Resources, Fisheries and Oceans Canada, etc.) must be in hand, otherwise the party responsible for the work could be held liable.

Drainage challenges in rural Ontario are rarely restricted to individual properties. As outlined, there is an Act and a formalized process that is designed to address drainage outlet concerns.

Jeff Dickson, P.Eng.
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Paul MacIntyre, LEL, C.E.T Drainage Engineer & Superintendent R.J. Burnside & Associates Limited

Mr. Jeff Dickson is a senior Municipal and Drainage Engineer in the Wingham office of R.J. Burnside & Associates Limited. Jeff's project experience spans a period of over 30 years and has included all aspects of field survey, detailed design, project management and construction / contract administration. Jeff has also provided expert evidence at hearings and tribunals before the Ontario Municipal Board, the OMAFRA Appeal Tribunal and the Drainage Referee.

Mr. Paul MacIntyre has over 25 years of experience in the field of Municipal and Drainage Engineering. His experience includes road design and construction, subdivision development, sewer and water projects, onsite sewage and lot grading as well as aggregate resource plans. Paul sits on the Board of Directors of the Drainage Superintendents Association of Ontario and is the appointed Drainage Superintendent for the Township of Perth South. He oversees the maintenance program for the Township and provides advice and guidance in matters of municipal drainage. He participates in all aspects of producing drainage reports under the Drainage Act.

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Chad Hanlon Manager Corporate Investigations & Security Services



#### Bee in the Bonnet Beaten by Back Block

We have all heard of the usual ways to find information through social media but quite often, we end up missing the obvious. There are more websites out there now that use a public platform than ever before. The days of standing on a milk crate with a megaphone in a local town speaker's corner are far behind us, being replaced with millions of active appendages.

We are all witness to the celebrity feuds that evolve through Twitter causing more PR nightmares than a substance abusing Mayor (arguable I suppose). The goal with Twitter is to gain as many followers as possible and have an influential voice with all the superfluous thoughts that filter through busy thumbs. As a result, you'd be hard pressed to find anyone declining a potential smart phone screen to fill. The same rings true with many other sites that have arose throughout the past few years. One may never think that the website Pinterest could assist in an **investigation**; they would be wrong. Pinterest is a billion dollar idea that allows people to share crafty ideas such as innovative recipes, inexpensive décor tips no matter how big or small, even remote undiscovered recreation spots. Utilized in an investigative manor, the best recipe that can be provided is the plain old breadcrumb that can begin or connect a trail leading to further activity.

Well I'm going to suggest another route to take where data mining has proven successful on many occasions; the all too archaic organized club sites.

Recently we conducted an initial **social media investigation** on a subject that was becoming quite a hindrance for a client. This particular subject had also become evasive and sporadic at best in co-operation with the initial investigation causing immediate red flags. After some data mining we hit pay dirt when we found that the subject was an active member in a roller derby league under an alias that would make a pro wrestler jealous. We were not only able to retrieve a schedule of the upcoming bouts (as they are called) but we could also pull up her very own league profile complete with a recent picture and persona. She apparently had a reputation for being quite aggressive and terms like 'hip-whip, rink rash, and back block were not used sparingly when others described her.

The investigator was sent to the next upcoming match to join the subcultural popular sport for a productive evening of filming. It didn't take long to realize that the leg injury sustained in the **claim** had clearly been replaced with bionics as our subject was a bonafide star complete with her own cheering section. Continuity is always a concern in **surveillance** of any kind and even after a 2-hour night of 't-stops, toe-stops and tripping' we had to be certain the evidence would be convincing enough to prove that this was no magical one-time game. After looking further into her sporting statistics, we were able to prove that this roller girl was the Cal Ripken of this world and hadn't missed a game all season.

The video evidence along with the social media gathered was certainly going to turn this derby dynamo into a cornered kitten.







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