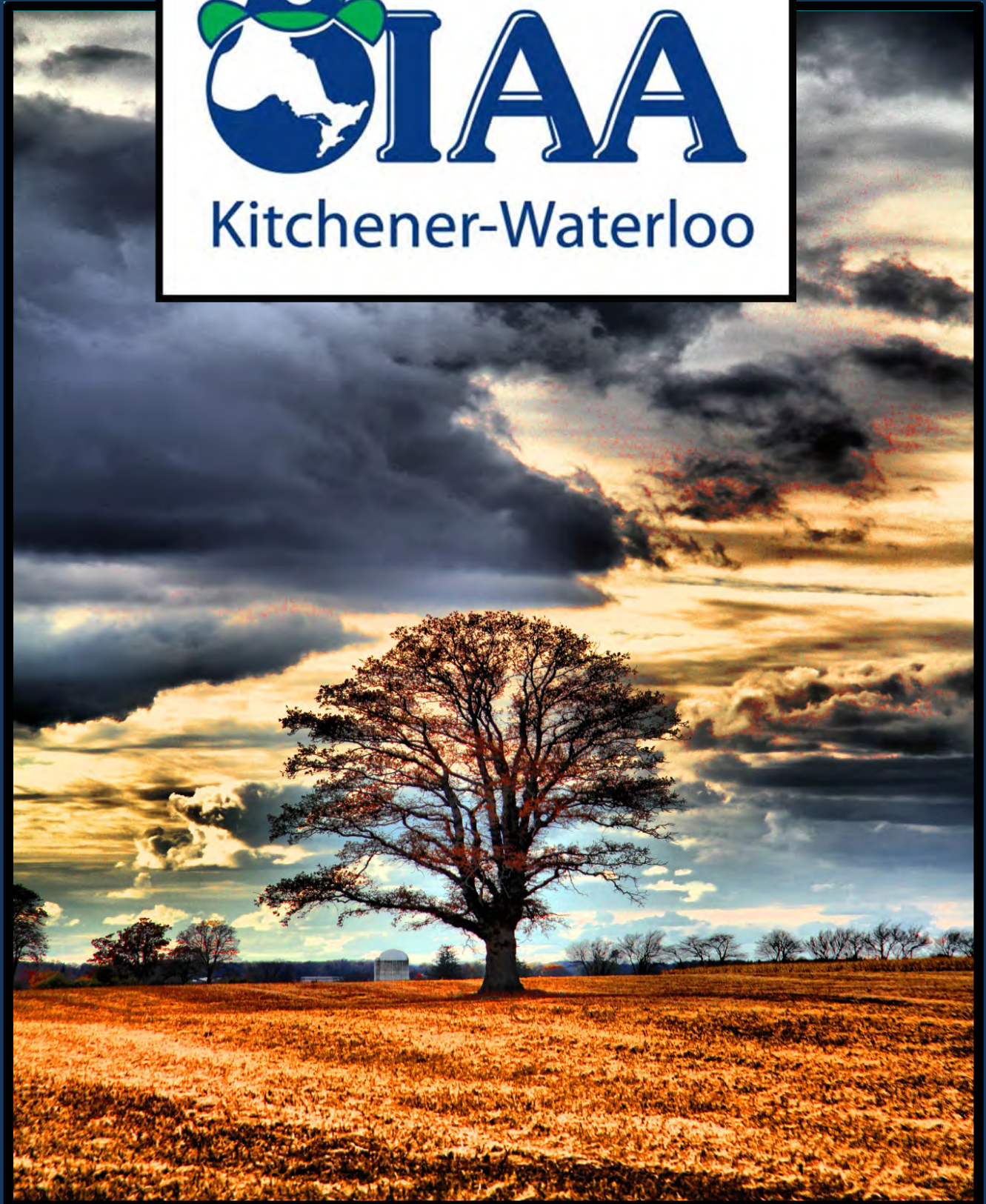




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Contacts

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Telephone

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PRESIDENT'S MESSAGE

NOVEMBER 2014

Fall is here and winter is fast approaching. Our calendar year is in full effect. We just completed our first dinner meeting of the year with speaker Steven Dubenow of CKR Global's Special Investigation Unit. This presentation was very interesting and informative. This was another successful event with a great topic. We had over 75 people attend the meeting. The 50/50 prize winner took home \$55.00.

Next month is our annual Chili Cook off...has your team signed up yet? This is a really fun event where you can vote for the winner of the "People's Choice" award. There will also be a prize for "Chef's Choice". If you would like to sign up please visit our website or email Cyndy Craig at ccraig@archinsurance.com.

Registration is now up for both the Kids' and Adults' Christmas parties. This year we are combining the adults' party with a Past Presidents' night. If you are a past president of the K-W OIAA and would like to attend this event please let me know (laura.potts@tdinsurance.com). Our Past Presidents and executive committee are what have made this organization so successful and we would like to thank them for all of their hard work over the years.

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. If you have any articles that you would like published in our bulletin please contact Manish Patel at mpatel@larrek.com.

The executive committee and I are always available if you have any questions about our organization. I am looking forward to the start of this New Year and hope to see you at the Trade Show!

Laura Potts, TD Insurance
K-W OIAA President



OIAA – Executive Council 2014-2015

Laura Potts

President

TD Insurance

519-884-6976

Email: laura.potts@tdinsurance.com

Cyndy Craig

Past-President

Arch Insurance Canada Ltd

647-293-5436

Email: ccraig@archinsurance.com

Mark Potts

Secretary

Claims Pro- Kitchener

226-750-0087

Email: mark.potts@scm.ca

Gillian Reain, BA

Director

Economical Insurance

519-570-8500 X43283

Email: gillian.reain@economical.com

Ashleigh Leon

Social Director

Miller Thomson LLP

519-593-2427

Email: aleon@millertthomson.com

Manish Patel

Bulletin Director

Larrek Investigations

519-576-3010

Email: mpatel@larrek.com

Jennifer Brown

Vice-President

Economical Insurance

519-570-8322

Email: jen.guttridge@gmail.com

Ryan Potts

Treasurer

Cunningham Lindsey Canada- Guelph

226-979-7091

Email: rpotts@cl-na.com

Stephen Tucker MA, CIP, CRM

Toronto Representative

Economical Insurance

519-570-8500 X43281

Email: stephen.tucker@economical.com

Daniel Strigberger

Web Director

Miller Thomson LLP

519-593-3253

Email: dstrigberger@millertthomson.com

Stephanie Storer

Social Director

CKR Global Investigations

519-884-6352 X233

Email: stephanie.storer@ckrglobal.com

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



IN THIS ISSUE...

President's Message	Page 1
2014-2015 K-W OIAA Executive	Page 2
Schedule of Meetings	Page 4
Kids' Christmas Party Information	Page 6
Social Chit Chat	Page 8
Toronto Delegate Report	Page 10
Caskanette Udall – Slip Testing and the BOT 3000	Pages 11-12
2014 K-W OIAA Golf Tournament Pics	Pages 14-15
Blaney McMurtry – Hot Tubbing Experts	Pages 16-17
Insurance Industry 9 th Annual Food Drive	Page 19
Co-operators Cambridge Fall Fundraiser	Pages 23-24
Miller Thomson – Successful Motion Confirms Defendant's Right to Prepare Insurance Examiners for Trial	Page 25
2015 OIAA Provincial Claims Conference	Pages 26-27
IIO Speakers Luncheon	Page 32
Crossword	Page 34
Adult Christmas Party Information	Page 39
Burnside – Proposed Structural Repairs	
Appear Far Stronger than the Existing Framing?	Pages 41-43
Advertisers' Index	Page 44

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

<u>Date</u>	<u>Topic</u>
November 27	Chili Cook-Off Cyndy Craig and Manish Patel
December 6	Kids Christmas Party 4:30-7:00pm *Please note this is a Saturday Jennifer Brown and Randy Higgins
December 18	Christmas Party and Past President's Night Laura Potts and Ryan Potts
January 29	Educational Meeting – TBA Dan Strigberger – Cyndy Craig
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 Mark Potts
May 7-9	Out of Town Meeting
June 25	Charity Golf Tournament Laura Potts and Jennifer Brown

Hello All,

Welcome to my first issue as Director of the K-W OIAA monthly bulletin! I hope you notice some fresh changes and find them appealing. I look forward to bringing you the best bulletin that this Chapter has ever seen! If you have any articles, photos, comments or questions about the bulletin, please send me an email: mpatel@larrek.com

Manish Patel
Larrek Investigations
K-W OIAA Bulletin Director



Case 5040

Perpetrator: Fuel Oil Product in Sump Pit

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Social Chit Chat

HAPPY NOVEMBER!

Though the “festing” is over, the weather is still reasonably beautiful and the colours are vibrant! Bring on the hot apple cider and hay bale rides for one more month...!!

Here's some of the latest news to keep you informed:

Did you know...?

Distracted driving is not just limited to cell phones and hand helds?

According to the Canadian Underwriter this month, the Insurance Institute for Highway Safety (IIHS) quotes that "Even though studies show that phone use by drivers has declined in states with bans, crashes reported to insurers haven't gone down during the same period".

Other causes for distracted driving collisions?

- Interacting with passengers
- Reaching for objects
- Eating
- Caring for a child
- Adjusting the radio or climate controls
- Using faulty/new hands-free technology
- Listening to audio materials (novels, documentaries, etc.)
- Talking/singing or dancing alone

The IIHA is committed to combatting all forms of distracted driving, beginning with awareness. So far current crash reports are looking pretty good compared to those reported back in 1988 (2% lower); although, we've seen an increase in the last year. (Source “Distracted driving ‘much larger problem than just electronic devices’”, 2014-10-27 *Canadian Underwriter*)

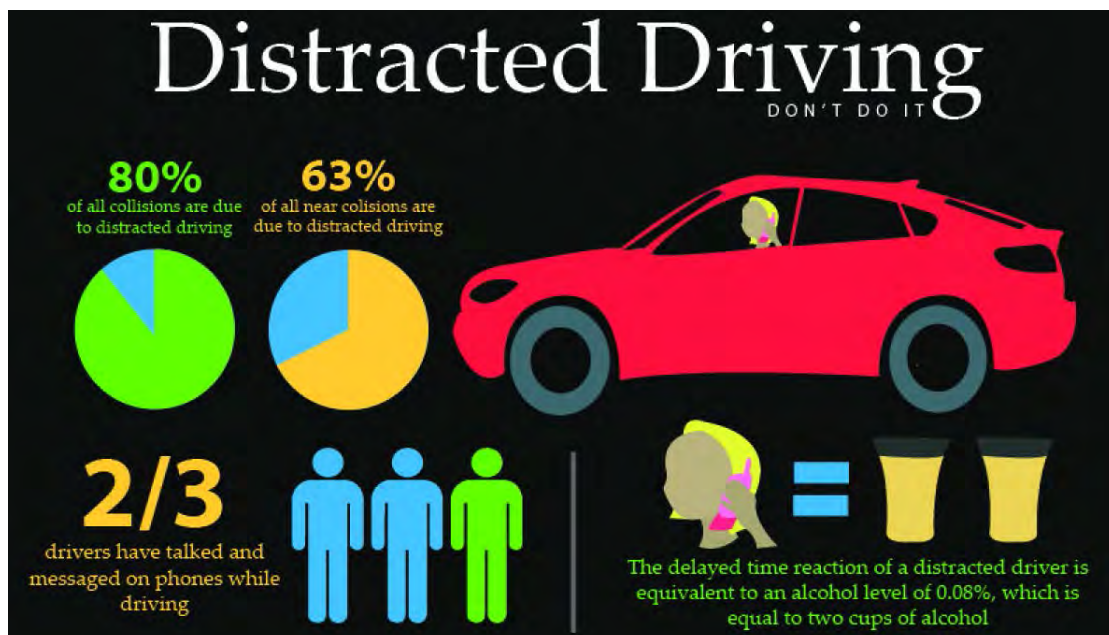
As you get ready to light up your fires and cozy down for the winter ahead, don't forget SNOW TIRES SNOW TIRES SNOW TIRES!!

Enjoy the autumn days and cozy nights!

Stephanie Storer

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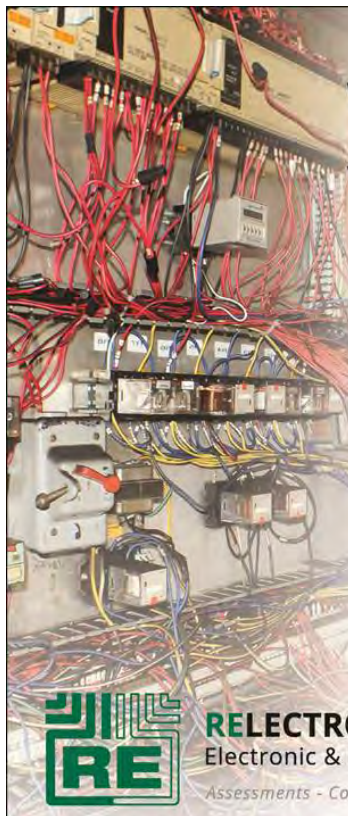
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TORONTO DELEGATE REPORT

Past Presidents' and Honourary Members' Night took place at the Grand Hotel in Toronto on October 8th. This event is very special night and it was nice to see so many past presidents from different generations. OIAA president Alf Strudwick made Norm McGlashan a life-time honourary member at the event. The guest speaker, Olympic gold medal winning goalie Sami Jo Small, talked about teamwork and embracing whatever role you are given in life.

The November Seminar takes place on November 12th at the Grand Hotel. The event is a panel of industry experts discussing Catastrophic Losses and lessons learned over the past year from underwriting, claims and reinsurance. The 2014 Christmas Party takes place on December 10th at the Westin Harbour Castle.

I hope you are able to join us at the upcoming Toronto events. As always details and registration for OIAA events are available at www.oiaa.com and you can stay tuned to OIAA events by following @PresidentOIAA on twitter or on Facebook.

November 12, 2014

Seminar – Panel discussion, Catastrophic Losses - The Grand Hotel, Toronto, ON

December 10, 2014

Christmas Party - The Westin Harbour Castle, Toronto, ON

February 4, 2015

2015 Claims Conference - Metro Toronto Convention Centre

March 10, 2015

Curling Bonspiel - Richmond Hill Curling Club, Richmond Hill, ON

April 8, 2015

Vendor Appreciation event – TBA

June 3, 2015

Golf tournament – TBA

Regards,

Stephen Tucker

Kitchener Waterloo OIAA Chapter, Toronto Delegate

Slip Testing and the BOT 3000

By Jason Nguyen



Caskanette Udall purchased the BOT 3000 back in 2012 to stay ahead of current codes, standards and regulations for slip testing. In the fall of 2012, American National Standards Institute (ANSI) and National Floor Safety Institute (NFSI) released the new and updated standards for slip testing of floor surfaces called ANSI A137.1 and ANSI/NFSI B101.1. Since the update, tile manufactures and construction companies have switched from the old ASTM C1028 standard that uses a horizontal pull dynamometer to the newly recommended BOT-3000 equipment.

The switch to the new standards and equipment became necessary due to problems with repeatability of test results using the various slip testers on the market. This BOT technology has been around and operational for decades in other countries such as Australia, Germany, New Zealand and the United Kingdom. In the United States (U.S.), it is becoming more common for architects, engineers and general contractors to request slip testing using the new standards from floor installers before signing off on the building and handing the key over to the owner as a way to reduce liability and increase quality control.

The BOT-3000 is a self-propelled device that uses various sensor materials which eliminates the potential for human error during use. Caskanette Udall utilizes the BOT-3000 for cases and it has proven to be effective and reliable. The slip test results are instantaneous and are measured in real-time. The results can be viewed on site and the data can be downloaded and printed.

Caskanette Udall recently updated from the BOT-3000 to the BOT-3000E. The newer model adds more security to protect clients from receiving altered or edited results. It has higher precision, repeatability and is generally more reliable when determining the coefficient of friction of hard surfaces. Our experts have travelled to the supplier's facility in Texas to train on the use, maintenance and required calibration of the newest equipment.

The BOT-3000/3000E cannot measure the coefficient of friction between the floor surface and other materials. For example, a recent case required measuring the coefficient of friction between an exercise mat and a gym floor. The horizontal pull dynamometer method is still useful for special cases like this. Caskanette Udall continues to utilize both these methods of friction testing, depending on the nature of the case.

Be assured that when you retain our firm to handle a slip and fall assessment, you will get the best measurements possible based on the current equipment available. Make sure you ask other potential experts if they are equipped and trained to do the same.

The BOT-3000E Digital Tribometer (surface friction tester)





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2014 K-W OIAA Golf Tournament – Ariss Valley





Hot Tubbing Experts

Article By: [Jess Bush](#)

Recently, I settled a multi-party, multi-action motor vehicle accident claim at the third pre-trial, which occurred on the eve of trial.

At the second pre-trial, some months earlier, the court had ordered a “hot tub” involving the four liability engineers.

Rule 20.05(2)(k) of the *Rules of Civil Procedure* provides that, where a summary judgment has been refused, or granted only in part, the court may give directions, including that any experts meet, on a without prejudice basis, to identify the issues on which the experts agree and disagree, to attempt to clarify and resolve any issues and to prepare a joint statement, setting out the areas of agreement and disagreement and the reasons for it. The court may order such a meeting if, in the opinion of the court, the benefits that may be achieved are proportionate to the amounts involved or the importance of the issues involved in the case and there is a reasonable prospect for agreement upon some or all of the issues or the rationale for opposing expert opinions is unknown and clarification would assist.

By virtue of Rule 50.07, if a proceeding is not settled at a pre-trial, the presiding judge may make such order, as the judge considers advisable with respect to the conduct of the proceeding, including a meeting of the type just described of experts.

Pre-trial judges are now ordering (or suggesting) these meetings or “hot tubs” on a more frequent basis. My experience involved engineers but it could easily have involved damages experts in another setting. In particular, often times, there are huge differences between future care cost experts and that could, as well, be the subject matter of one of these meetings.

With this background, I offer the following comments.

These meetings are only to be ordered when they make sense on the basis of proportionality. The fact is that such meetings are expensive as, in the case that I was involved in, the four experts met for the entire day and subsequent exchanges between them occurred before they were able to issue a joint statement. Clients involved in smaller claims may not wish to go down this road and counsel should be prepared to voice that concern when the pre-trial judge raises the idea of a “hot tub.”

The issue of expense is, of course, increased if counsel are to be involved in the meeting. In our case, counsel allowed the engineers to meet alone, although things may have occurred differently with different experts.

As mentioned, these meetings, and the product of these meetings, are without prejudice. However, the reality here is that agreements achieved, or gaps in opinions that are identified, will have real world results. An expert who has agreed to a point in a “hot tub” setting as being correct is unlikely to take a different position when in the witness box.

In every case, counsel should meet and brief their expert as they would for trial.

As you can appreciate, the skill set required of an expert for this task may be different than the skill set required to review evidence and prepare an opinion, present that opinion at trial and be subject to cross-examination. In a “hot tub” setting, the expert will require not only a grasp of the underlying substance but, as well, a strong personality, people skills and even negotiation skills. Not every expert will be well suited to this process.

In my recent experience, certain gaps in the opinions of the opposing engineers were identified during this process. I feared that the “hot tubbing” process would simply allow the opposing experts to back-fill their opinions to somehow fill those gaps by delivering supplementary opinions. That occurred to some extent but, in the end, I believe that the gaps identified during this process allowed the claims to settle. So it was worthwhile.

Choosing an expert is an important task in the life of a lawsuit. Not every expert is a professional witness. Now counsel should bear in mind that their expert, whether a liability expert or a damages expert, may be required to participate in a meeting of experts following the pre-trial and before trial. The skill set required to succeed in that arena should be considered when experts are being retained.

Counsel, with their client’s input, should be prepared, at the pretrial, to address the issue of whether a hot tub makes economic sense in their particular case if the pretrial judge raises the question.

Articles



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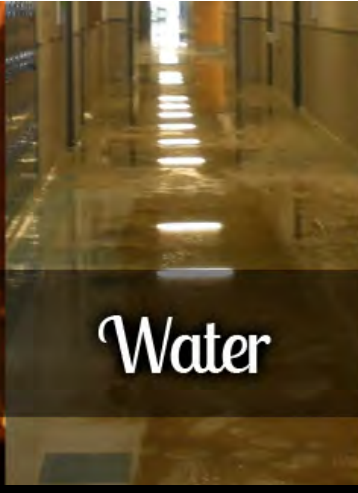
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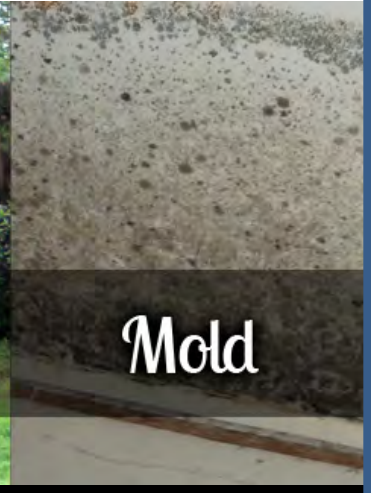
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The Co-operators Cambridge Claims office held their annual fall fundraiser on Friday October 3. This year the event was called “Support the Fight” as all funds raised were donated to Juravinski Cancer Centre – Hematology Unit and Lisaard House. The day had a silent auction, bake sale and 50/50. Fo’Cheezy Food Truck attended and everyone enjoyed an amazing lunch, sponsored by Larrek Investigations. Let’s not forget the team challenge between claims staff, advisor staff and the vendors! Due to everyone’s willingness to provide their time, the donations to the silent auction, and the money that was generously given, **we were able to raise over \$17,800 for a very worthy cause!** Thank you to everyone who attended and we look forward to seeing you next year!!





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Successful Motion Confirms Defendant's Right to Prepare Insurer Examiners for Trial

October 23, 2014

Nicholaus de Koning, Helen D.K. Friedman, Audrey H. Wong

In the context of insurer examinations under the *Statutory Accident Benefits Schedule* ("Schedule"), the Superior Court has found that for the purpose of trial preparation, a Plaintiff's consent is not required for Defendant's counsel to meet with the examiners.

In *Lacroix v Federation Insurance Company of Canada, 2014 ONSC 6002*, the Plaintiff brought an action against the Defendant for income replacement benefits (IRB).

The Plaintiff was involved in a car accident in November 2004. The Defendant then proceeded with insurer medical examinations pursuant to s.42 of the Schedule (as it was then). The examiners concluded that the Plaintiff could eventually return to work with accommodations and/or retraining. Consequently, the Defendant discontinued IRB in April 2007, taking the position that the Plaintiff did not meet the "complete inability" disability criteria with respect to alternate employment. The Plaintiff disputed this and claimed to meet the disability test.

Prior to trial starting on October 14, 2014, Plaintiff's counsel had corresponded with the s.42 examiners cautioning the examiners against communicating with Defendant's counsel prior to the trial (as they did not have the Plaintiff's consent to discuss her healthcare information).

Subsequently, at the start of the trial, the Defendant brought a motion for:

1. an Order confirming that counsel for the Defendant is entitled to discuss the subject matter of this action with certain medical witnesses in advance of those witnesses being called for Trial; and,
2. an Order directing counsel for the Plaintiff to communicate in writing with the witnesses [sic] that they may discuss the subject matter of this action, including health information of the Plaintiff, with counsel for the Defendant;

The Defendant argued that the Plaintiff has a reduced expectation of privacy by participating in the litigation process. Further, as is its right to prepare for trial, the Defendant wished to refresh the memory of the examiner witnesses as many years had passed since their examinations. The Defendant also asserted that by obtaining these reports pursuant to s.42 of the Schedule, these reports belonged to the Defendant. The Defendant also recognized the distinction between s.42 of the Schedule and s.105 of the *Courts of Justice Act*, acknowledging that leave of the Court would be required should any testimony go beyond the examiner's initial reports.

The Plaintiff took the position that the s.42 reports did not belong to the Defendant insurer, as a copy must be provided to the Plaintiff. The Plaintiff alleged that the Defendant's intention behind meeting with the examiners was to explore information obtained after the initial report. The Plaintiff argued that there was no statutory right for ongoing communication with these examiners; potential unfairness would ensue if one party had access to more medical information than the other, without the other's presence.

The Honourable Justice Marc R. Labrosse noted that although s.105 of the *Courts of Justice Act* would also permit a "defence medical" if the insured person elected to start a court action, s.42 of the Schedule may be the insurer's only opportunity to obtain a report from an examiner of its choice. If the Plaintiff had commenced a FSCO arbitration instead, the insurer would be limited to the s.42 reports. There is no suggestion that the examiner must be neutral. Justice Labrosse went on to note that s.42 of the Schedule neither limits nor authorizes communications between the insurer and examiner. The appropriateness of those communications is determined on a case-by-case basis. Justice Labrosse noted that the Plaintiff consented to the release of her medical information in her Application for Accident Benefits (OCF-1), so there was no concern that the examiner would disclose confidential information to the Defendant.

Justice Labrosse concluded that no further consent is required from the Plaintiff for the Defendant's counsel to meet with the examiners, revisit the report and relevant health information, and prepare the examiner for cross-examination. It would otherwise be prejudicial to the Defendant to prevent them from doing so. In effect, this is considered a part of the normal trial preparation process.

This is a truly unusual issue as the OCF-1 should be a full answer to the concern. Had the approach taken by the Plaintiff been successful, the insurer Defendant would have been deprived of the ability to prepare their witnesses, which at the end of the day, would not benefit the court process.



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Schedule of Events

Thursday May 7th, 2015

2:00 pm—8:00 pm	Registration in main lobby
6:00 pm—9:00 pm	Trade Show with free time following

Friday May 8th, 2015

7:00 am—9:00 am	Continental Breakfast
8:00 am—10:00 am	Registration in main lobby
9:15 am—10:15 am	Seminars <ul style="list-style-type: none"> 1 - Daniel Dooley - Dooley Lucenti Barristers & Solicitors Trying tort cases without trials 2 - Kadey Schultz - Hughes Amys LLP Getting to the bottom of Auto Reform, Accident Benefit & Tort
10:15 am—10:30 am	Coffee Break
10:45 am—11:45 am	Seminars <ul style="list-style-type: none"> 1 - Stephanie Beattie - Centre for Disaster Recovery Catastrophic Management & Handling 2 - Anthony Kunkle - Mitchell Partners Investigation Services Advanced Desktop Investigation
12:00 pm—1:30 pm	Luncheon with guest speaker Dennis Hull
2:00 pm—3:30 pm	Seminar - Outdoors (rain or shine) DKI - Burn house demonstration
3:30 pm—5:00 pm	Seminar - Outdoors (rain or shine) Kodsi Forensic Engineering - Crash demonstration
5:00 pm—6:00 pm	Free time
6:00 pm—7:00 pm	Social time
7:00 pm—9:00 pm	Dinner
9:30 pm—1:00 am	Hospitality Gathering

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The Council of the Corporation of the City of Waterloo invites members of the public who reside, own property, own a business, work in the City of Waterloo or attend a Waterloo Campus of a Post-Secondary institution to apply for the following Boards and Committees for a term ending November 30, 2016*.

- **ADVISORY COMMITTEE ON CULTURE**
- **AMBASSADOR COMMITTEE**
- **AUDIT COMMITTEE** (*term ending on November 30, 2018)
- **COMMITTEE OF ADJUSTMENT** (*term ending on November 30, 2018)
- **COMMUNITY CASH GRANTS ADVISORY COMMITTEE**
- **DOG DESIGNATION APPEAL COMMITTEE**
- **FENCE VARIANCE COMMITTEE**
- **LICENSING APPEAL TRIBUNAL**
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- **SAFE AND HEALTHY COMMUNITY ADVISORY COMMITTEE**
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- **TOWN AND GOWN COMMITTEE**
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- **WATERLOO ECONOMIC DEVELOPMENT COMMITTEE**
- **WATERLOO PARK COMMITTEE**
- **WATERLOO PUBLIC LIBRARY BOARD** (*term ending on November 30, 2018)

Please refer to the City of Waterloo website for information about Committee meeting times.

APPLICATION INFORMATION:

Terms of Reference, Committee staff contact, application forms and all other relevant information is available at the following locations:

In person at Legislative Services, 1st Floor, Waterloo City Centre, 100 Regina Street South, Waterloo

On the web at waterloo.ca/committees

**By contacting Natalia Chebel, Records Management Coordinator,
Tel: 519-747-8585, Email: committees@waterloo.ca**

Applications will be accepted until 4:00 p.m. on Friday, November 14, 2014

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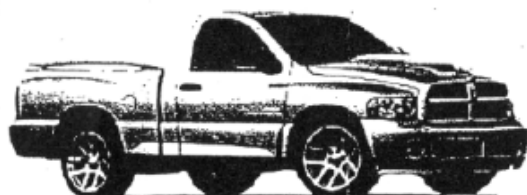
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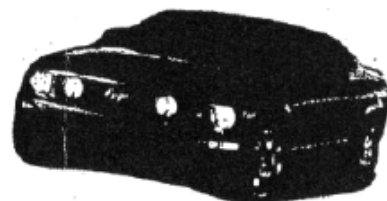


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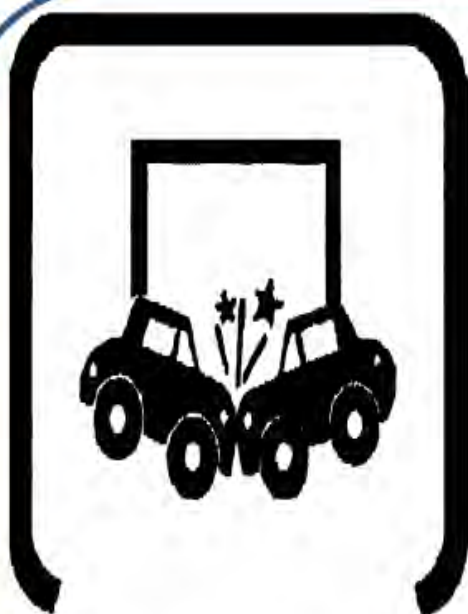
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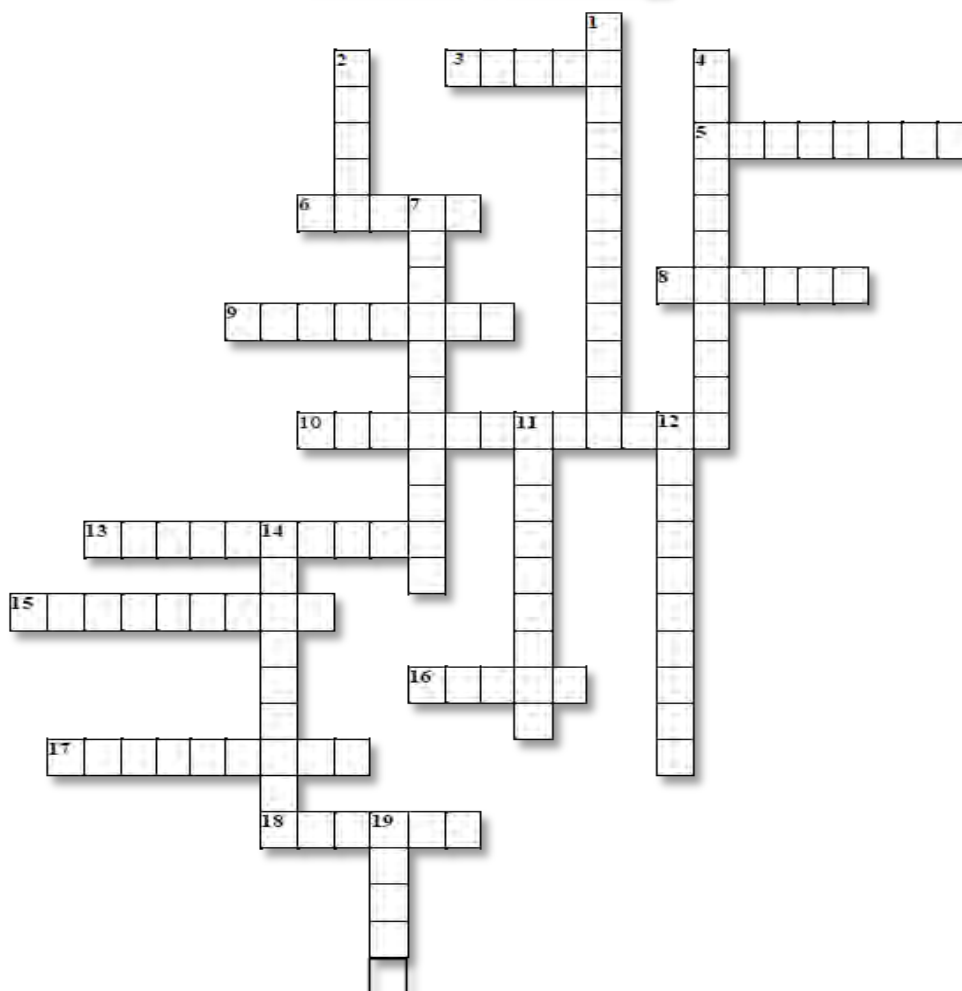
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6. Deliberate misrepresentation or misstatement.
8. The intentional relinquishment of a known right.
9. An event that happens by chance and is not expected in the normal course of events, which results in harm to people, damage to property or equipment, or a loss of process or productivity.
10. Reduction in value of property through use, ageing, deterioration and obsolescence.
13. To fail to do what a reasonable and prudent person would do (or to do what such a person would not do); this can result in property damage, injury or death.
15. Appraisal estimation of the value of an item.
16. The wrongful taking of the property of another. It is a broad term and includes larceny, pilfering, hold up, robbery and pick pocketing.
17. The person who initiates a lawsuit. Also called a claimant.
18. Condition which engenders or increases the chances of a loss.

Down

1. The fraudulent use of money or property that has been entrusted to one's care.
2. An amendment to an insurance policy. It is used to add or remove coverage.
4. Once a company has paid a loss for which someone other than the policyholder is responsible, it may have the right to recover this loss from the guilty party.
7. An employee of an insurance company who looks at an insurance application and decides whether or not the insurance company can or should provide the applicant with insurance, based on the risk that person presents.
11. To compensate the insured person for a loss, in whole or in part, by payment, repair, or replacement.
12. An event that results in an insured loss.
14. This implies a standard of honesty greater than that usually required in most ordinary commercial contracts. (2wds)
19. The willful and malicious burning of property.

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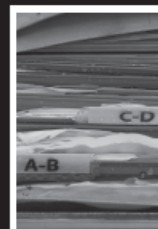
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dstrigberger@millerthomson.com

James Bromiley
jbromiley@millerthomson.com

Timothy J. McGurrin
tmcgurrin@millerthomson.com

Nicholaus de Koning
ndekoning@millerthomson.com

Teneil MacNeil
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Ashleigh T. Leon
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Caroline L. Meyer
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WHEN: THURESDAY DECEMBER 18, 2014
WHERE: GOLF STEAKHOUSE
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Proposed Structural Repairs Appear Far Stronger than the Existing Framing?

Carl Lankinen, B.A.Sc., M.A.Sc., P.Eng.

So you have a claim involving structural damage to a building. You've had the structural engineer attend the site, make observations and prepare a report. The engineer has included drawings or a description of the proposed repairs and specifies members such as rafters or beams that are far larger than what existed. The existing structure had stood for 30, 50 or perhaps 100 years or more without issue. Why are the repairs more extensive or heavy duty than what had obviously worked for such a long time?

As you may be aware, the Ontario Building Code (OBC) is the legislated building code in Ontario. It came into effect in the mid 1970's to standardize building designs across the Province. Perhaps you remember the era where shoveling snow off your roof was fairly common practice? Well, the OBC was put into place, in part, to address issues such as someone building a roof for a house without accounting for local snow effects. The OBC is the minimum standard for buildings in Ontario. It outlines the procedures for calculating snow and other loads for Part 4 (over 600m² floor area) and Part 9 (under 600m² floor area) buildings. Basically, Part 9 of the OBC can be considered to cover small buildings such as homes while Part 4 covers the remainder of buildings.



Depending on the age of a building, it is quite possible that it was constructed when no OBC existed or using a version of the OBC other than the current version. If the building predated the OBC or was not built in accordance with the OBC, it is likely that it does not meet the current OBC requirements. Similarly for buildings constructed to previous versions of the OBC. All new construction must comply with the current version of the OBC. This explains why the new design may vary considerably from the remainder of an existing structure.

But why did the old design work without issue for so many years? Good question. There are several contributing factors for this:

- A. The structure may have never experienced the loads predicted by the OBC. Loads on a structure, whether they are snow, wind, or earthquake, are difficult to predict and quantify. The OBC uses measured quantities for the base values for loads such as snow, wind and seismic. It then uses a number of different procedures to customize these values to account for the specific geometry or layout of the particular building under consideration. In doing so, a number of assumptions and simplifications need to be made. This can result in conservative values for one building in one location but efficient values for the same building in a different location or orientation. Essentially, the designs resulting from using the OBC are desired to be

conservative and therefore safe for a large variety of buildings and locations. This can mean that an older building with much smaller framing can work in a given location for a long time.

- B. Wood framed buildings that are 80 or more years old, though constructed with a similar species of lumber, is of a superior grade than modern lumber used for modern structures. The current OBC makes the assumption that lumber is produced from timber that is currently commercially available. Old buildings, particularly timber framed structures, can be made from old growth trees which could have different strength parameters. Therefore, a replacement component using lumber from modern trees can be significantly larger to gain the added strength needed.
- C. Simplifying assumptions are made when designing a structure. These simplifications are intended to make the design of a structure practical. These simplifications can be as straight forward as assuming a nailed connection cannot resist any bending while in actuality the connection may transfer some bending forces that would reduce the net moment on a particular section. They also neglect things such as how floor sheathing may actually increase the bending capacity of a rafter or a joist.
- D. Contribution of architectural finishes is ignored in design. As one may imagine, a drywall finish with solidly taped and filled joints can resist quite a bit of load. The contribution of finishes such as this and similar components are ignored in design but can contribute to the overall strength of a structure in practice.



We all recall the saying that “They don’t build things like they used to.” This is certainly true; however, this may not be a bad thing. While I’ve seen a number of old buildings that in no way meet current OBC

requirements that are perfectly fine, I've also seen a number of old buildings with connections that are pulling apart due to having never being designed properly.

The building code is based on years of research, testing and lessons learned. Designs meeting the building code ensure that our built environment is safe and functional.

Carl Lankinen, B.A.Sc., M.A.Sc., P.Eng.

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Mr. Carl Lankinen has acted as a structural expert on a number of expert reports for insurance companies and law firms. He has opined on a variety of issues including house fires, structural collapses, tornado damage, foundation underpinning for environment repairs and wind damage.

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Golden Triangle Restoration	38
Ground Force	22
Highland DKI	Outside Back Cover
Hrycay Consulting Engineers	7
KPMG	9
Larrek Investigations	21
Lipskie Appraisal Services	28
MD&D	37
Miller Thomson LLP	36
Origin & Cause Inc	13
Parkway Auto Recyclers	33
Paul Davis Systems	Inside Front Cover
PriceWaterhouse Coopers	Inside Back Cover
Queenway Auto Body LTD	35
Regency Auto	38
Relectronic-Remech	9 & 24
Rochon Engineering Inc	5 & 29
Strone Restorations	36
We Care Home Health Services	35
Whitehall Bureau of Canada Ltd	30
Winmar	20