

PRESIDENT'S MESSAGE

September 2012

September is here and so is the Trade Show! Please ensure that you have submitted your form if you are registering for a booth – there are only room for 53 booths!!! Seating is limited for dinner so please make sure you sign up in advance – tickets will not be sold at the door for dinner.

The KW OIAA has joined the 21st century – our website has gone live!!! Check us out at www.kw-oiaa.ca! Any feedback you can provide on what other information you would like to see on the website would be appreciated. In addition to the website, we are now on Facebook – find us online and Like us! And to round this out, we also have a Twitter account!! There are multiple ways to find out what's going on with our chapter and to be kept in the loop. Thank you to Daniel Strigberger for making all this happen.

I look forward to seeing everyone at the monthly meetings and welcome to all the new members that have joined us over the summer.

The executive committee is always available if you have any questions about upcoming events or have a suggestion for a meeting topic, or an article you would like to see in the bulletin.

Charlene Ferris, FCIP CRM
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KW Ontario Insurance Adjusters Association

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

September 2012



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2012-2013 Executive Committee – Getting to know them!



Charlene Ferris – President

Charlene has worked for The Co-operators for 12.5 years in a variety of roles, and is currently a Region Property Adjuster handling large and complex files. She has been on the executive for 6 years. Charlene is an avid soccer player, enjoys travelling and spending time at the cottage.



Cyndy Craig – Vice President

Cyndy has 30+ yrs working in the insurance industry, handling multi-line claims and currently works for Arch Insurance as a senior examiner. This is her third year on the OIAA executive in the KW area. Cyndy enjoys the outdoors, is an avid golfer, baseball player, and gardener.



Lisa Dobson – Past President

Lisa has worked for the past 10 years in Accident Benefits for The Co-operators. She has worked in St.Catharines, Mississauga, Cambridge and most recently the London office. She was the past president for 2011-2012 and staying on for a second term.



Laura Potts – Treasurer

Laura Potts is presently an all lines Field Adjuster at Cunningham Lindsey-Guelph adjusting Property, Municipal Liability, Liability, Automobile, Bodily Injury and Accident Benefit claims. She has been in the industry for over four years. This is her second year on the KW executive council. Laura is very passionate about traveling and is an avid swimmer.



Mark Hale – Secretary

Mark Hale ACII CIP FCILA has worked in claims for 30 plus years and as an Independent Adjuster for 26 years. He began his career in the UK before moving to Canada with his family in 2004. He took a position with Crawford & Company (Canada) Inc. where he continues to work and is currently Branch Manager of their Kitchener & Owen Sound branches.



Mike McLeod – Toronto Representative

Michael sits with both the KW OIAA and on the provincial OIAA executive council. He represents KW at the provincial level and is responsible for the provincial OIAA website portfolio as well as committee work on the annual OIAA claims conference and benevolent events. He is employed with Crawford and Company (Canada) Inc. as branch manager for West GTA claims branches.



Dale Stuart – Director

This will be my second year as a Director for the KW OIAA. I am employed at Cunningham Lindsey Canada as a Road Adjuster, which I have been doing for four years. I have had the opportunity to travel to Australia twice for catastrophes, while also being involved in local CAT's such as Goderich and Hamilton.



Stephen Tucker – Director

Stephen has an undergraduate degree in political science and business and a master's degree in judicial administration. He holds CIP and CRM designations and is working towards achieving his FCIP. He has been in the insurance industry for 16 years having previously held positions in sales, marketing and claims. He has been with Economical for the past 12 years and is currently the Assistant Line Manager for Ontario Casualty/Litigations Claims. Hobbies include hockey, skiing and curling and he enjoys travelling and cottaging with his wife Kim.



Stephanie Jermyn – Social Director

Stephanie works for CKR Global, Canada's largest Risk Mitigation and Investigations company. She is responsible for Business Development across CKR's South-Western division. Stephanie joined CKR Global in the fall of 2011. She also teaches aerobics for Goodlife Fitness and is an avid rock climber. She received her Baccalaureate degree in English Literature from the Univ of Ottawa and completed post-degree courses in Economics at the Univ of Waterloo.



Dan Strigberger – Social Director

Daniel is a Partner in the Insurance Litigation Group in our Waterloo office. He has developed an expertise in inter-company priority and loss transfer disputes, representing his clients in hundreds of such disputes over the years. He also acts for insurers' interests in first party claims, coverage disputes, and tort actions. He has several years of experience being lead counsel in matters before the courts, private arbitration tribunals, and at the Financial Services Commission of Ontario. Daniel also runs a Twitter feed, @InsuranzLaw, broadcasting "tweets" about cases and news stories dealing with insurance law issues as they happen.



Randy Higgins – Bulletin Editor

Randy is a partner at Paul Davis Systems Restorations of Kitchener-Waterloo, Guelph-Wellington County and Owen Sound-Grey Bruce. Randy is responsible for Business Development in these territories. Prior to joining Paul Davis Systems in April of 2007 Randy spent 14 years as an Insurance Adjuster handling all lines of claims with Pilot Insurance Company. He has sat on the K-W OIAA executive since 2009, he spent two terms as one of the Social Directors and this will be his second term as the Bulletin Editor.

HOT NIGHT IN THE CITY

Fashion Show featuring
The Waterloo Professional
Firefighters Association

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Schedule of K-W Chapter Monthly Meetings 2012-2013

Date	Topic	Contact
2012		
SEPTEMBER 27	TRADE SHOW	Charlene Ferris Cyndy Craig
OCTOBER 25	BAD FAITH	Stephanie Jermyn Laura Potts
NOVEMBER 29	CHILI COOK-OFF	Dale Stuart Mark Hale
DECEMBER 9	KIDS CHRISTMAS PARTY	Randy Higgins Dale Stuart
DECEMBER 13	CHRISTMAS PARTY <i>**NEW THIS YEAR**</i>	Stephen Tucker Charlene Ferris
2013		
JANUARY 31	CARGO THEFT	Lisa Dobson Dan Strigberger
FEBRUARY 28	PANEL DISCUSSION	Stephen Tucker Mike McLeod
MARCH 28	PROVINCIAL SEMINAR	Mike McLeod
APRIL 25	FUN NIGHT & ELECTIONS	Stephen Tucker Laura Potts
MAY	**NO MEETING AS PROVINCIAL CONFERENCE**	
JUNE 27	GOLF TOURNAMENT	Charlene Ferris Cyndy Craig

**** All meeting dates, topics and contacts are subject to change**

****Cost for meeting is \$35 per person**

Here are some fun facts about Canada:

1-Fun fact about Canada

Canada has more women than men in age group of 15-64.

2-Fun fact about Canada

Canada is largest producer of natural uranium (10%-30%) in the world.

3-Fun fact about Canada

Manitoulin Island in Canada is the world's largest island surrounded by freshwater.

4- Fun fact about Canada

Canada has the World's Largest Source of Cesium. More than two-thirds of the world's reserve of Cesium – 110,000 tones – is found at Bernic Lake, Manitoba, Canada

5- Fun fact about Canada

Dr. James Naismith, a Canadian, invented Basketball.

6- Fun fact about Canada

The largest Island in Canada is Baffin Island which is fifth biggest island on Earth

7- Fun fact about Canada

The average person in Canada watches more than 20 hours of television per week.

8- Fun fact about Canada

50% of Canadians have a TV in the main bedroom. 128, 000 Canadian households have TVs in the bathroom.

**If you have an ad or an
article you would like to place
in the KW OIAA bulletin**

Please contact

Randy Higgins –

randy@pdskw.ca -

519-570-0438 x 242



TORONTO DELEGATE REPORT

With the kids back in school and activities starting up for the fall term things are starting to ramp up after a beautiful summer. The OIAA is also off and running and here are a couple events that you may want to check out hosted by the provincial OIAA in the coming months.

On September 19, 2012 the new OIAA executive will be hosting a meet and greet event at The Ballroom bowling lounge located at 145 John Street Toronto, ON.

On October 10, 2012 we celebrate the OIAA Presidents of the past at the King Edward Hotel located at 37 King Street East Toronto, ON. This is a perfect venue and will be a great event with special guest speaker.

You can register for these events online at www.oiaa.com under the events menu heading.

The OIAA now has a facebook page so when you have a moment please take the time to visit: <https://www.facebook.com/OntarioInsuranceAdjustersAssociation?ref=hl> and "Like" it. Feel free to invite other industry friends to do the same.

The Kitchener Waterloo OIAA Chapter has also begun to build it's social media presence so please also take a moment to "Like" our new Facebook page and, while you're at it, get your Facebook friends to Like us too: <https://www.facebook.com/KwOiaa>

While your at it, stay connected and network by visiting linkedin and twitter. You can join our linkedin group at: <http://www.linkedin.com/groups?gid=4578135> or follow our Twitter handle <https://twitter.com/KWOIAA>. While you are at it you can get your contacts to join the group and to follow us to.

As always if you have any questions or comments please feel free to reach out at Michael.mcleod@crawco.ca.

Regards,

Michael McLeod

Kitchener Waterloo OIAA Chapter Toronto Delegate

ASSOCIATION CONTACTS AND INDUSTRY EVENTS SCHEDULE

Sept. 27/2012 – K-W OIAA Annual Trade Show

Insurance Brokers Association of Waterloo

Contact – Dianne Monteiro

dmonteiro@donovaninsurance.com

Oct.25/2012 - Monthly meeting

Nov.29/2012- KW-OIAA Chili Cook off

K-W Chapter – OIAA

Contact – Randy Higgins

randy@pdkw.ca

Dec. 9/2012- OIAA Kids Christmas Party

Insurance Institute-Conestoga Chapter

Contact – Heather Graham

hgraham@insuranceinstitute.ca

MORE DATES TO COME AS DATES ESTABLISHED



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July 3, 2012

Lisa Dobson
Kitchener-Waterloo Insurance Adjusters Association
P.O. Box 40079, 75 King St., South
Waterloo, ON N2J 4V1

Dear Lisa,

By supporting KidsAbility Foundation through the recent Insurance Adjusters Golf Tournament you have helped to empower children and youth right here in our community. This includes children with conditions such as cerebral palsy, autism, down syndrome as well as children with speech disabilities.

It takes a team approach to raise the necessary funds to allow KidsAbility to provide the best care possible in a timely manner. Thank you for being a part of our team as we strive to help every child to shine and realize their full potential.

We are extremely grateful for your generous support of our work and we look forward to working with you again in the future. You make a difference – Thank you!

Sincerely,

Lisa Talbot
Executive Director
KidsAbility Foundation

SOCIAL CHIT-CHAT

September 2012

We're soon to be surrounded by autumn colours and falling leaves! As summer dwindles down, let's consider what has transpired this year to date...

The Steering Committee of the Ontario Auto Insurance Anti-Fraud Task Force is looking for your input on the following anti-fraud initiatives, among others, before it submits to the government this fall:¹

- Regulation of health clinics and of the towing industry.
- Tightened controls on the delivery of auto accident benefits, including a proposal that would allow insurers to bill claimants \$500 as "a form of cost recovery" if claimants fail to attend a medical examination requested by the insurer.
- An ability to share personal information in a way that conforms to privacy legislation, but that would allow insurers and authorities to detect and prevent fraud.
- Providing insurers with broader civil immunity, so that insurers might be protected from civil suits for reporting to regulators or the police when they have suspicions of fraudulent behaviour by their own policyholders.

If you have input, let your voice be heard. Submit to the Task Force at: autoinsurance@ontario.ca

The full report can be found at: <http://www.fin.gov.on.ca/en/autoinsurance/status-report.html#sec1>

¹ Anti-Fraud Task Force committee seeks public input on proposed measures to combat auto insurance fraud [DAILY NEWS Jul 27, 2012 1:08 PM]

We are looking forward to seeing all of you at the KW OIAA Tradeshow Sept 27th at the Concordia Club in Kitchener.

And, as always, if you know someone associated with our industry that would like to become a member and receive our newsletter, please have him or her contact any executive member.

See you all soon!!

Cheers, Stephanie Jermyn



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KITCHENER WATERLOO CHAPTER O.I.A.A.

TRADE SHOW BOOTH REGISTRATION

WHEN: Thursday, September 27, 2012 **WHERE:** CONCORDIA CLUB, 429 Ottawa Street
Kitchener, Ontario

FEES: Single booth: (10' x 10', including tablecloth) 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

Please complete the following:

Company Name: _____	
Contact Person: _____	Telephone: _____
Email _____	
Do you Require Electrical Outlet: _____	
Do you Require a Vegetarian Meal: _____	
Email: _____	Fax: _____
# _____ Booth(s) at \$299.45 = \$ _____	
# _____ Dinner(s) at \$35.00 = \$ _____	
Cheque Total \$ _____	<i>Cheques should be made payable to: KW O.I.A.A.</i>

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:
Charlene Ferris, charlene_ferris@cooperators.ca
(519) 618-1212

Please RSVP by September 1, 2012



K-W O.I.A.A.



TRADE SHOW DINNER REGISTRATION

WHEN: **THURSDAY, SEPTEMBER 27, 2012**

WHERE: **CONCORDIA CLUB**
429 Ottawa Street, Kitchener

DOORS 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.

MEALS MUST BE ORDERED IN ADVANCE

To order your meal(s) please complete the following:

Name: _____ Telephone : () _____

Company Name: _____

of Dinner Tickets _____ X \$35.00 = \$_____ Amount Enclosed

Cheques payable to : **KW O.I.A.A.**

Mail cheque and Registration form to:

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P.O. Box 40079 – Waterloo Square
75 King Street South
Waterloo, On N2J 4V1

Inquiries can be directed to:
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DAY OF THE TRADESHOW ***

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Municipalities Take Notice: Treading on Thick Ice



Authored by:

Randy Knight

Associate
Kitchener-Waterloo

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In the recent decision of Justice Mossip, *Mark v. Corporation (City of Guelph)*, 2012 ONSC 3510 involving local counsel Gary Petker for the Plaintiff, Nathan Mark, and James Bennett for the Defendants: the City of Guelph and the County of Wellington, the Defendant municipalities were found to be 100% liable for the nearly \$2,000,000.00 in damages arising out of a motor vehicle collision. The City of Guelph was found to be equally liable even though it contracted its responsibilities for the winter road maintenance to Wellington County.

The Plaintiff was travelling southbound on Gordon Street and Lewis Sutter was driving northbound. The Plaintiff's vehicle crossed the centre line into the northbound lane and the two cars collided head-on.

The snow plough operator had passed through the area laying down some salt mixture 6 hours or so before the accident.

The action against Lewis was dismissed on consent.

The accident occurred within the municipal limits of the City of Guelph and, as such, it was the responsibility of Guelph to maintain the roads pursuant to the *Municipal Act, 2001*. The City of Guelph and the County of Wellington Road Departments had an understanding that Wellington County would maintain that part of Gordon Street located within Guelph. By that understanding, Wellington assumed the maintenance responsibilities for the accident location, although it was located within the boundaries of Guelph.

The Plaintiff suffered catastrophic injuries as a result of the crash.

Justice Mossip had to decide whether Guelph and Wellington are liable to pay the agreed damages and, if so, is the Plaintiff contributorily negligent.

Justice Mossip stated the tort law duty of care applies to government authorities in the same way as it does to individuals unless exempted by statute or situations involving policy decisions which would negate the duty of care. Section 44(1) of the *Municipal Act ("Act")* provides that the municipality having jurisdiction over a highway

shall keep it in a state of repair that is reasonable in the circumstances and the state of repair also applies to winter road maintenance of highways. Subject to the issue of contributorily negligence as set out in the *Negligence Act*, if a municipality defaults in its duty it is liable for all damages any person sustains because of the default.

Furthermore, if an employee of a municipality authorized to carry out its duty defaults, the municipality is liable for the default of that employee. The *Act* also provides for situations in which the city is not liable for failing to keep a highway in a reasonable state of repair and these situations are set out in subsections 44(3) a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if,

- (a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;
- (b) it took reasonable steps to prevent the default from arising; or
- (c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met.

The Court had to consider whether the Minimum Maintenance Standards/Ont. Reg. 239/02 ("MMS") provided a defence at all in this case.

Were the road conditions on Gordon Street on February 5, 2003 in a reasonable state of repair and, if not, did the state of non-repair cause the accident and any injuries to the Plaintiff? If those two questions were answered in the affirmative, Wellington must then show that it took reasonable steps within a reasonable time to reduce the risk to the public; however, not to a standard of perfection.

There was no legal dispute that Guelph and Wellington would be equally liable if the duty of care was not met, notwithstanding that Guelph delegated to Wellington the maintenance of Gordon Street where the accident occurred.

There was ample testimony as to the icy road conditions. The witnesses all testified that the roads were like an ice rink. One of the police officers recalled what stood out for him was the thickness of the ice and that there was a significant change in the condition of Gordon Street south of Clair Road and near the accident scene.

No charges were laid against either of the drivers because of the weather and road conditions.

A traffic sergeant with the City of Guelph recalled there was thick ice and the roads were “treacherous” at the collision scene.

Both sides of the dispute tendered experts on winter road maintenance and operations; some opined that Wellington met or exceeded the requirements of the MMS and others stated that the municipality did not.

Justice Mossip relied on *Thornhill (Litigation Guardian of) v. Shadid* [2008] O.J. No. 372 (S.C.J.) and stated the jurisprudence is that the duty of care resting on the province or its municipality towards its road system consists of protecting users of the highway from unreasonable risks of harm to them. The highway authority is not an insurer. The duty of care applies to operational decisions. The liability will result to where the highway authority has failed to take reasonable steps to eliminate or effectively reduce a condition of risk (a state of non-repair) within a reasonable time after it became aware or ought to have become aware of its existence.

Justice Mossip stated there is no general duty on that authority to salt or sand highways. In other words, the failure to sand or salt will not in itself be a sufficient ground for imposing liability; it is a question of fact in each case whether a condition of non repair exists and, if so, whether the highway authority's response is reasonable, timely and reasonably executed.

The Judge in *Thornhill* stated that the *Municipal Act* has basically subsumed the common law tort principles of duty of care, standard of care and causation where a claim emanates from the condition of a highway or street in the municipal jurisdiction and control. It was further found the MMS are not an all-inclusive document and that they do not cover all situations.

Justice Mossip also cited the Ontario Court of Appeal in *Guillani v. Halton (Regional Municipality)*, [2011] O.J. No. 5845 (C.A.). In that case, the MMS did not even apply as the Court found they were intended to create a minimum standard for treating a highway *after* becoming aware that the road is icy. The MMS were directed at the situation when the roadway had already become icy, not before. The MMS does not address a municipality's response to conditions that had not yet become icy.

In that decision, the municipality failed to take reasonable steps to avoid the ice forming in the first place and failed to monitor the weather and to have deployed resources much earlier than what is done to avoid the formation of ice.

Mossip J. found that the icy road was the sole cause of the motor vehicle accident and that Gordon Street was not treated in a reasonable manner or in a manner which

protected the public from harm. The operator of the plough created the icy road by using some salt mixture which melted the ice/snow but was allowed to re-freeze due to the extreme cold and the passage of time, and then failed to treat that ice within a reasonable time. In these situations Justice Mossip found that the MMS cannot be used to shield the Defendants.

The plough driver was found to have fallen well below the standard of care in carrying out his duties as a snow plough operator and therefore the Defendants were liable for that default.

Mossip J. stated the MMS do not deal with a situation where the municipality has *caused* a non-icy road to become icy and then not treat that road properly. Therefore, Justice Mossip was satisfied that the MMS did not apply on the facts of the case and the Defendants were not protected by section 44(3) of the *Municipal Act*.

It is important to note that even though the MMS did not apply to the circumstances of the case, that did not leave those circumstances unregulated. Mossip J. found that a municipality must still take steps to keep the highway in a reasonable state of repair having regard to all the circumstances pursuant to section 44(1) of the *Municipal Act*.

In addition, Mossip J. found that even though the Plaintiff crossed the centre line prior to impact, he rebutted the presumption of his own negligence.

This case, and the others that preceded it, should serve as a stark reminder to all municipalities and their insurers that adherence to the MMS might not be enough in that the MMS may not even apply in certain circumstances and that a municipality cannot simply delegate its responsibilities to another municipality and shield itself from all liability.

Randy Knight is an associate in the Insurance Litigation Group at the Waterloo office of Miller Thomson. Randy's legal practice focuses on the area of insurance defence, including the defence of personal injury claims and accident benefits.



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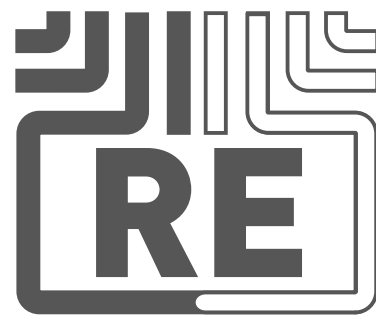
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After completing their articles with Miller Thomson, we welcome back Katie Quinlan and Bryan Horrigan to our Insurance Group as Associates in our Waterloo Office. Katie and Bryan's litigation practice focuses primarily on the defence of first party claims on behalf of insurers under the Statutory Accident Benefits Schedule.



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"Oh man," the bartender says, "I'm sorry, here, the first one's on me." The man takes his drink and goes to a table near the door.

Another guy walks into the bar with a Chihuahua. The first guy sees him, stops him and says "You can't bring that dog in here unless you tell him it's a seeing-eye dog."

The second man graciously thanks the first man and continues to the bar. He asks for a drink. The bartender says "Hey, you can't bring that dog in here!"

The second man replies "This is my seeing-eye dog." The bartender says, "No, I don't think so. They do not have Chihuahuas as seeing-eye dogs."

The man pauses for a half-second and replies "What??? They gave me a Chihuahua??!"





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