

PRESIDENT'S MESSAGE



February 2013

We are well into the 2013 year and so far we have seen something we didn't see a lot of in 2012 – SNOW!!! Hope that everyone survived the snow that hit our region, and took the time to enjoy it!

The KW OIAA sent a team to the London OIAA Chili Night – while we didn't win the chili competition, we did make it to the sudden death round of the trivia!! Thank you to PDS Kitchener, CKR Global, Burnside Engineering and MD&D for being part of the team.

February also brought with it the Toronto OIAA Trade Show – thank you to everyone who made the trek into Toronto. This was my first time attending this trade show and it was great to see how well attended it is and how informative the seminars were – I look forward to next year.

We have a lot of great events coming up – the Curling Bonspiel in March, the Niagara OIAA Out of Town in May, and the Golf Tournament in June. Hope to see everyone at these events!!

Regards,
Charlene Ferris, FCIP CRM
President – KW Chapter



February 2013

The Bulletin Index

Inside your February issue you will find:

Presidents Message	Page 1
2012-2013 KW-OIAA Executive	Page 2
R.J. Burnside & Associates Article.....	Page 4-5-6
Schedule of 2012-2013 Monthly Meeting.....	Page 8
Toronto Delegate Report	Page 10
Social Chit Chat.....	Page 12
CKR Global Investigations Article	Page 14-15
Miller Thompson Article	Page 18-19
OIAA Membership Application	Page 30
Advertisers Directory	Page 32

2012-2013 Executive Committee



President
Charlene Ferris, FCIP CRM
The Co-operators
519-618-1212
charlene_ferris@cooperators.ca



Vice President
Cindy Craig
Arch Insurance
647-283-5436
ccraig@archinsurance.com



Past-President
Lisa Dobson, CIP
The Co-operators
866-466-4426 X2056
lisa_dobson@cooperators.ca



Toronto Representative
Michael McLeod, CIP
Crawford & Company (Canada) Inc.
905-206-5401
michael.mcleod@crawco.ca



Treasurer
Laura Potts
TD Insurance
519-884-6978
laura.potts@tdinsurance.com



Secretary
Mark Hale, FCIA CIP
Crawford & Company (Canada) Inc.
519-593-2620
mark.hale@crawco.ca



Director
Dale Stuart
Cunningham Lindsey
519-578-5020
dstuart@cl-na.com



Director
Stephen Tucker, MA CIP CRM
Economical Insurance
519-570-8322 X43281
stephen.tucker@economical.com



Social Director
Daniel Strigberger
Miller Thomson LLP
519-593-3252
dstrigberger@millerthomson.com



Social Director
Stephanie Jermyn
CKR Global
519-884-6352 X233
stephanie.jermyn@ckrglobal.com



Bulletin Editor
Randy Higgins
Paul Davis Systems
519-570-0438 X242
randy@pdskw.ca

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



Caskanette Udall

CONSULTING ENGINEERS

EXPERIENCED • TRUSTED • PROMPT

Fire Investigations

Accident Reconstruction

Personal Injury

Environmental Services

Structural Design

Building Science

Property Claims



248-675 Queen St. S., Kitchener, ON N2M 1A1

www.caskanette.on.ca 1-800-920-5854



Medisys

It's all about health

Where do you turn when interests collide?

Medisys provides 15,000 independent medical assessments per year, including:

- Independent medical evaluations
- Functional abilities evaluations
- Physical demands analyses

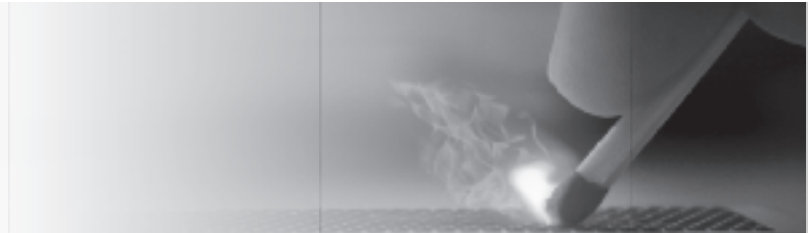
For more information about our timely external consultations, contact us at 1-877-312-0479



**Celebrating health
for 20 years.**

MONTRÉAL OTTAWA TORONTO CALGARY VANCOUVER

www.medisys.ca



Fire Safety and the Building Code vs. the Fire Code—What’s the Difference?

By Mina Tesseris, P. Eng

Two important regulations governing fire protection of buildings in Ontario are the Building Code and the Fire Code. Because both regulations address fire safety, the difference between the two may be misunderstood. This article attempts to summarize the basic differences, and similarities, between the fire safety provisions of the Building Code and the Fire Code as well as their relevance to the insurance industry.

The Difference

Generally speaking, the Ontario Building Code (OBC) applies to the construction of new buildings, including renovations, alterations and additions to existing buildings, while the Ontario Fire Code (OFC) regulates the maintenance and operation of buildings after construction is completed. For example, it is the OBC that regulates whether or not a fire alarm system is required in a new building and it is the OFC that regulates the annual inspection and maintenance of the fire alarm system after the building is occupied. One exception to this occurs in unoccupied portions of a building under construction. In this case, the OFC overrules the OBC if there has been no substantial work related to the construction of the building for at least six months or if conditions in the unoccupied portions threaten the safety of the occupied portions.



The OFC is very clear insofar as the responsibility for compliance is concerned. The first article of the OFC states, “Unless otherwise specified, the owner shall be responsible for carrying out the provisions of this Code.” On the other hand, responsibility for compliance with the OBC during construction of a building is shared among the various parties involved including owners, designers, builders, manufacturers, building inspectors and chief building officials as set out in the Building Code Act.

The OBC is a Regulation made under the Building Code Act that can only be enforced by appointed building inspectors, Chief Building Officials and Registered Code Agencies. The OFC is a Regulation made under the Fire Protection and Prevention Act that can only be enforced by the Fire Marshal, an assistant to the Fire Marshal or an appointed Fire Chief. One must be cognizant of the different jurisdictions of Fire officials and Building officials when dealing with matters relating to fire safety. The authority of Building and Fire Officials to enforce Regulations are contained in the respective Acts. Their powers are broad reaching and include the authority to issue permits, perform inspections and write orders.



The Similarities

Both the OFC and the OBC share a common objective – to protect persons and property from fire (the OBC has several additional objectives that are unrelated to fire safety). It is important to note that both regulations are regarded as minimum standards to be met. They do not preclude one from voluntarily adopting an increased level of fire safety within a building. Another similarity between the OFC and the OBC is that the regulations apply to all buildings except for the Retrofit requirements contained in Part 9 of the OFC as discussed below.



Retrofit Legislation and the Inter-relationship Between OFC and OBC

The upgrading of existing buildings to minimum fire safety requirements has been legally imposed in Ontario since 1987. Retrofit legislation was introduced under the OFC under the OFC in response to changes in technology, construction practices, public policy and increased knowledge of fire safety risks in buildings. When the first edition of the OBC was introduced in 1975, it included fire safety provisions that are outdated by today's Building Code standards, but nevertheless are considered to provide a minimum acceptable level of fire safety. Certain types of buildings that were constructed prior to 1975 were recognized by the fire safety community as having inadequate fire protection systems and therefore posed an unacceptable risk to the occupants. The unacceptable risk to life safety in certain older buildings was also recognized in the Webber Report of 1983 on "Fire Safety in High Rise Buildings," which recommended that minimum retrofit standards be incorporated in the OFC. As a result, retrofit provisions were introduced in Part 9 of the 1987 OFC which made it mandatory for building owners to upgrade deficient fire protection systems but only in assembly and institutional buildings. Certain classes of residential buildings including hotels followed suit several years later. The retrofit provisions essentially mirrored certain fire safety requirements contained in the 1975 OBC which is considered the benchmark for achieving a minimum acceptable level of fire safety in existing buildings. In essence, buildings that were built in accordance with the OBC since 1975, will automatically meet the OFC requirements for fire safety retrofit. The one exception to this is hotels in which case the OFC uses the 1994 OBC as the benchmark. It is safe to say buildings of the classes described above that were built prior to 1975 are unlikely to meet the OFC retrofit requirements in which case owners are legally obligated to undertake fire safety upgrades.

Retrofit legislation is a good example of how the OFC and OBC interrelate. If a building does not comply with the retrofit requirements of the OFC, then upgrading work must be undertaken. The OFC



refers to the OBC for construction requirements. For example, the OFC requires that stacked dwelling units in a three-storey condominium be separated from one another by fire separations having a minimum 30 minute fire resistance rating with the components making up the fire separation to be assembled in a manner that meets the requirements of the OBC.

It is important to note the level of fire protection in a new building constructed in accordance with the current OBC is greater than that in a building which is upgraded to the requirements of the OFC retrofit legislation. This often raises the question, “If compliance with the retrofit provisions of the OFC results in an acceptable level of fire safety, then why does the OBC require new buildings to be constructed to a higher standard?” In order to answer this question, one must consider the increased cost of achieving a higher level of fire safety in a new building versus the benefits of reduced risk of loss. Generally, the cost of achieving fire safety during construction of a new building is significantly less than achieving the same level of fire safety through renovation of an existing building. In other words, the increase in fire safety achieved by constructing a new building to the higher standard of the OBC as compared to the OFC outweighs the incremental cost.

Application to Insurance Claims

It is essential to have a clear understanding of construction regulations related to fire safety when undertaking restoration of a fire-damaged building. One of the first questions to answer before commencing a restoration project is whether or not the building is of a class that is regulated by the retrofit provisions of the Fire Code as discussed above. If it is, then one must determine whether or not the building met these provisions prior to the loss. In the case where a building is of a class that is subject to the retrofit provisions but did not comply with the provisions prior to the loss (note that buildings constructed prior to 1975 are probably non-compliant if fire safety retrofitting has not been undertaken), it is incumbent upon the owner to upgrade the fire protection systems so that the restored building meets these requirements. In other words, restoring the building to its pre-fire condition is not acceptable as the work would not comply with the Fire Code. It is important to note that upgrading the fire protection systems may or may not be underwritten by the insurer depending on insurance policy coverage. It is also important to note that some fire restoration projects may involve renovations which reduce the “Performance Level” of the building as defined in the Ontario Building Code. For example, a renovation involving an increase in occupant load of more than 15% would be regarded as a reduction in Performance Level. On these projects, the fire protection systems would need to be upgraded to the often more stringent requirements of the OBC.

In closing, remember to seek professional assistance before commencing restoration work and always check with your local Fire and Building Departments to determine the applicable regulations. This will limit the risk of project delays and cost overruns due to non-compliant work.

Mina Tesseris, P. Eng. LEED AP BD + C, is a Senior Engineer and Technical Leader of Building Sciences at R.J. Burnside & Associates Limited. His area of practice for insurance clientele includes investigation of damaged buildings. He is also a qualified Building Code expert.

For more information contact:
insurance@rjburnside.com 519.271.5111 x655
R.J. Burnside & Associates Limited

Your single source for injury & claims management solutions

Whether it's a Single-In-Home assessment or an integrated Chronic Pain Program, DMARehability delivers solutions that maximize the function and economic potential of clients impacted by injury.

Fully integrated and modular services

In all cases you get specific, relevant and cost effective courses of action. We never lose sight of our commitment to help you and your client accomplish the goals you set out to achieve.

Case driven experience and expertise

Our professionals have extensive experience with both adult and paediatric clients. Our knowledge, experience and expertise delivers quality service and consistent results.

Individualized. Real life. Relevant.

Everything we do in the client's home, place of work and community contributes to solutions that are cost effective, real-life and relevant, allowing you to select DMARehability with confidence when your file requires:

Injury management and return to work

*In-Home Occupational Therapy and Treatment
Assessment of Attendant Care Needs (Form 1)
Medical Case Management
Physiotherapy Assessment and Treatment
Home and Community Based Exercise Programming
Rehabilitation Therapy
Individualized Return to Work Programming
Physical Demands Analysis/Job Site Analysis
Cognitive Demands Analysis
Job Coaching
Hand and Upper Limb Assessment and Treatment
Social Work Assessment and Treatment
Job Re-entry Training (JRT) - Individual and Group
Labour Market Research
Transferable Skills Analysis
Ergonomic Assessments
Driving Evaluations
Implementation of DAC Recommendations*

Assessments and claims resolution tools

*Functional Abilities Evaluations - ARCON & KEY Systems
Vocational Evaluations
Psychovocational Evaluations
Independent Living Assessments
Interdisciplinary Chronic Pain Assessment
Future Care Costs Analysis
Interdisciplinary File Reviews
Independent Medical Evaluations - Multidisciplinary*

DMARehability
Potential in motion

Offices and service capabilities across Ontario

1601 River Road, Suite 302, Kitchener, Ontario N2A 3Y4

Toll Free: 1-866-309-0046 Fax: (519) 893-6896 www.dmarehability.com

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**

Kitchener-Waterloo Adjusters Association
Chapter of Ontario Insurance Adjusters Association



“Like” us on Facebook: <https://www.facebook.com/KwOiaa>

Join us on LinkedIn: <http://www.linkedin.com/groups?gid=4578135>

Follow us on Twitter: <https://twitter.com/KWOIAA>





TORONTO DELEGATE REPORT

We kick off the year with the OIAA signature event, the OIAA Claims Conference at the Metro Toronto Convention Center on February, 6 2011.

The event is a full day of seminars, networking, luncheon with keynote speaker and over 150 trade show exhibitors profiling the latest products and services for the claims industry. We look forward to seeing you there and welcome you to check your February edition of WP which has a full event bulletin, exhibitor and seminar information.

March 19, 2013 brings the annual Curling Bonspiel which will be held at the Richmond Hill Curling Club. You can register online at www.oiaa.com.

If you would like more information or have any questions or concerns please do not hesitate to contact me at Michael.mcleod@crowco.ca.

Regards,

Michael McLeod
Chapter Toronto Delegate

ASSOCIATION CONTACTS AND INDUSTRY EVENT SCHEDULE

February 28th, 2013Educational Meeting

March 22nd, 2013Insurance Associations Curling Bonspiel

March 28th, 2013Provincial Seminar

Insurance Brokers Association of Waterloo
Contact – Dianne Monteiro
dmonteiro@donovaninsurance.com

K-W Ontario Insurance Adjusters Association
Contact – Randy Higgins
randy@pdkw.ca

Insurance Institute-Conestoga Chapter
Contact – Heather Graham
hgraham@insuranceinstitute.ca



Professional Investigations

IRG

Investigative Research Group

49 Truman Road Suite 102, Barrie Ont.

TEL: (705) 739-4800

1-800-721-7393

Providing Services Throughout Ontario

E-mail info@irg-investigation.com
www.irg-investigation.com

Surveillance • Backgrounds • Activity Checks • Interview / Statements • Financial
 • Employment History • Locates • Accident Re-Construction • Link Analysis



Service you need, by people you trust
 serving the Waterloo region and surrounding areas

2302 Dumfries Road Units 2 & 3, RR#2 Cambridge, Ontario N1R 5S3
 PHONE 519 624 4487 FAX 519 624 4484 TOLL FREE 1 877 458 4487
www.gtrs.ca

We've got the trucks adjusters' need:

Car & Truck Rental
Jamieson

Kitchener: 519-578-0760
Stratford: 519-272-2886

Cambridge: 519-740-0760
Woodstock: 519-539-5609

SOCIAL CHIT-CHAT

February 2013

Happy New Year to you all! Business is quickly ramping up in 2013 and we are BUSY BUSY BUSY! But that doesn't mean that we should neglect our social circles for networking opportunities and education.

One great way to do this is to attend our monthly OIAA meetings and events, details for which can be found right here in our Bulletin or on our new (and spectacular!) website: <http://www.kw-oiaa.ca/>

Another great way to get connected out there (other than through social media, which we highly recommend) is through our provincial OIAA, the Insurance Institute, or the Blue Goose Society (to name only a few).

For those of you who are hearing about Blue Goose International for the first time, here is a blurb from their website about who they are:

The Honorable Order of the Blue Goose, International is a fraternal organization of individuals who work in the insurance related industry. As Ganders, we are members of Ponds located throughout the United States and Canada. There is fellowship, education, charity, and leadership in our organization. We invite you to learn more through our website: <http://www.bluegoose.org/>

Noteworthy upcoming event: **July 8 - 12, 2013** 107th Grand Nest Convention in *Quebec Pond (City)*.

Take care out there in our ever-changing (Canadian?) weather this winter!

Cheers,

Stephanie Jermyn

Social Director, OIAA

Business Development, CKR Global

DID YOU KNOW.....

- Did you know 11% of people are left handed
- Did you know August has the highest percentage of births
- Did you know unless food is mixed with saliva you can't taste it
- Did you know the average person falls asleep in 7 minutes
- Did you know a bear has 42 teeth
- Did you know an ostrich's eye is bigger than its brain
- Did you know most lipsticks contain fish scales
- Did you know no two corn flakes look the same
- Did you know lemons contain more sugar than strawberries
- Did you know 8% of people have an extra rib
- Did you know 85% of plant life is found in the ocean
- Did you know Ralph Lauren's original name was Ralph Lifshitz

ASSESSMENTS • COMMUNICATIONS • RECOMMENDATIONS



WHAT'S IT WORTH?

RELECTRONIC-REMECH consultants will help mitigate losses with clear and unbiased reports.



RELECTRONIC-REMECH Inc.
Electronic and Mechanical Loss Recovery

www.Relectronic-Remech.ca

Emergency Service
1-800-465-9473

Head Office
Waterloo, ON
519-884-8665
1-800-465-9473

Greater Toronto Area
Mississauga, ON
905-672-0947
1-877-282-2252

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

Collision Centre



Forbes
MOTORS INC.

742-8309

165 WEBER S.
WATERLOO

PONTIAC • BUICK • CADILLAC • GMC
SALES • SERVICE • LEASING
CALL 742-4463

Forbes MOTORS IS THE TRI-CITIES HOME
OF MUSCLE CAR RESTORATION PARTS.

CAMARO/FIREBIRD
67-81

MUSTANG
65-73

NOVA
62-79

CHEVELLE/EL CAMINO
64-67

IMPALA
63-70

PICKUPS
47-CURRENT

OTOMONTE CARLO
64-72



FENDERS DOORS HOODS GRILLES
MOLDINGS BUMPERS DECALS

Call us @ 519-743-0203

ASK FOR DAVE



The Investigative Process: Tools for Determining Claim Validity:

When investigating insurance fraud, surveillance is one of the best known and most reliable methods of determining the validity of a claim. Surveillance is still a paramount means of gathering evidence to challenge insurance fraud, but the effectiveness of surveillance can be increased exponentially by combining it with effective and thorough preliminary research.

Preliminary research is an integral service that should be provided by any private investigation company that offers surveillance services. This investigation should include a thorough review of OSI (Open Source Intelligence), which includes publicly available sources such as social networking profiles, published telephone listings, print and broadcast journalism. The private investigation company you retain should also be able to acquire information through contracts held with private sector and government databases not accessible to the general public.

When evaluating the findings of preliminary research, there are two main factors that should be considered. The first factor is the reliability of the information. Although the private investigation company that you retain may be contractually unable to provide the specific identity of their source of information, they should always be able to provide a frank assessment of the degree to which this information may be relied upon. If the reliability of the information is suspect, there is often the option to confirm it through corroborating sources.

The second factor to be remembered when assessing findings is the age of the information, which may impact upon its value. That said, the potential value of historical information should not be discounted. As the public awareness of information privacy increases, accessible information regarding the activities of claimants decreases. (However, to the chagrin of many claimants and to the benefit of your investigation, historical data placed online can remain in place for years. The details can still serve to provide valuable information such as previous hobbies, associates, gym memberships, clubs, sports teams, or other organized activities, all of which may still be relevant despite the age of the original information.)

Effective preliminary research can benefit a pending surveillance investigation in three different ways:

1. The first and most standard use of preliminary research is to confirm the information already in your possession. This allows surveillance to begin with the confidence that time and budget will not be wasted at the wrong house, or following the wrong individual.
2. The second benefit of preliminary research is to allow for the surveillance to be targeted for times and places that will provide the most evidence of value for the least cost. Preliminary research can identify times of the day or week that the subject may be particularly active, special occasions that may be of particular interest, and locations that the subject of investigation may frequent away from their residences.

As an example, multiple successful investigations conducted by CKR Global started with the discovery that the subject had been a member of a sports league in previous seasons. From there it was possible to acquire a schedule of future games and practices, and surveillance was then targeted for these dates and times. This resulted in the acquisition of substantial video of the subject engaged in high levels of activity entirely contradicting their claims of injury and disability.

Conversely, effective preliminary research can also allow private investigators to avoid conducting surveillance at times and locations that will not be productive, such as when the subject is travelling or entirely inactive for another reason.

3. The final benefit of preliminary research is the potential to generate evidence entirely separate from the subsequent surveillance. This can include statements by the subject as to their activities, or images and even video of the subjects engaged in physical activity, travel, or other behaviour that would contradict their claim.

As a particularly vivid example, CKR Global completed a successful surveillance investigation in which, during the preliminary investigation, YouTube videos of the subject were found of the subject riding a snowmobile at high speeds over several jumps. In that the date that the video was posted and the timestamp of the video followed the reported date of loss, this evidence was clearly of immense value and interest to the client.

Surveillance is a critical tool for the investigation of insurance fraud. However, when selecting an investigation provider, it can only be of benefit to seek out a company that can provide access to the research techniques and resources that can enhance the effectiveness of surveillance, as well as generate evidence of substantial value even before surveillance begins.

Gavin G. Phillips

Case Manager, CKR Global

T: 519-884-6352 x235 | gavin.phillips@ckrglobal.com



725 Bridge Street West, Unit 202, Waterloo, Ontario, Canada, N2V 2H1

T: 1-800-253-1666 | ckrglobal.com



First General
 Property Restoration Specialists
 • WATERLOO REGION • GREY/BRUCE
 The *Thurco* Group Inc.

**WATERLOO REGION
 Now Re-Opened!
 With Pride of
 New Ownership**



227 Riverbend Drive,
 Kitchener

519-584-7000

540 1st Street,
 Hanover

519-364-1317

www.firstgeneral.ca



Forensic investigations. Insurance claim support. We can help.

KPMG Forensic professionals offer robust, practical advice, helping insurers with claims assessment, fraud investigation, and staff training. We bring clients the resources and knowledge necessary to assess their claims effectively, efficiently, and in a timely manner.

For more information, contact us at 519.747.8800 or one of the following Forensic professionals:

Paul Ross
 pross1@kpmg.ca

Michala Henderson
 mhenderson@kpmg.ca

Karen Grogan
 kgrogan@kpmg.ca

Peter MacKenzie
 pmackenzie@kpmg.ca

David Bushell
 dbushell@kpmg.ca

Veronica Chapman
 vchapman@kpmg.ca

kpmg.ca

© 2012 KPMG LLP, a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

JOIN US



EDUCATION • EVENTS • LEADERSHIP

OIAA is the industry association people think of most when it comes to upgrading skills, staying on top of industry trends and staying networked with both peers and the entire adjusters community. An association made up of leaders in the insurance adjusting field.

Among other things, your membership includes:

- A subscription to *Without Prejudice*, the highly regarded OIAA magazine, published ten times a year and delivered to the address of your choice (office or home)
- Discounts for social and professional development events
- Access to the members only portion of our new website, with member forums, polls and other features to help you stay connected to your peers throughout the province



Most compelling of all, the price: at **\$40** per year plus HST. Can you afford not to be a member?

Sign up today at www.oiaa.com/membership

Experience the power
of our new website
www.oiaa.com



**Ontario Insurance
Adjusters Association**

The Unintentional Results of Intentionally Doing Doughnuts



Authored by:
James B. Prior
Associate
Kitchener-Waterloo
519.593.2429
jprior@millerthomson.com

Recently, the Ontario Court of Appeal considered an insurer's obligation to indemnify its insured under an Ontario automobile policy in circumstances in which it was alleged that the insured intentionally caused harm to the Plaintiff.

In *Savage v. Belecque*, the 14-year-old Plaintiff, Amy Savage, had been skating at an outdoor rink with friends. Similarly, the 16 and 17-year-old Defendants, Shayne Poitras and Michel Belecque, had been playing hockey at the rink like many good ol' Canadian boys do on a crisp January day. After their game, Michel and Shayne returned to Michel's car, which was parked in a nearby parking lot. At the same time, Amy was searching the parking lot for "someone who would give her a smoke", so she approached the Belecque car to ask Shayne through his open rear window. As Amy did so, Shayne reached out the window and, while engaging in "horseplay", grabbed her by her jacket. Michel then accelerated the car with Amy, who was still wearing her skates, in tow. Amy was then dragged alongside the car for some distance while upright on her skates. When she was eventually released by Shayne, Amy's momentum carried her a further 15 feet before she fell to the ground, fortunately uninjured.

Unfortunately for Amy, the teenage antics of Michel and Shayne did not end there. You see, shortly after sending Amy for a spill, Michel realized he had forgotten something at the rink and decided to go back to get it. However, Michel's hockey skills apparently exceeded his common sense that day and instead of slowly turning around to retrieve his forgotten item like most of us would do, he executed what was referred to by the Court as a "high-speed doughnut", which caused the car to spin. Regrettably, in the course of performing this super-cool manoeuvre,¹ the Belecque car struck and injured Amy, who was still on the ground from her earlier fall.

¹ Please note that this author and Miller Thomson LLP in no way endorse the performance of "doughnuts" or related vehicular activities. Such manoeuvres are dangerous and should be performed at the operator's own risk.

As a result of the injuries she sustained in the accident, Amy sued Michel and Shayne for their actions, as well as their parents for negligently supervising their children and her own parents' insurer, CGU Insurance Company of Canada ("CGU") for uninsured and inadequately insured motorist coverage. In turn, the Belecques sued their insurer, Allstate Insurance Company of Canada ("Allstate"), which had denied them coverage for the accident, for a declaration that Allstate was obliged to provide coverage for the loss under their automobile policy. Allstate denied coverage under the automobile policy for various reasons, including its assertion that Michel's actions were deliberate when he struck Amy while performing the doughnut.

The main action between Amy, Michel and Shayne eventually settled for \$450,000. The only question that remained was which insurer was to fund the settlement. The answer to this question was dependant largely on whether Michel's conduct was negligent (in which case he was covered by Allstate up to his \$1 million policy limits) or whether he intentionally caused Amy's loss (in which case coverage by Allstate would be excluded, except for the \$200,000 statutory minimum limit). CGU, which was potentially liable as the excess insurer, therefore moved for summary judgment seeking a declaration that Allstate's policy covered Michel.

The motion judge ultimately decided that in the circumstances of this case, Allstate had a duty to defend, as well as indemnify, Michel under the automobile policy. Allstate appealed this decision, arguing that Michel's actions were deliberate when performing the doughnut, such that he was statutorily excluded from coverage.

The Duty to Indemnify

One of the primary issues for consideration by the Court of Appeal was Michel's intention at the time of the accident, as this was determinative of whether the accident was excluded from coverage under the policy pursuant to section 118 of the *Insurance Act*, which excludes coverage for conduct contravening any criminal or other law "with the intent to bring about loss or damage".

In support of its assertion that the accident was excluded from coverage, Allstate argued that Michel's act of doing the doughnut was deliberate and, therefore, the harm sustained by Amy was caused intentionally. In support of this position, Allstate relied on Michel's conviction for careless driving under the *Highway Traffic Act*, as well as the argument that Michel's driving was so reckless that it amounted to an intentional act.

In deciding the case, the Court of Appeal distinguished between the intention to commit an act (i.e. intending to do a doughnut) and the intention to cause harm (i.e. intending to strike Amy with the car). The Court of Appeal held that while Michel's act of doing the doughnut may have been intentional, there was no indication that he intended to harm Amy. In coming to this conclusion, the Court of Appeal was mindful of Michel's "unshaken testimony" that he had absolutely no intention to harm Amy. This evidence was supported by Shayne and was not refuted by Amy. The Court of Appeal also observed that there was no animosity between any of the parties involved in the accident.

In the foregoing circumstances, the Court of Appeal held that Michel did not intend to bring about loss or damage to Amy, such that coverage was not excluded under the policy. As such, Allstate's appeal was dismissed and it was required to fund the settlement of the main action.

The Court of Appeal's decision in *Savage v. Belecque* is significant for several reasons. First, it reminds us that insurers will often owe a duty to provide coverage for seemingly "intentional acts" so long as the harm that such acts cause is unintentional. Second, and perhaps more importantly, it reminds us that one must exercise extreme caution when executing radical moves like doughnuts in public places.

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



Added Experience. Added Clarity. Added Value.

Accelerator Centre, 295 Hagey Blvd, Suite 300, Waterloo N2L 6R5
www.millerthomson.com

Helping you. Live your life.

We Care provides the support *your loved ones need* and the peace of mind *you need* – for a few hours a month or around the clock, at home or in a long-term care or retirement community.

- Services include:
- Personal Care
 - Housekeeping
 - Nursing
 - Accompanied Visits
 - Caregiver Relief
 - Foot Care



Our caregivers are specially trained to help with Alzheimer's and dementia, diabetes, acquired brain injury and end of life care. We've been helping families like yours since 1984.



Helping you. Live your life.™

700 Strasburg Road, Unit SO-30,
Kitchener, ON N2E 2M2

519-576-7474 www.wecare.ca





Disaster repair and cleaning specialists

An innovative leader providing professional and quality services to the insurance industry and its customers.

Barrie | Brantford / Cambridge

Halton / Peel | Hamilton

1-888-751-7285 | www.paulsrestorations.com





HAVE YOU MET MARTIN?

FirstOnSite is proud to announce its newest Project Manager – Martin West. Based out of our Guelph office at 355 Elmira Rd, Martin will provide service to the Guelph, Kitchener, Waterloo, Cambridge and surrounding areas. Specializing in large and complex losses, Martin has combined a carpentry background with over 6 years of restoration industry experience and extensive education credentials.

He holds multiple IICRC certifications including training in water restoration, applied structural drying, mould, fire and smoke restoration. Additionally, Martin has participated in asbestos supervisory training, infection control and confined space training. Martin is well known throughout the industry for his exceptional customer service and exacting standards.

Martin West
355 Elmira Road North – Unit 108, Guelph Ontario N1K 1S5
| P | 519.837.1601 | F | 519.837.4147
| E | mwest@firstonsite.ca | www.firstonsite.ca |

**YOUR
PROPERTY
IS OUR
PRIORITY**



Patrick Leonard, VP Southwest Ontario

Jason Dumbreck, VP Southwest Ontario

ADVANTAGE: **LOCAL EXPERTISE**

It has been one year since King-Reed & Associates LP re-branded to CKR Global and what a great year it has been. After operating in Ontario for the past 28 years as King-Reed & Associates LP it has been an exciting and refreshing change to our new brand, CKR Global.

In addition to becoming the first truly national investigations agency, with 26 locations across the country, we were also able to increase our experienced team of investigators in Ontario by a substantial amount. We now have over 250 investigators on the ground in 11 locations across Ontario, 5 of which are strategically located in Southern Ontario from Waterloo to Windsor. Many of our investigators in this area come from a wide variety of backgrounds and live in rural neighborhoods, making them the perfect choice for your summer surveillance and inquiry needs.

Please feel free to reach out to us directly for any advice pertaining to your current handlings.

1 877 695 6575

www.ckrglobal.com



Discount[®]

CAR AND TRUCK RENTALS

Canada's Leading Vehicle Replacement Solution



- ◆ **Free** Customer Pick Up & Return
- ◆ Servicing Your Local Insurance Needs!
- ◆ Body Shop & Insurance Company **Daily** Follow Ups
- ◆ Wide Selection of Current Model Year Vehicles & Trucks

Brantford (519) 753-4000

230 Lynden Rd.

Cambridge (519) 650-5500

1250 Bishop St. N.

Guelph (519) 837-2030

2-695 Woodlawn Rd. W.

Guelph (519) 837-0653

73 Gordon St.

Kitchener (519) 743-5020

1081 King St. E.

Kitchener (519) 894-0100

Fairway Rd S.

Waterloo (519) 888-6175

475 King St. N. (in the Waterloo Inn)

Emergency

- Catastrophic Event Response
- Fire / Water / Wind / Lightning
- HAZMAT Emergency Response
- Spill Response
- Water Extraction
- Structural Drying

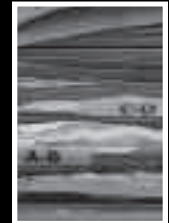
Restoration

- Fire / Water / Wind / Lightning
- Deodorization and Neutralization
- Document Recovery & Restoration
- Electronics & Equipment Cleaning

Remediation

- Spill Remediation
- Asbestos Abatement
- Mould Remediation
- Vacuum Truck Services
- Demolition
- Tank Removal
- Wastewater Treatment

Your Complete Emergency Solution™



STRONE™

1987
years
25
2012

itech™

STRONE.ca @STRONEHQ

itechEnvironmental.ca @itechHQ

STRONE 24/7 Emergency - 866-354-4424

Itech 24/7 Live Answer - 877-324-4402

INSURANCE

YOUR INSURANCE LAW TEAM

Richard J. Trafford
rtrafford@millerthomson.com

Randall B. Carter
rcarter@millerthomson.com

Patricia J. Forte
pforte@millerthomson.com

Theodore J. Madison
tmadison@millerthomson.com

Helen D. K. Friedman
hfriedman@millerthomson.com

James Bromiley
jbromiley@millerthomson.com

Ashleigh T. Leon
aleon@millerthomson.com

Patrick Ley
pley@millerthomson.com

Gordon L. Robson
grobson@millerthomson.com

Teneil MacNeil
tmacneil@millerthomson.com

James Prior
jprior@millerthomson.com

Nicholaus de Koning
ndekoning@millerthomson.com

Timothy J. McGurrin
tmcgurrin@millerthomson.com

Katherine Waterston
kwaterston@millerthomson.com

Bryan Horrigan
bhorrigan@millerthomson.com

Caroline L. Meyer
cmeyer@millerthomson.com

Daniel Strigberger
dstrigberger@millerthomson.com

Talaal Bond
tbond@millerthomson.com

Katie Quinlan
kquinlan@millerthomson.com

Added experience. Added Clarity. Added value.

ACCELERATOR BUILDING
295 HAGEY BLVD., SUITE 300
WATERLOO, ON + N2L 6R5 + CANADA

Miller Thomson LLP
millerthomson.com

**Miller
Thomson**
lawyers | avocats


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

The Insurance Law Firm
Gilbertson *Davis* EMERSON
 Easy to work with. Tough to oppose.

Gilbertson Davis Emerson LLP
 20 Queen St., W., Suite 2020
 Toronto, Canada M5H 3R3

T 416.979.2020
 F 416.979.1285

gilbertsondavis.com




If only it were this easy...

For "proof positive," you can depend on the comprehensive resources and experience of the highly respected forensic team at Rochon Engineering.

We are your single source for forensic investigations across all disciplines. Reacting quickly, our findings stand up against the highest scrutiny, in and out of court. Trust us to deliver concise and conclusive results for every situation including:

- Structural, civil and mold assessments
- Motor vehicle accident reconstruction
- Environmental remediation
- Fire investigation
- Failure analysis of mechanical and electrical systems
- Metallurgical & plastics failure analysis

Setting the standard for quality in Forensic Engineering
1.888.ROCHONS (762.4667) • ROCHONS.CA




AUTOPRO **12 months/20,000 km**
"PEACE OF MIND" WARRANTY



Complete Collision Specialists

ESTABLISHED IN 1952

We Are The Largest & Best Equipped Repair Facility In The Tri-City Area

- ✓ New Devilbiss down draft baking booth for factory like finish
- ✓ Our Collision repairs are guaranteed for as long as you own the vehicle - ask for details
- ✓ All makes of cars & trucks

(519) 576-9450
 200 Gage St. Kitchener (at Belmont)

Member of The  Network

WE'VE GOT YOU COVERED...



WINMAR®

GUELPH
Allen Danson
(519) 826-0000

**KITCHENER/
CAMBRIDGE**
Peter Douwes
(519) 895-0000

ORANGEVILLE
Michael Daws
(519) 940-8400

STRATFORD
Devon Pritenica
(519) 273-0000

"The Largest Restoration
Company In Canada!"

PROUD TO BE CANADIAN OWNED AND OPERATED  FOR MORE INFORMATION VISIT WWW.WINMAR.CA



2nd Annual Local Insurance Associations Charity Curling Bonspiel

Friday, March 22, 2013

Time is more valuable than ever with busy schedules it is often difficult to support the many insurance events. Leaders within your local Broker, Adjuster, and Insurance Institute associations have been working to organize a winter event that will bring our memberships together providing an opportunity to net work with like minded individuals within our community.

Based on your feedback, we recognized that building and creating connections within our industry is important to you and key to career development and success. Our tripartite associations are please to extend an invitation to join our second annual Local Insurance Associations Charity Curling Bonspiel.

We hope you can join us at Westmount Curling Club on Friday, March 22. We are offering a morning and afternoon draw so you can still get a half-day in at the office. A buffet style lunch will be catered to both the morning and afternoon curlers, with four (4) end draws providing lots of opportunity to connect with colleagues throughout the local industry.

This is a fun event so experience is not required but we will try to match up experienced groups in the draws along with offering some instructions at the rink. A registration is provided below. It will

be first come first serve for your choice of a morning or afternoon draw. If you care to sponsor part of the event please indicate so on the registration form. We will present proceeds to the United Way of Kitchener Waterloo.

Curling is a really fun social sport that most of us do not get to try or do very often, we really hope you can join us on the 22nd.

Prize Sponsorships

Donations of prizes to Melissa Snyder and Charlene Ferris
msnyder@lmicanada.com or Charlene_Ferris@cooperators.ca

Location

Westmount Curling Club

Date

Friday March 22, 2013

Time

9 am - Start. Select preferred draw time on the registration form.

Price

\$50 plus hst per person. \$200 plus hst for a team of 4.

Note

Wear warm clothing and flat, indoor shoes

1st Local Insurance Associations Charity Curling Bonspiel

First name		Last name	
Company		Address	
City/Prov		Postal code	
E-mail	Phone	Fax	

Price

\$50 plus hst per person. \$200 plus hst for a team of four.

Telephone registrations: 519-579-0184

E-mail registrations: Conestogamail@insuranceinstitute.ca

Present experience Never curled Curled 1-10 games
 Curled 10 - 20 games Present league curler

Payment Choice

Method (check one) Cheque Money order

Amount _____ Date _____

Signature _____

Preferred position Skip Vice Second Lead

Preferred draw time a.m. p.m.

Mail or fax payment to: Insurance Institute of Ontario - Conestoga Chapter, 101-515 Riverbend Dr., Kitchener, ON N2K 3S3 Fax: 519-579-1692



Like New Collision Group

Dedicated to Excellence in
Customer Service



Guelph – (519) 824-5550
Cambridge – (519) 622-1055

Kitchener – (519) 744-8421
Waterloo – (519) 885-3800

Find us at:
WWW.LIKENEW.CA



Quality Since 1984

WHITEHALL BUREAU OF CANADA LIMITED

Canada's National Investigative Resource TM
www.whitehallcanada.com

Surveillance
Comprehensive Statements
Background Inquiries
Financial/Assets/Locates
Accident Scene Analysis
Major & Complex Loss Specialists
Canadian/U.S. Database Specialists
U.S. Vendor Management and Audit
FileLynx.com - 24 Hr Case Management System

**Whitehall Bureau of America
Now licenced in the USA**

Toll Free: 1.866.510.1212
mail@whitehallamerica.com

TOLL FREE: 1.877.313.7283

TOLL FREE FACSIMILE: 1.866.809.7283

Service Offices Across Canada including:
Kitchener-Waterloo: 519-772-7616

Vancouver, Calgary, Winnipeg, Toronto, Hamilton, Kitchener, London, Barrie, Niagara Falls, Ottawa-Gatineau, Montreal, Halifax, Moncton, United States

a global **ONIX** partner

PARKWAY AUTO RECYCLERS

Your Best Choice for Quality Late Model Auto Parts Since 1963



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



www.parkwayautorecyclers.com

info@parkwayautorecyclers.com

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

519-894-1450

Fax: 519-894-1948

21 Manitou Drive, Kitchener Ontario N2C 1K9



**A VALUABLE ADDITION
TO YOUR TEAM**



THE BODY SHOP NETWORK • FIXAUTO.COM



Making Numbers Make Sense

Forensic Accountants

Experts in Economic Damage Quantification

- Accident Benefits
- Casualty & General Liability
- Litigation Accounting Services
- Property
- Specialty Risks



Sheri Gallant, CMA
sgallant@mdd.com
519.432.1123

> mdd.com

Across Canada & Around the World

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

2012-2012
K-W O.I.A.A. APPLICATION
FOR SOCIAL MEMBERSHIP

Name: _____

Company: _____

Telephone No. (____) _____ Fax No. (____) _____

Email Address _____

Previous Member: () No () Yes

If Yes, state year and employer: _____

New Members only – Two active members in good standing must provide sponsorship:

Name: _____

Company: _____

Name: _____

Company: _____

I HEREBY MAKE APPLICATION FOR SOCIAL MEMBERSHIP IN THE K-W CHAPTER OF THE O.I.A.A. IF I AM ACCEPTED, I PROMISE TO SUBSCRIBE TO AND ABIDE BY THE CONSTITUTION AND CODE OF ETHICS OF THE ASSOCIATION.

Signed: _____ Date: _____

Membership Dues are \$20.00 – Membership effective from September 1, 2012 to August 31, 2013

Payable to: K-W O.I.A.A.
P.O. BOX 40079
WATERLOO SQUARE
75 KING STREET SOUTH
WATERLOO, ON N2J 4V1

Insurance Stays are our Specialty!



- Spacious Studio, 1-Bedroom and 2-Bedroom/2-Bath Suites
- Full equipped kitchen in every suite (stove-top, full fridge, dishwasher, microwave, toaster, cooking utensils)
- Pets Welcome!
- Free: Daily hot breakfast buffet; Tues-Thurs dinner buffet; laundry facilities; wired & wireless internet access
- For more details, contact Tyler Culbert at Tyler.Culbert@whg.com or 519-780-3902

Staybridge Suites
11 Corporate Court
Guelph, ON N1G 5G5

519-767-3300 • 1-800-238-8000
www.staybridge.com/guelphontario



Total Roofing Capabilities

From large straightforward industrial projects to the most complicated of hospital or educational reroofing projects, Atlas-Apex Roofing Inc. has the experience and knowledge to complete any project to the satisfaction of our customers. Atlas-Apex Roofing Inc. is dedicated to providing the highest quality workmanship, along with excellence of service.

- We specialize in
- Re-roofing
 - Maintenance
 - Water Proofing
 - Roof Restoration
 - Emergency Repairs 24/7
 - Slope / Shingles / Metal

Serving the Ontario region since 1920.

Tel: 519-894-4422 • Tel: 416-421-6244 • 1-877-221-ROOF (7663)

www.atlas-apex.com email: inquiries@atlas-apex.com

65 Disco Road, Etobicoke, ON M9W1M2
390 Trillium Drive, Kitchener, ON N2E 3J3
122 Saunders Road, Unit 2, Barrie, ON L4N 9A8

Industrial • Commercial • Institutional

DISCOVERING
THE TRUTH BY
DETERMINING
THE FACTS

Structural Fire & Explosion Investigation

Residential / Commercial / Industrial • Canine Accelerant Detection and Drug Searches • Fire Department Litigation

Forensic Visual Services

Forensic Animations • Forensic Illustrations • Photogrammetry
Videography • Virtual Tours • Fire Modelling • X-Ray Imaging

Structural & Civil Engineering Services

Structural Collapse / Failure • Civil Engineering Assessment
Mold Assessment • Computer Assisted Drawings

Personal Injuries Slip & Fall Investigation

Building Code Issues • Product Liability

Failure Analysis

Electrical / Mechanical / Chemical / Metallurgical
Product Liability • Heating & Ventilation Systems

Vehicle & Heavy Equipment Fire Investigation

Private Passenger Vehicles • Tractor Trailers • Forestry Equipment
Commercial Passenger Vehicles • Marine • Agricultural Equipment
Construction / Industrial Equipment

Damage Assessment

Equipment • Environmental • Structural

Alarm System Analysis

Fire / Burglar Detection • Fire Suppression

ORIGIN
AND CAUSE



Ancaster, Mississauga, Thunder Bay,
Kingston, Ottawa and Winnipeg

www.origin-and-cause.com

1-888-OCI-FIRE

ADVERTISERS DIRECTORY

Atlas-Apex Roofing Inc	31
Autopro/Queensway.....	25
Bayshore Home Health	Outside back cover
Broderechts	Inside back cover
Carpet Department	Inside front cover
Carstar	Inside front cover
Caskanette Udhall	03
CKR Global Investigations.....	22
Davis Martindale Advisory Services Inc.	Inside front cover
DMA Rehability	07
Discount Car and Truck Rentals	23
FG	16
First Response Restorations	Outside back cover
Fix Auto	29
Forbes Motors	13
Gilbertson, Davis, Emerson LLP	25
Golden Triangle Restoration	11
IRG	11
Jamieson Car & Truck Rentals	11
KPMG	16
MacIntosh Cleaners.....	Inside back cover
MD&D	29
Medyisys Health Group	03
Miller Thomson LLP.....	24
Origin & Cause Inc.	31
Parkway Auto Recyclers	29
Paul Davis Systems.....	Inside back cover
Paul's Restorations	20
PriceWaterhouseCoopers	Outside back cover
Regency Auto	28
Relectronic-Remech	13
Rochon Engineering Inc.	25
Staybridge Suites	31
Strone Restorations	24
Whitehall Bureau of Canada Ltd	28
Winmar	26