

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

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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.

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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**

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Chapter of Ontario Insurance Adjusters Association



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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@crawco.ca.

Regards,

Michael McLeod
Chapter Toronto Delegate

ASSOCIATION CONTACTS AND INDUSTRY EVENT SCHEDULE

February 28th, 2013Educational Meeting

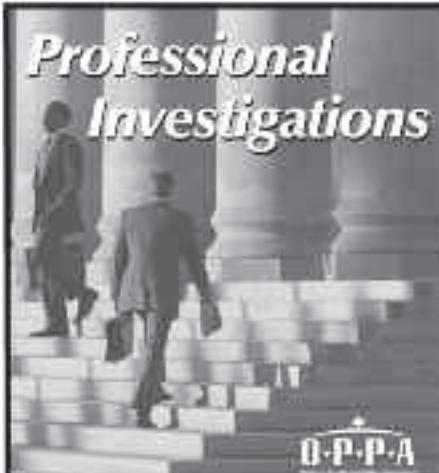
March 22nd, 2013Insurance Associations Curling Bonspiel

March 28th, 2013Provincial Seminar

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K-W Ontario Insurance Adjusters Association
Contact – Randy Higgins
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Insurance Institute-Conestoga Chapter
Contact – Heather Graham
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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

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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

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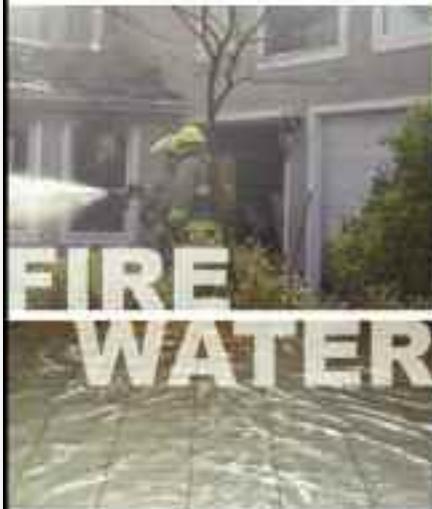
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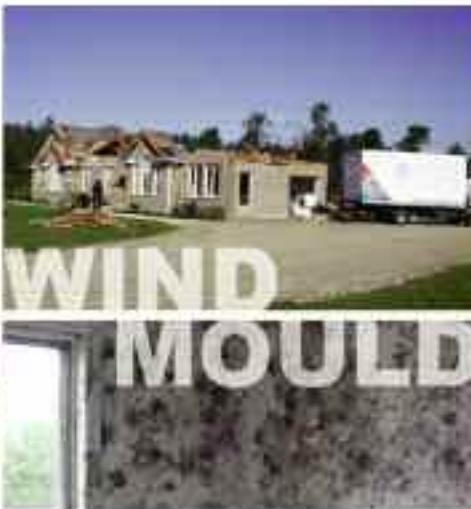
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The Unintentional Results of Intentionally Doing Doughnuts



Authored by:

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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.

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".

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.

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.



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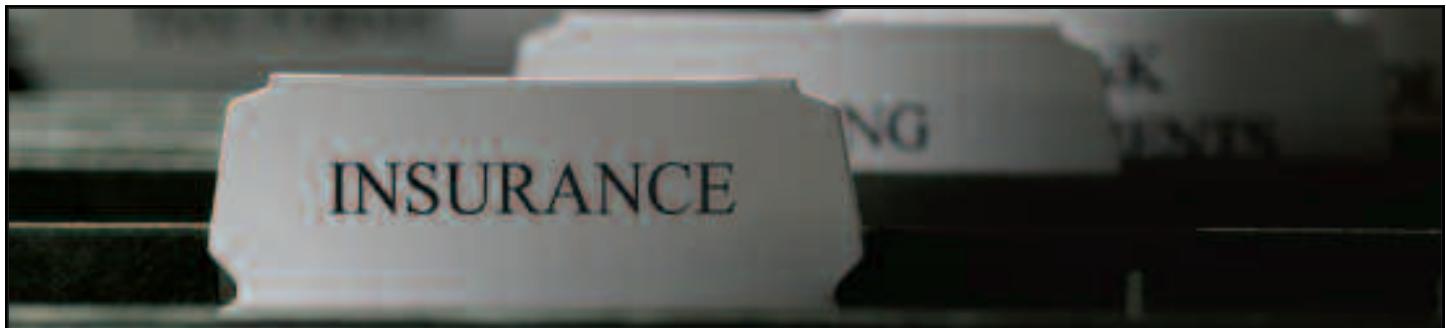
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Friday, March 22, 2013

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.

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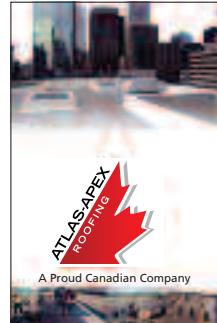
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