

PRESIDENT'S MESSAGE



August 2013

... Come Hell or High Water... certainly has been THE catch phrase for this last couple of months of summer. Our thoughts go out to all of those who have lost everything in the floods in High River/Calgary as well as the recent flooding in Toronto. As well, our prayers go out to those who have lost friends, family and relatives in the Lac Megantic derailment. It is seemingly turning out to be a summer of disasters, and as I write this, July has not yet ended. All of these events keep our insurance professionals extremely busy, and for some people, this is the first time that they will have had the reasons to call on our industry. While the work is hard and exhausting, it is also rewarding, and with that thought in mind, so begins the new executive year for the KW-OIAA.

First of all, I would personally like to thank outgoing president Charlene Ferris for doing such a wonderful job last year. Her organizational skills and determination made the executive run smoothly, and left it better than when she took on her role as President. I am sure that she will enjoy her much less hectic role as Past President. Many thanks as well to all of our executive and a special mention to Dan Strigberger, who was and is essential to our website role-out and continued success on-line.

On another high note, a very special Thank You to all of our members for making the 2011 KW-OIAA Golf Tournament a huge success. We raised \$5000 for our charity, KidsAbility; with our kind-hearted 50/50 winner donating his half of the 50/50 draw and Peter Douwes of Winmar making two \$250 donations in the "closest to the tee" prize hole on behalf of those winners, we increased that donation amount to almost \$6000.!! Well done to one and all for giving so generously; all the proceeds from the two draws (50/50 and Blue Jays tickets) as well as the proceeds from the putting contest, and hole sponsor funds, went directly to our charity. The Ferrier family educated us on how important and vital KidsAbility is to families in need this kind of support; their speeches were inspirational and enlightening. Good Luck to the Ferrier family in the future and I am sure that Lauren will get all the assistance she needs to become the lovely young lady we all anticipate she will be. If you would like more information on this incredible association, please be sure to visit their website at www.kidsability.ca. This coming year will have many entertaining as well as educational aspects to it, starting off with our annual Trade Show to be held at The Concordia Club on Sept 26th. The registrations forms are available in this bulletin, as well as online via our website www.kwoiaa.com. If you have any questions regarding the upcoming trade show, either myself or your new Vice President, Laura Potts will be happy to answer them.

We are always looking for good articles regarding all aspects of our business and I would encourage our membership to come forward with any ideas for our educational meetings. As for myself, as your new President, I will be working closely with our new executive and look forward to a successful year – please feel free to contact me if you have any concerns or questions.

So, in closing, let's hope Mother Nature is a little kinder for the balance of the summer! Cheers to all working so hard – and we look forward to seeing you at the Trade Show in September.

Cyndy Craig

August 2013

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

2013-2014 Executive Committee – Getting to know them!



Cyndy Craig – 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 fourth year on the OIAA executive in the KW area. Cyndy enjoys the outdoors, is an avid golfer, baseball player, and gardener.



Laura Potts – Vice President

Laura Potts is presently a Residential Property Field Adjuster at TD Insurance covering the KW, Cambridge and Guelph. She has experience adjusting Property, Municipal Liability, Liability, Automobile, Bodily Injury and Accident Benefit claims. She has been in the industry for over five years. This is her third year on the KW executive council. Laura is very passionate about traveling and is an avid swimmer.



Charlene Ferris – Past President

Charlene has worked for the Co-operators for 13.5 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 7 years. Charlene is a avid soccer player, enjoys travelling and spending time at the cottage.



Mark Hale – Treasurer

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.



Jennifer Brown – Secretary

Jennifer has worked for Economical Insurance for 3 years in various roles in the claims department, and is currently an Accident Benefits Claims. Jennifer can usually be found reading, baking or cooking in her spare time. Jennifer has joined the executive this year and looks forward to the years to come.



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/Webmaster

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.



Ashleigh Leon - Social Director

Ashleigh joined the insurance litigation group at Miller Thomson LLP after being called to the bar in 2008. Her practice is focused on accident benefits disputes and includes the mediation, litigation and arbitration of these claims. She also handles private disputes between insurers. When not practicing law Ashleigh spends some time helping to coach local rep and high school sports teams. This is Ashleigh's first year as an executive member of the KW-OIAA.



Randy Higgins – Bulletin Director

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 third term as the Bulletin Editor.

ON THE COVER

Because of the unique nature of our location, the association has been using photos of local landmarks and other photos that more closely reflect KW and surrounding area; last year's cover was the covered bridge in West Montrose, one of the few remaining in Canada. Stay tuned for changes – but for the next couple of months (at least) we bring you back to a little bit of Canadiana and how it ties to our region. This year's cover is Woodside National Historic Site – William Lyon Mackenzie King (1874-1950)

Woodside is the boyhood home of William Lyon Mackenzie King, Canada's 10th and longest serving Prime Minister. The house has been restored to the Victorian style of the 1890's. The importance of this residence is reflected in King's own words:

“The years that left the most abiding of all impressions and most in the way of family associations were those lived at Woodside.”

Historians conclude that King remained so long in power because he had developed wide-ranging skills that were appropriate to Canada's needs. He was keenly sensitive to the nuances of public policy; he was a workaholic with a shrewd and penetrating intelligence and a profound understanding of how society and the economy worked. He understood labour and capital. He had a pitch perfect ear for the Canadian temperament and mentality, and was a master of timing. National unity was King's most important goal. He recognized that this did not mean forcing all Canadians to espouse one single vision, but accommodating a multitude of differing, and sometimes conflicting, points of view. He led the Liberal party for 29 years, and passed away 2 years after officially retiring from politics.



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I Need an Engineer, but What Kind?

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

In my previous article I described the characteristics of an expert. Now you have a claim and you know what to expect from an expert but what type of engineer do you need?

There are many different types of engineers that cover a wide range of technical fields. I will give you an overview of some of the fields of engineering and when you might need to use them.

There are five main engineering disciplines. They include: Civil, Mechanical, Electrical, Systems, and Chemical, and each is described in the following table:

Discipline	Description
Civil Engineering	Design construction and maintenance of built environments.
Mechanical Engineering	Design of machines and mechanical systems.
Electrical Engineering	Design of systems using electricity and electromagnetism.
Chemical Engineering	Design and application of biochemical and industrial processes to change or create more useful forms of raw materials.
Systems Engineering	An interdisciplinary field that connects the aforementioned fields of engineering with human sciences to solve issues.

Each of these disciplines of engineering also has a number of sub-disciplines. For the sake of brevity and applicability I will only address a portion of them in the following table:

Discipline	Sub-Discipline	Description
Civil Engineering	Structural Engineering	The behaviour of structures subjected to various load conditions (buildings, towers, chimneys and other structures subjected to wind, snow, seismic and other loads).
	Building Science Engineering	The behaviour of the building envelope in separating the exterior environment from the interior environment (eg leaking roofs/windows/parkades, air leakage etc).
	Geotechnical Engineering	The behaviour of the ground and bearing materials (settlement, shifting, frost heave).
	Environmental Engineering	The protection and improvement of the environment using engineering principles.



Discipline	Sub-Discipline	Description
	Transportation Engineering	The design of roads, bridges and railways for the transportation of goods and persons.
Mechanical Engineering	Aerospace Engineering	The design of air vehicles and space vehicles.
	Acoustical Engineering	The control and mitigation of noise and vibration.
	Manufacturing Engineering	The design of manufacturing processes, machinery and equipment.
	Vehicle Engineering	The design of cars and other vehicles that operate across various terrains (roads, rails, ground).
	Mechanical HVAC and Plumbing	Internal heating, cooling, ventilation and piping for buildings.
Electrical Engineering	Electronic Engineering	The design of circuits.
	Power Engineering	The design of electrical generation systems, transmission lines, distribution, motors, and generators.
	Computer Engineering	The design of computing devices.
Chemical Engineering	Materials Engineering	The properties and behaviour of matter.
	Process Engineering	The design of chemical processes.





A term that gets used a great deal in insurance claims and failure investigations is forensic engineering. Forensic engineering does not involve a particular field of engineering. It can involve one or more different fields. It refers to the process of ascertaining the cause of a failure. Forensic engineering or investigations can involve: attending the site to take measurements and make observations, speaking with witnesses, testing materials, reviewing reports, working with other experts, computer modelling, simulations, accident recreations, and report preparation. In essence, all failure investigations involve forensic engineering.

There are those who may consider themselves “multi-discipline” experts... as you can imagine, it takes a constant effort to keep abreast of the latest codes and products in any one of the disciplines of engineering. For example, I am a Structural Engineer. I am formally schooled and trained as such. I work as a Structural Engineer full-time and enjoy it thoroughly. My energy is focused on keeping up with new technical advances, bulletins, standards, getting my work done and training. There is no practical way that I could maintain my expert level of knowledge in Structural Engineering if I also practised Mechanical or Electrical Engineering and visa versa. You can think of it this way, would you hire the mechanic who fixes your car to build an addition on your house?

So, at the onset of your next claim, ensure you consider gaining the insight of the proper engineering expert; and consider that a true expert should limit their focus to one field of engineering.

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

Mr. Carl Lankinen has acted as a structural expert on a number of expert reports for insurance companies and law firms. He has opined on a variety of issues including house fires, structural collapses, tornado damage, foundation underpinning for environment repairs and wind damage. He has also completed a number of peer reviews of drawings, calculations, reports, buildings and components. To this end, he has qualified as an expert witness while testifying at a Professional Engineers of Ontario tribunal.

Carl is the Facilities Group Senior Manager at Burnside. The Facilities Design Group is a multidisciplinary team consisting of the Mechanical Engineering Group, the Electrical Engineering Group, the Structural Engineering Group and the Integrated Design Group.

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FUEL SAFETY PROGRAM IN ONTARIO

By Rene Caskanette, P.Eng - Caskanette Udall Consulting Engineers

Rene is a respected forensic engineering expert, specializing in forensic engineering and environmental services for insurance and legal clients. Rene has provided engineering services to the insurance industry since 1980.

The Technical Standards & Safety Authority (TSSA) regulates the use of fuel oil in Ontario by virtue of The Technical Standards and Safety Act 2000, and Ontario Regulations 213/01 and 223/01.

On November 1, 2012 the TSSA caught up with the rest of Canada and announced release of the CSA Ontario Installation Code for Oil-burning Equipment based on the CSA B139, 2006 document published by the Canadian Standards Association, with some amendments.

One amendment was to add 6.4.12 which requires that all steel tanks be provided with double bottom construction or secondary containment to avoid environmental damage from tank leaks. This became effective on January 1, 2013.

The previous code allowed for the use of single wall steel tanks. These tanks fail regularly due to internal corrosion, releasing the oil into the environment. The failures are sudden and unexpected since the problem originates inside the tank. The cost to clean up this oil can be quite high since it can travel long distances through porous soil and on groundwater, and it can contaminate water bodies and be trapped below structures.

This code change has been a long time coming, but it should have a positive long term effect on spills and contamination in Ontario.

Existing single wall tanks can remain in service. There are no retrofit requirements in the code. Insurers should be aware of this when placing a policy on a property with an old tank.

It would be wise to request replacement of old tanks, to improve the safety of the fuel oil system and avoid costly claims for spill cleanups. It will be many years before all of the existing tanks are replaced or taken out of service, so the risk will not be eliminated by the code change alone.

Remember not all spills are from old tanks failing. It is important that the systems be inspected annually as outlined in the code to find problems with installations, or the piping, filters and appliances, which may also cause fuel leaks and contamination.

We handle many failure analysis assignments on fuel oil spill claims for liability determination, along with handling the environmental remediation of the sites. Give us a call if you have a case you would like to discuss.

Kitchener-Waterloo Adjusters Association
Chapter of Ontario Insurance Adjusters Association



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TORONTO DELEGATE REPORT

I hope everyone is enjoying a safe and happy summer. There is certainly no shortage of weather related events this summer to keep everyone busy.

The 2013- 2014 OIAA term is here and we say goodbye and thank you to Brett Colville who is the outgoing Past President of the OIAA.

Stephen Del Greco has now assumed the role of Past President and Tammie Norn has taken the reins as the new OIAA President. The senior executive also welcomes Jennifer Graham as Secretary and Dara Banga as GTA delegate for the 2013-14 term.

OIAA event registration for the Toronto area will be posted at www.oiaa.com and you can stay tuned to OIAA events by following @PresidentOIAA on twitter and joining us on facebook.

I am happy to return as the Toronto Delegate for the KW OIAA and welcome any questions or comments that you may have throughout the year. You can reach me at Michael.mcleod@crawco.ca.

Regards,
Michael McLeod
Kitchener Waterloo OIAA Chapter Toronto Delegate

ASSOCIATION CONTACTS AND INDUSTRY EVENT SCHEDULE

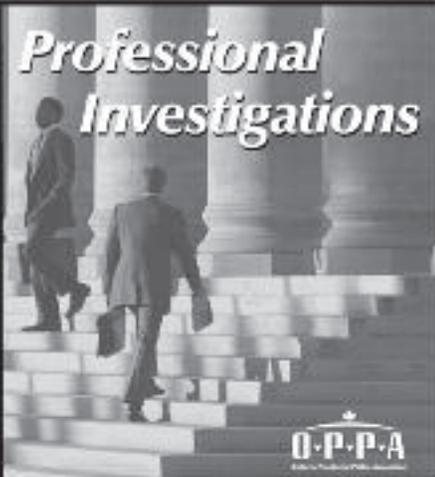
September 26th 2013.....KW-OIAA Trade Show

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How to Avoid being a Winning Loser



Authored by:

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"I was never ruined but twice; once when I lost a lawsuit and once when I won one." Voltaire (1694-1778)

Often the toughest challenges of legal strategy are driven by the contest between principle and economics. The pursuit of a result must be tailored to tolerance for risk and the reality of expense. The structure of our legal system encourages litigants to approach the process in a pragmatic manner and with efficiency. Within this environment, the effective use of Rule 49 of Ontario's *Rules of Civil Procedure* and offers to settle are still often cited as an underutilized tool.

Wise clients understand that recommendations regarding offers to settle do not necessarily equate with legal counsel who are afraid to fight or don't believe in their client's case, but rather may be indicative of counsel who make frank assessments and try to look out for a client's big picture interests. Such lawyers will regularly consider the merits of a tactically constructed offer to settle, and will make recommendations when appropriate.

An understanding of some of the basics of Rule 49 is important for any client wanting to provide informed instructions on such recommendations. Under Rule 49, if a plaintiff makes a qualifying offer to settle and then obtains a better result at a hearing, that plaintiff may receive an award of partial indemnity costs to the date of the offer and substantial indemnity costs from that date forward. The switch to substantial indemnity costs is a bonus for having been prepared to accept less than what was eventually won. It also serves as penalty for the defendant having forced the manner through a hearing after reasonable settlement became available for the taking.

If a defendant makes a qualifying offer and then the plaintiff recovers less after a hearing, the plaintiff still receives partial indemnity costs to the date of the defendant's offer. The bonus for the defendant is an award of the defendant's own partial indemnity costs from the date of the offer. If a plaintiff's claim is entirely dismissed, in a strict sense Rule 49 may have no direct application as a defendant would normally expect to receive an award of partial indemnity costs for the entire contest. However, there is some precedent for providing the defendant a

bonus by an award of substantial indemnity costs from the date of the offer. The authority for such awards derives from Rule 57.01 in combination with Rule 49, and the broad general discretion of our courts when dealing with issues of costs.

Not just any offer to settle will trigger Rule 49 cost consequences. Qualifying offers generally must be fixed, certain, easily understandable, made at least 7 days in advance, and left open for acceptance until the hearing or trial. Although case law is somewhat mixed on the point, it has been opined that a court should not be required to enter into an ad hoc assessment of costs as of the date of an offer. Therefore, it is usually best if the offer does not contain a fixed amount for costs or an all inclusive number, with the possible exception of a defendant's offer designed to trigger a substantial indemnity award in the event of an outright dismissal. Other considerations may also come into play. For example, if the dispute involves an automobile insurance claim, the impact of decisions based on section 267.5(9) of the *Insurance Act* may be considered and the terms of the offer adjusted to accommodate issues of any applicable deductible, threshold defence, and collateral benefits.

The careful use of Rule 49 is a valuable tool in leveraging a favourable result, whether by settlement or Judge's decision. The fact that the potential costs bonus is tied to the date of the offer should not be overlooked. It is rarely appropriate for matters to go to trial without the delivery of a Rule 49 offer, but further advantage can be obtained by serving such an offer as early as possible. In some matters, neither the plaintiff nor the defendant may really be able to assess liability, damages, and trial risk early in the process. However, in other cases, service of a Rule 49 offer before documentary productions are exchanged or even together with a pleading may be shrewd.

The decision in *Godina v. Tripemco Burlington Insurance*, 2013 ONSC 1787 (CanLII), released March 25, 2013 illustrates some of these points. The dismissed claim related to allegations the Defendant failed to properly advise the Plaintiff about the opportunity to purchase optional income replacement benefits. The combined effect of Rule 49 and

Rule 57.01 “allow the court to award costs to a successful defendant on a partial indemnity basis up to the date of an offer and on a substantial indemnity basis thereafter where the action is dismissed.”

The Defendant had made offers to dismiss without costs but it was an offer made on November 18, 2010, for \$35,000.00 all inclusive, that the Court held triggered the cost consequences of Rule 49. The Defendant was awarded partial indemnity costs to November 18, 2010, and then substantial indemnity costs thereafter. In the circumstances of an outright dismissal, there was no question that the Defendant’s offer to pay something would have been a more favourable result for the Plaintiff.

The result illustrates how the typical problems that sometimes disqualify all inclusive offers and fixed costs offers from Rule 49 cost implications does not exist in the event of an outright dismissal. Logically, the often cited decision from *Noyes v. Attfield*, 1994 CanLII 7286 (ON SC) that a court should not enter into an ad hoc assessment of costs as of the date of the offer in order to assist a party in meeting the onus of proving the favourability of an offer to a result has no bearing where the Plaintiff had offered something and the Defendant received nothing.

The considerations when preparing any offer, and particularly an offer intended to have Rule 49 costs consequences, are many. Yet there are few tools a litigant may use with a more direct effect on determining whether a win is still a successful result. If only Voltaire had used Rule 49 offers.

Tim McGurrin is a partner and litigator in Miller Thomson’s Waterloo office. Tim has significant experience in managing claims and disputes and is adept at leveraging his knowledge to the benefit of individuals, businesses and insurance companies.



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Interesting Facts About Earth

1. The Earth is not a perfect sphere. It's actually an oblate spheroid, thanks to a slight equatorial bulge (the difference between the equatorial and polar diameters).
2. Gravity changes across the surface of the Earth — so dieters might want to avoid the poles, where you weigh 0.5 percent more than at the equator. This gravity disparity is largely due to that equatorial bulge creating non-uniform distances from points on the planet's surface to center of the Earth, and to the fact that the Earth spins.
3. The oceans, which cover almost 71 percent of the Earth's surface, contain close to 20 million tons of gold.
4. Humans have explored less than 10 percent of the Earth's vast oceans. Get on it, James Cameron.





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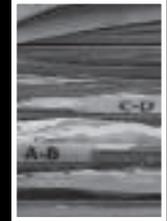
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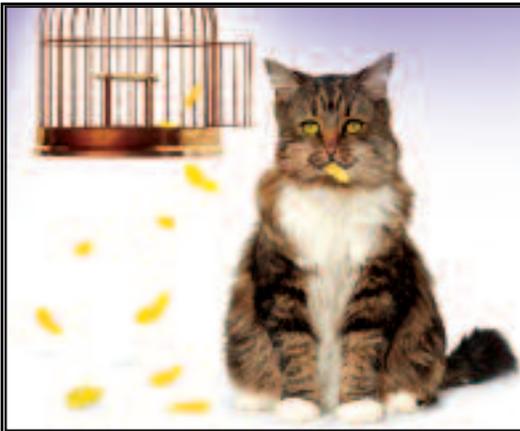
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Kitchener Waterloo Tradeshow – Thursday September 26, 2013

- Location:** Concordia Club
429 Ottawa Street
Kitchener, ON N2M 3P6
(519) 745 5617
- Vendor Drop Zone:** ~~Drop~~ arrival vendors can access the inside of the tent with their vehicle in order to drop supplies closer to their booths.
- Registration Desk:** Located inside the main entrance to the Concordia Club
- Important Times:**
- | | | |
|--------|---|----------------|
| 12 pm | - | Booth set up |
| 4 pm | - | Doors open |
| 6:30pm | - | Tradeshow ends |
| 7pm | - | Dinner |
- Supplies:** Electrical power is available at all booths but you may want to consider bringing an extension cord or power bar. Two chairs are provided.
- Prizes:** The prize table will be made available in the dining room. We ask that each vendor draw a name for the recipient of their prize. Tag the prize with the recipient's name and place it on the prize table. *A member of the OIAA executive will attend your booth shortly after 6pm and ask you to identify the recipient of your prize.* The vendor and recipient's name will be displayed in the power point display in the dining room. It is the vendor's responsibility to ensure the appropriate person receives the prize.



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TRADE SHOW BOOTH REGISTRATION

WHEN: Thursday, September 26, 2013 **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 \$ _____ *Cheques should be made payable to: KW O.I.A.A.*

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
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Inquiries can be directed to:
Cyndy Craig, ccraig@archinsurance.com
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Please RSVP by September 1, 2013



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TRADE SHOW DINNER REGISTRATION

WHEN: **THURSDAY, SEPTEMBER 26, 2013**

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

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Name: _____ Telephone : () _____

Company Name: _____

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