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PRESIDENT'S MESSAGE

FEBRUARY 2017



Hello,

January has had some different weather patterns, snow, sleet, hail, rain, positive temperatures, and ice which has made some interesting times for those travelling, but there hasn't been a polar vortex this year. That is a bonus, right? I know I will be glad to see spring.

On January 26, we welcomed over 100 people to the Contractors Round Table discussion. Many thanks to all who were on the panel; David Colyn, Dan Loosemore, Jeff Durrer, Kristin McCutcheon, Jim Woodhouse, Chuck Stewart and Peter Douwes. It was a great night had by all.

We are still busy planning the year's biggest event, Maytoberfest May 4 & 5, 2017, and have many exciting things in store for the attendees. You can register TODAY at <http://www.kw-oiaa.ca/2017Provincial> for general attendance tickets and trade show booths. Maytoberfest is being held at the Inn of Waterloo which is booking up fast. If you would like a room on site, please register and book your room.

Sponsorship is the only way we will be able to pull off an amazing conference for all attendees, if you or your firm are interested in sponsoring this event please contact us at sponsorship@oiaaprovincial.com for more information. We are pleased to say that Platinum Sponsorship has sold out. Please don't wait to let us know that you want to sponsor so that you don't miss the amazing opportunities.

On January 31, 2017, members of the committee attended the provincial claims conference in Toronto. If you were there you couldn't miss us in our Drindls and Lederhosen. The conference was a huge success for the provincial chapter and ourselves. I would love to extend many thanks to the executive committee for being so dedicated to the membership of this chapter. They are always willing to step up and help each other out and any of our members, it is a great honour to work along side these wonderful people.



A handwritten signature in black ink that reads 'Jennifer Brown'.

Jennifer Brown
President of K-W OIAA

K-W OIAA EXECUTIVE COUNCIL 2016-2017

Jennifer Brown

President

Economical Insurance

519-635-3678

Email: jen.guttridge@gmail.com

Charlene Ferris

Vice President

The Co-operators / Cosco Insurance

877-682-5246 ext 272280

Email: Charlene_ferris@cooperators.ca

Carrie Keogh

Treasurer & Provincial Conference Chair

Economical Insurance

519-570-8500 ext. 43220

Email: carrie.keogh@economical.com

Jaime Renner

Secretary

Economical Insurance

519-570-8500 ext. 43031

Email: jaime.renner@economical.com

Cyndy Craig

Past President & Provincial Conference Chair

Arch Insurance Canada Ltd.

647-293-5436

Email: cccraig@archinsurance.com

Leeann Darke

Director

The Co-Operators

519-618-1230

Email: leeann_darke@cooperators.ca

Jennifer Mohr

Director

Economical Insurance

519-570-8500 ext.43017

Email: Jennifer.mohr@economical.com

Stephen Tucker

Provincial Delegate

Economical Insurance

519-570-8500 ext 43281

email: stephen.tucker@economical.com

Monika Bolejszo

Social Director

Samis + Company

1-844-SAMISKW ext 110

Email: mbolejszo@samilaw.com

Ashleigh Leon

Social Director

Miller Thomson LLP

519-593-2427

Email: aleon@millerthomson.com

Manish Patel

Bulletin Director

Larrek Investigations

519-576-3010

Email: mpatel@larrek.com

Daniel Strigberger

Web Director

Samis + Company

1-844-SAMISKW ext 127

Email: dstrigberger@samilaw.com

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

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EVENTS SCHEDULE 2016-2017

February 23, 2017- LAT Attack - Ashleigh Leon & Leann Darke

March 30, 2017- Liability Topic- Carrie Keogh & Dan Strigberger

March 31, 2017- Tri- Council Curling Bonspiel: Westmount Golf and Country Club

April 27, 2017- Election Night- Jennifer Mohr & Jaime Renner

May 4&5, 2017- OIAA Provincial Conference – The Inn of Waterloo

June 22, 2017- John McHugh Memorial Golf Tournament: Jennifer Brown & Charlene Ferris: Ariss Valley Golf and Country Club

All events will be held at Golf's Steak House and Seafood unless otherwise noted.



SOCIAL CHIT CHAT

February 2017



In Canada, 2016 brought the highest ever catastrophe insured loses; but last year is well behind us and we have a lot to look forward to in the insurance industry this year and specifically in our region.



Google and 10 other companies continue to test and improve their self-driving vehicles at an exceptional rate but most exciting is our Maytoberfest Provincial Conference taking place May 4-5, 2017 at the newly revamped Inn of Waterloo. Please visit www.oiaaprovincial.com to register and for more information.

We look forward to seeing you at our monthly dinner and educational evening coming up on February 23, 2017 at Golf's to discuss the LAT. And also, don't forget to register for the annual curling bonspiel happening March 31st.

See you soon and as always if you have any comments or suggestions please feel free to email any of the members of your executive.

Cheers,

Your 2016-2017 Social Director
Ashleigh Leon

Articles



Do you have an article that you would like to submit to the bulletin? We are always looking for interesting articles relating to insurance that will help educate adjusters and vendors!!

Please submit your articles to Manish Patel at mpatel@larrek.com

Are you hosting an event that you would like photos to be included in the bulletin? Please submit them to Manish Patel.



PROVINCIAL DELEGATE REPORT



The OIAA Claims and Professional Development Conference took place at the Metro Toronto Convention Centre on Tuesday January 31st. This was a milestone year marking the OIAA's 25th anniversary hosting the event. In conjunction with the Claims conference the OIAA also hosted a panel discussion and career fair for over 200 students from the insurance programs from the various participating colleges including Conestoga. This year I had the pleasure of participating in the panel discussion. Interacting with the students was the highlight of the conference for me – that and Manish marketing the Kitchener Provincial Conference dressed in his styling lederhosen. Thanks to Cyndy, Jen, Carrie and Emily who were also on hand dressed in dirndls to market the K/W event.

The next major OIAA provincial event is the 2017 Toronto Delegate Election at the Intercontinental Hotel on March 8th. The guest speaker will be John Scott who will tell his story about overcoming adversity. Recall that it was just over a year ago when NHL enforcer John Scott took the hockey world by storm following a fan vote that led to his controversial appearance in the 2016 NHL all-star game. Ultimately he led his team to victory and was declared the game's MVP.

Without Prejudice is still looking for informative articles. WP is a great way to share informative educational topics with our entire provincial membership. WP reaches 1600 claims professionals and industry partners on a monthly basis. Please feel free to contact me at stephen.tucker@economical.com if you have any questions or would like more information about publishing an article in WP.

Please remember to follow OIAA events on Twitter, @OIAAOfficial.

Regards,

Stephen Tucker
Kitchener-Waterloo OIAA Chapter, Provincial Delegate



OIAA 2017 Provincial Conference

Inn of Waterloo

May 4-5, 2017

Ticket prices include admission to all events on May 4 & 5
\$140+HST until January 31, 2017 • \$175+HST from February 1, 2017

**Visit www.oiaaprovincial.com or contact info@oiaaprovincial.com
for event details and registration**

May 4

Tradeshow 5-8 pm

70+ Industry Partners will be in attendance

Food and beverages will be served at this event

Industry Partners can purchase an 8'x10' booth for
\$800 + HST

Mix and mingle 8-10 pm

An opportunity to network with those in the Insurance industry

May 5

7 educational sessions

SABS and LAT Panel Discussion – Is this what anyone expected?

Hoarding – Digging out from under the exposure

Casualty Update – The Year in review

Insurance 2.0: The Sharing Economy

Fort Mac Round Table Discussion

VP Claim Panel

Drones Presentation – Outside and Interactive

**The education seminars will be followed by a
dinner and traditional fest hall.**



Tired of handing out pens, paper pads, and other ordinary swag at your trade show booth?

CHECK THIS OUT!

As part of the fun of the Provincial Conference this year, we are handing out specially designed pins that reflect our chosen theme – K-W Oktoberfest! The goal is to have attendees collect customized pins from all of the booths and decorate their bags, hats or lanyards. It's a great collector item and a fun, unique way to get your company name out there *in full colour* for around two bucks each!

Here is the pin which they designed for us:



Orders need to be in by the end of January!

To have your own special event pin for this conference, please contact:

Ana Golobic
Operations Manager
Kitchener-Waterloo Oktoberfest
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Kitchener, Ontario N2G 3G9

Phone: (519) 570-4267 ext. 226
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How to Possess a Great Dane

Daniel Strigberger | 519.279.6864 | dstrigberger@samislaw.com

Can the definition of “owner” under the *Dog Owners’ Liability Act* include someone who does not have *dominion and control* over the dog? The Court of Appeal for Ontario says “yes”.

Take a Bite of the Dog Owners’ Liability Act

By way of background, section 2 of the *DOLA* imposes strict liability upon an “owner” of a dog that bites or attacks another person or domestic animal:

Liability of owner

2. (1) The owner of a dog is liable for damages resulting from a bite or attack by the dog on another person or domestic animal. R.S.O. 1990, c. D.16, s. 2 (1).

Where more than one owner

(2) Where there is more than one owner of a dog, they are jointly and severally liable under this section. R.S.O. 1990, c. D.16, s. 2 (2).

Extent of liability

(3) The liability of the owner does not depend upon knowledge of the propensity of the dog or fault or negligence on the part of the owner, but the court shall reduce the damages awarded in proportion to the degree, if any, to which the fault or negligence of the plaintiff caused or contributed to the damages. R.S.O. 1990, c. D.16, s. 2 (3).

Contribution by person at fault

(4) An owner who is liable to pay damages under this section is entitled to recover contribution and indemnity from any other person in proportion to the degree to which the other person’s fault or negligence caused or contributed to the damages.

Section 1 of the Act defines “owner”:

1. (1) In this Act,

“owner”, when used in relation to a dog, includes a person who *possesses* or harbours the dog and, where the owner is a minor, the person responsible for the custody of the minor; [emphasis added]

Zeus Slips Down the Mountain

In *Wilk v. Arbour*, Mr. Arbour owned a Great Dane named Zeus. At all material times, Arbour was in a romantic relationship with Ms. Wilk. On December 28, 2013, Wilk offered to take Zeus for a walk and Arbour accepted her offer.

During their walk, Zeus, who was on a leash attached to his collar, suffered a seizure and became unconscious. When he regained consciousness, he backed up, came out of his collar, slipped on ice and fell down an embankment into a ditch. Wilk tried to retrieve Zeus, but also slipped into the ditch. She collided with Zeus and Zeus bit her thumb, causing her to lose her thumb above the joint.

Wilk Bites Arbour

Wilk sued Arbour for her injuries. She claimed he was liable under section 2 the *DOLA*. She also sued him in negligence.

Arbour brought a summary judgment motion, arguing among other things, that Wilk was an “owner” at the time of the accident and therefore she could not sustain a claim under the Act as an “owner”. Arbour also argued that Wilk’s injuries were not reasonably foreseeable and sought to have her action in negligence dismissed against him as well.

Summary Judgement Motion Barks at Arbour and Wilk

The motions judge found that Wilk was not an “owner” under the *DOLA* and held that she could maintain those claims against Arbour. He also found that Zeus was not in her “possession”. However, he dismissed her action for negligence, finding that the injury suffered by Wilk was not a reasonably foreseeable consequence of Arbour’s actions.

The end result was that Wilk's action against Arbour under the *DOLA* could proceed to a trial on the damages issue.

Arbour appealed.

Wilk cross appealed.

Court of Appeal Tosses Arbour a Bone

The *DOLA* claims turned on whether Wilk was an “owner” of Zeus at the time of the incident. Returning to the definition of “owner” under the Act, the issue turned on whether Wilk was a “person who possesses...the dog”. [emphasis added]

The motions judge held that the word “possesses” under the definition of “owner” means the “exercise of dominion and control similar and in substitution for that which ordinarily would be exerted by its owner (namely the person to whom the dog belongs) over the dog.”

The Court of Appeal disagreed and found that the motions judge went too far by requiring the person in question to have “dominion and control” similar to the owner:

Thus, the weight of Canadian jurisprudence respecting harbouring requires “some degree of control” in the specific situation of providing shelter to a dog; it does not use the phrase “dominion and control” as does the American jurisprudence relating to the keeper of a dog. The word, “dominion” is defined in *The Shorter Oxford Dictionary*, Thumb Index Edition (1993) as follows: “Sovereign authority” and “control”. Reading in the word, “dominion” in addition to control, in order for a person to possess a dog, as did the motion judge, imports a requirement that the person who physically has the dog has the right to exercise sovereign authority or the highest measure of control over the dog and stands in the shoes of the owner.

Accordingly, the Court held that the word “possesses” in the definition of “owner” under the DOLA includes a person – such as Wilk – who is in physical possession and control over a dog just before it bites or attacks another person or animal.

As an aside, the Court of Appeal also found that the motions judge made a palpable and overriding error when he held that Zeus was not in Wilk’s possession at the time of the incident. The Court held that the critical time to determine possession was the time just before the incident. As Wilk was the person exercising actual control of the dog just prior to the incident, and she was best placed to prevent the bite that occurred, Zeus was in her possession.

Accordingly, Arbour’s appeal was allowed.

Court of Appeal Puts Wilk in the Doghouse

The Court of Appeal held that to establish liability for animals in negligence, special circumstances must exist. The owner of an animal cannot be negligent if the animal acts in an unexpected way and injures someone.

The Court of Appeal agreed with the motions judge that Wilk had failed to prove that Arbour, as Zeus’s owner, could have reasonably foreseen the danger that could result in Wilk’s damages. The Court held that Wilk’s decision to leave the safety of the path, and proceed down the icy slope to retrieve the dog, interrupted the alleged chain of causation and was an intervening act: “Given this voluntary, intervening act, Mr. Arbour’s alleged negligence was not the proximate cause of Ms. Wilk’s injury.”

Accordingly, Wilk’s cross appeal was dismissed.

Final Fetch

Following this case, I am now trying to talk my 11-year old out of her aspirations to start a neighbourhood dog-walking business.

See [Wilk v. Arbour](#), 2017 ONCA 21.

Daniel Strigberger is a lawyer at Samis+Company’s Waterloo’s Office.
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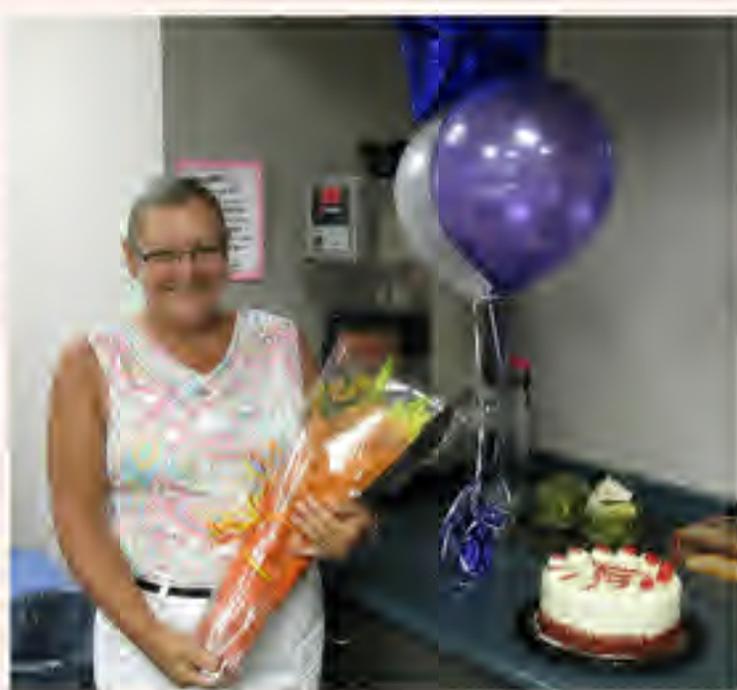
Obituary for Kimberly Filer



Passed away at the Brantford General Hospital with her son Mike, her sister Sherry and her husband Greg by her side on Wednesday, January 25, 2017 at the age of 60 years after a long and courageous battle with cancer. Best friend 45 years & loving wife of Greg for 33 years. Cherished mother of Ryan (Kristen) of Stony Creek and Michael (Jami) of Brantford. Proud grandma of Aidan - (sister of Scott (Tara)), Mia (Mary) McKinnon of Niagara Falls and Sherry (Gary) Lacky of Brantford. Sister-in-law of Alan (Bernie) Filer of Niagara Falls. Kim will also be missed by many nieces, nephews, extended family members and friends. Kim was a dedicated employee of The Co-Operators for 40 years. She will be remembered for her strong values and love for family

as well as her dedication to the Hamilton Tiger-Cats.

Friends and family will be received at the DENNIS TOLL FUNERAL HOME, 55 Charing Cross Street, Brantford on Monday, January 30, 2017 from 2-4 and 7-9 p.m. A Funeral Service will be held on Tuesday at 3:00 p.m. in the funeral home chapel. Cremation to follow. The family would like to thank Nancy, Stella, Casey and Eva of Bayshore Homecare, Dr. Legere and the Palliative Care team at the BGH, the Doctors and Nurses at Juravinski Cancer Clinic, Cancer Hospital and the Foundation especially Dr. Fraser and Tracy. Donations in memory of Kim can be made to The Juravinski Cancer Center Foundation or the BGH Foundation (Palliative Care).





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Authored by:

Teneil MacNeil

Partner, Waterloo

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In the January 2017 Ontario Court of Appeal decision of *Wilk v. Arbour*, the Court was asked to determine when a person is considered to be in possession of a dog for the purposes of the *Dog Owners' Liability Act*, R.S.O. 1990, c. D. 16 ("the Act"). The facts of this case were as follows: on December 28, 2013, Donna Marie Wilk took her boyfriend's nine year old dog, Zeus, for a walk, during which time Zeus suffered a seizure and became unconscious, while on a leash. Upon regaining consciousness, Zeus, a Great Dane, *"backed up, came out of his collar, slipped on ice and fell down an embankment into a ditch. Ms. Wilk tried to retrieve Zeus, but also slipped into the ditch. She [then] collided with Zeus and Zeus bit her thumb, causing her to lose her thumb above the joint"*. Ms. Wilk commenced a lawsuit as a result, and in doing so relied upon section 2 of the Act, the relevant provisions of which are as follows:

1.(1) *In this Act,*

"owner" when used in relation to a dog, includes a person who possesses or harbours the dog and, where the owner is a minor, the person responsible for the custody of the minor.

2. (1) *The owner of a dog is liable for damages resulting from a bite or attack by the dog on another person or domestic animal.*

(2) *Where there is more than one owner of a dog, they are jointly and severally liable under this section.*

(3) *The liability of the owner does not depend upon knowledge of the propensity of the dog or fault or negligence on the part of the owner, but the court shall reduce the damages awarded in proportion to the degree, if any, to which the fault or negligence of the plaintiff caused or contributed to the damages.*

(4) *An owner who is liable to pay damages under this section is entitled to recover contribution and indemnity from any other person in proportion to the degree to which the other person's fault or negligence caused or contributed to the damages.*

Mr. Arbour, Ms. Wilk's boyfriend, in defending this case, brought a motion for summary judgment. In doing so, he alleged as follows: Ms. Wilk was an "owner" of Zeus when bitten, and as the Act provides for liability to "another person" (a non-owner), Ms. Wilk was not entitled to damages as a result, meaning that there was no genuine issue for trial.

The motion judge dismissed Mr. Arbour's motion, described above, his reasoning being as follows:

Having considered the ordinary meaning of the word "owner", the statutory context for the use of the word, including the objects of the Act, it is my view that a just and reasonable result is that the word "possesses" when used in relation to a dog means the exercise of dominion and control similar and in substitution for that which ordinarily would be exerted by its owner (namely the person to whom the dog belongs) over the dog.

Ms. Wilk was entitled to damages as a result, and her action was to proceed accordingly. Mr. Arbour, in response, appealed this decision, with the resulting issues having been identified as follows: (1) the motion judge's interpretation of the word "possess"; and (2) whether the motion judge made a palpable

and overriding error in finding that Ms. Wilk was not in possession of Zeus at the time that she was bitten.

Issue 1: Did the motion judge err in his interpretation of “a person who possesses a dog” under the Act?

The Ontario Court of Appeal determined that the motion judge erred in his interpretation of “a person who possesses a dog” under the Act on the basis that the legislature “wished to make those who were in a position to exercise a measure of control over a dog responsible for its behaviour. This makes sense as the person exercising actual control over a dog is generally in the best position to avoid damage being caused by the dog to another person or animal”.

Issue 2: Did the motion judge make a palpable and overriding error in finding that Ms. Wilk was not in possession of Zeus at that time that she was bitten?

The Ontario Court of Appeal determined that the motion judge made a palpable and overriding error in finding that Ms. Wilk was not in possession of Zeus and the time that she was bitten, its reasoning being that the critical time to determine possession is “the time just before the incident”. This considered, and as Ms. Wilk was the person exercising control over Zeus just prior to the time that she was bitten, “she was best placed to prevent the bite that occurred”.

As a result of the above, Mr. Arbour’s appeal was allowed, the motion judge’s order was set aside, and Ms. Wilk’s action was dismissed.

What lesson have we learned as a result of this case? To walk a dog is to possess a dog, and to be responsible for the dog’s behaviour. Strict liability will consequently attach to all those walking a dog that causes injury to others, at the time that the walk occurs, irrespective of whether or not the dog walker was negligent or in any way responsible for the injury.

Wilk v. Arbour, 2017 ONCA 21.

Teneil MacNeil is an experienced insurance lawyer whose practice includes the defence of personal injury claims, property damage claims, commercial general liability matters, and subrogated recovery matters.

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Veronica Chapman
vchapman@kpmg.ca

Mike Reinhardt
msreinhardt@kpmg.ca

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pmackenzie@kpmg.ca

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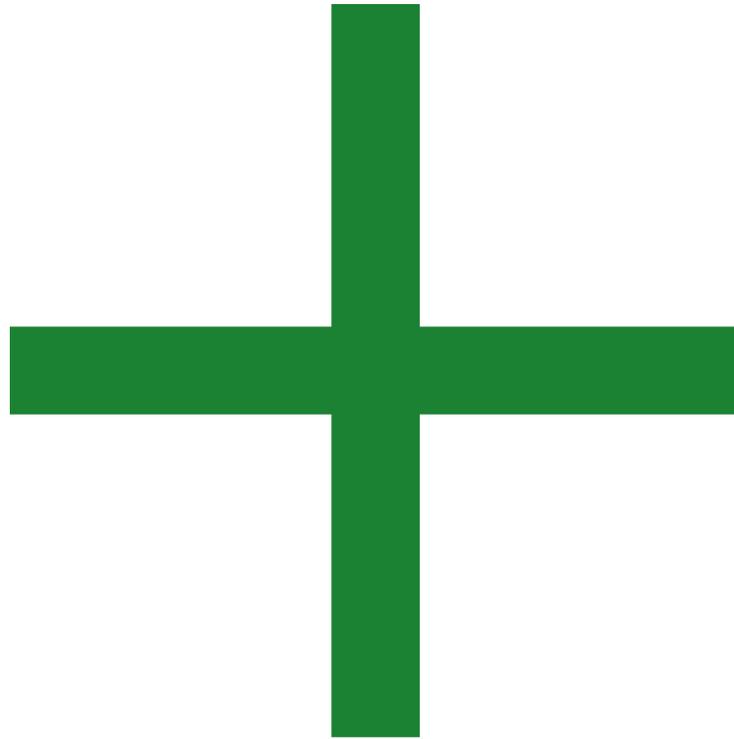
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Martin Jaekel, CFE, CII (Whitehall Bureau of Investigations Canada) has been elected **President** of the **Canadian Association of Professional Investigators (CAPI)**. CAPI was formed in 2010 as the official national voice for all recognized provincial private investigative associations which is represented by Dale Jackaman (Amuleta Computer Security) for British Columbia; Tim Houghton (Xpera) for Alberta; Rhonda Hines (Mainview Investigations) for Atlantic Canada and Louis Laframboise (Garda) for Quebec. Each provincial association has experienced, vetted members who specialize and provide training in cyber security, staged accidents, insurance investigation and forensics, amongst others. Provincial websites and members can be found on CAPI's web site;

www.capicanada.com. Representing the Kitchener-Waterloo area for the Council of Professional Investigators of Ontario (CPIO) is Wayne Sullivan (Prism Investigations).



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Contacts

Chris Gray	Zainab Walji
Jim Forbes	Blake DeClark
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