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PRESIDENT'S MESSAGE

FEBRUARY 2018



February brings with it Valentine's Day and Family Day! Hope that everyone enjoys their time with the family and their sweethearts. Thank you to everyone who attended our January Chili and Trivia Night! If you missed it, check out the photos and write up to find out who won!

Did you know that KW OIAA is being featured in the Without Prejudice magazine this month? Check out a copy of the magazine for photos along with an article we have provided.

Coming up on March 1, is the graduation ceremony for all those that have earned their CIP and FCIP. Congrats to everyone who has reached this milestone! The KW OIAA will be there as we sponsor an award for the highest mark in Principles and Practices of Insurance to a local Conestoga College student. Congratulations go to Cassandra Dawn Heasman for achieving this distinction!

Don't forget to sign up for the upcoming Tri-Association Curling Bonspiel. The registration form is located in the bulletin, if you are interested in sponsoring, please reach out to us. There will also be an upcoming Axe Throwing Event being put on by the Insurance Institute – we will send out more information as we receive it. March will also bring the Ontario General Insurance Hockey Tournament – check out their website for more information.

Thank you,
Charlene Ferris
President of K-W OIAA



K-W OIAA EXECUTIVE COUNCIL 2017-2018

Charlene Ferris

President

The Co-operators / Coseco Insurance

877-682-5246 ext 272280

Email: Charlene_ferris@cooperators.ca

Jaime Renner

Treasurer

Economical Insurance

519-570-8500 ext. 43031

Email: jaime.renner@economical.com

Jennifer Brown

Past President

Economical Insurance

519-570-8500 ext. 43375

Email: Jennifer.brown@economical.com

Jennifer Mohr

Director

Economical Insurance

519-570-8500 ext.43017

Email: Jennifer.mohr@economical.com

Randy Henderson

Social Director

Arcon Forensic Engineers

1416-492-2525 ext 36

Email: randy.henderson@arconforensics.com

Manish Patel

Bulletin Director

519-729-8881

Email: manish.mvp.patel@gmail.com

David Bushell

Financial Secretary

KPMG Forensic

519-747-8882

Email: dbushell@kpmg.ca

Carrie Keogh

Vice President

Economical Insurance

519-570-8500 ext. 43220

Email: carrie.keogh@economical.com

Ellie Celestine

Secretary

The Co-Operators

519-618-1211

Email: ellie_travis@cooperators.ca

Leeann Darke

Director

The Co-Operators

519-618-1230

Email: leeann_darke@cooperators.ca

Stephen Tucker

Toronto Delegate

Economical Insurance

519-570-8500 ext 43281

email: stephen.tucker@economical.com

Ashleigh Leon

Social Director

Miller Thomson LLP

519-593-2427

Email: aleon@millertthomson.com

Kristin McCutcheon

Web Director

FirstOnSite

226-338-0708

Email: kmccutcheon@firstonsite.ca

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 2017-2018

February 22, 2018- Forensic Engineering Seminar with Kods Engineering- Jennifer Mohr and Ellie Celestine

March 23, 2018- 7th Annual Local Insurance Association Curling Bonspiel - Westmount Golf Club

March 29, 2018- Kate Lines- Investigative Solutions Network – Jennifer Brown & Ashleigh Leon

Kate is Canada's First Female criminal profiler. We will learn about profiling and stories from her career within the OPP and as an investigator.

April 26, 2018- Election & Fun Night- Jennifer Brown, Randy Henderson & Dave Bushell

Election for positions available on the board, Members wishing to join the board must be in good standing with the K-W OIAA.

May 31, 2018 – Mini Tech Showcase- Kristin McCutcheon and Jennifer Brown

June 21, 2018- John McHugh Memorial Golf Tournament: Ariss Valley Golf & Country Club- Charlene Ferris & Carrie Keogh

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

♥ HAPPY
Valentine's
DAY ♥





Who wants to win a \$500 Visa Gift Card?!

From September 2017 to April 2018 we will be running a contest to increase adjuster attendance at our meetings. Not just any adjuster – adjusters who are not currently members of our Chapter! Every time you bring a new adjuster to a meeting your name is entered into the draw!

Rules:

1. Contest is open to current adjuster members, Industry Partners in good standing and Board Members of the K-W OIAA.
2. An adjuster can only be “brought” once to a meeting, the same adjuster cannot come every meeting with the member and qualify for the contest.
3. If current adjuster members, Industry Partners and Board Members of the K-W OIAA bring more than one new adjuster to a meeting, their name is entered into the draw equal to the amount of people they brought! (This is the equivalent of stuffing the ballot box!)
4. The adjuster member that is brought does need to have a ticket to attend.

FAQ:

1. Do I need to be in attendance to win the prize? ANSWER – if you are not able to make the May meeting when the announcement is done, you can still win the prize and arrangements will be made to get the prize to you.
2. Who keeps the list until May? ANSWER – the list of current adjuster members, Industry Partners in good standing and to Board Members of the K-W OIAA and the adjuster that they brought will be kept with the current President- (Charlene Ferris)
3. What happens if the same adjuster is brought a second time? ANSWER – the second person who brought them will not be eligible to enter the draw with that adjuster, they would need to work to bring someone else out!

SOCIAL CHIT CHAT

February 2018



With the holiday season behind us and spring still a few months away, it's natural that people struggle with the month of February. Don't despair!! We're starting to see the benefit of more daylight each day and there are plenty of activities to keep you busy. Speaking of which...the next chapter meeting is scheduled for the 22nd of this month. Regardless of how busy you are, the monthly meetings and other chapter events are a great source of camaraderie and perfect way to decompress from the stress of our daily lives. For those of you with a special someone in your life, don't forget that February is the month of love with Valentine's Day visible on the horizon and Family Day is February 19th!

If you have any personal or office announcements, please let Ashleigh or I know so we can make mention of it in the next issue of this newsletter. As your (Social Member) representatives on the chapter executive committee, we'd also like your feedback and input on topics for future meetings and chapter events.

As you go about your business over the next month, keep an eye on your colleagues and family members. Changes in their behaviour might be a sign of their challenge in coping with the doldrums that many people feel at this time of year.

Kindest regards,

Your Social Director,
Randy Henderson



PROVINCIAL DELEGATE REPORT



I am writing this report on the eve of the 26th annual OIAA Professional Development and Claims Conference at the MTC in Toronto. For members of the provincial executive this is the busiest 2 days on the OIAA calendar for us as we collectively pull together the largest annual claims event in the country.

This year the 9 education seminars are amongst the best presented to date at the Claims Conference. This broad statement is supported by the fact that there are over 750 registrants for the seminars. As in prior years the OIAA will host a panel discussion and career fair for over 150 students from insurance programs at the various participating colleges including Conestoga. There will be 12 insurers in attendance and as in past years some students may walk away from the career fair with a job offer. This year I will have the pleasure of moderating the panel discussion featuring 3 claims managers. Interacting with the students and marketing a career in claims is always the highlight of the conference for me.



On Thursday January 25th I had the pleasure of representing the Kitchener-Waterloo chapter at the Georgian Bay OIAA and IBAO ski event at Craighleith. The event raised over \$1,000 for the Salvation Army.

(From left to right is myself, Niagara delegate Craig Ozog and Georgian Bay delegate Greg Doerr)

Remember to tune in to WP Radio and check out our latest podcast. You can find links to the podcasts on the OIAA website, Twitter feed, Instagram or Facebook pages. WP Radio will be on site at the Claims Conference recording a number of live podcasts on a variety of interesting topics.

Regards,

Stephen Tucker

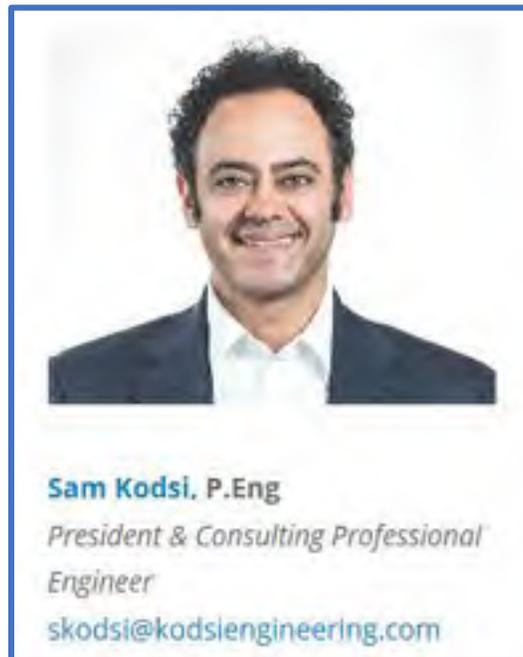
Kitchener-Waterloo OIAA Chapter, Provincial Delegate

February 18, 2018 Dinner Meeting Topic

The Human Factor: Driver Behaviour, Perception, and Response

Autonomous vehicles aside, human error is and has historically been responsible for more than 90% of crashes. In this seminar, we answer questions like: How do we typically respond to various roadway hazards? How long does it take us to respond? What are the limitations of human factors/driver behaviour/traffic engineering research? This seminar gives attendees a deeper perspective on how the machine behind the wheel operates. How will driverless vehicles respond? This seminar also uses several court-tested case studies with an emphasis on liability issues.

Presented By:



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Mr. Sam Kodsi is a Consulting Professional Engineer and a court-qualified expert witness* in accident reconstruction, including driver behaviour and response

<p>Case Work (in Canada and United States)</p>	<ul style="list-style-type: none">• Lead engineer in over 1000 collision reconstructions involving driver behaviour, response and/or perception-response time• Qualified and testified as an expert witness on driver behaviour, reaction, and perception-response time in 23 court proceedings* (in the Ontario Court of Justice, the Ontario Superior Court of Justice, and arbitrations)• Integration of naturalistic research, testing and observations of “real world” driver and pedestrian behaviour
<p>Research and Publications</p>	<ul style="list-style-type: none">• Lead or co-researcher in the following publications:<ul style="list-style-type: none">• “Modeling Passenger Vehicle Acceleration Profiles from Naturalistic Observations and Driver Testing at Two-way-stop Controlled Intersections.” <i>Society of Automotive Engineers (SAE) Technical Paper</i>, 2010. Research conducted over 5 years and more than 1000 hours.• “Modeling of Pedestrian Midblock Crossing Speed with Respect to Vehicle Gap Acceptance.” <i>SAE Technical Paper</i>, 2013. Research conducted over 3 years and more than 500 hours.• “Cyclist’s Choice of Speed, Radius and Lateral Acceleration while Negotiating a Curve: A Closed Course Pilot Study.” <i>Accident Reconstruction Journal</i>, 2015.• Regularly selected as a peer-reviewer for SAE research papers related to human factors and driving behaviour• Involved as human test subject in 6 published and peer-reviewed research studies involving visibility, detection and response
<p>Education</p>	<ul style="list-style-type: none">• Completed 12 courses involving driver behaviour and perception-response time, including Human Factors and Driver Response at Northwestern University (Chicago)

* Mr. Kodsi has testified in as an expert witness in 74 cases related to accident reconstruction and personal injuries across different branches and divisions of the Ontario Court System

Driver behaviour and response is one of Kodsi Forensic Engineering’s key areas of interest, experience and research. For more information: contact skodsi@kodsengineering.com or (416) 977-0009

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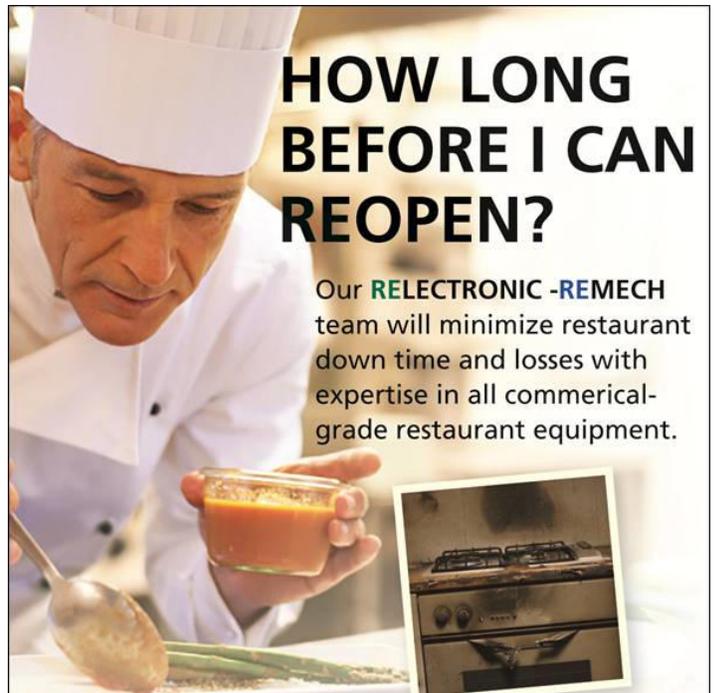


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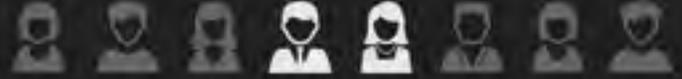
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New Developments in Adverse Costs Insurance



Authored by:

Evan Bawks

Associate, Waterloo

519.593.3201

ebawks@millerthomson.com

Many insurers and defence counsel are now aware of the growing use of adverse cost insurance, also known as “after-the-event” insurance (“ATE insurance”), in personal injury litigation. This insurance is typically a policy purchased by a plaintiff in a lawsuit to provide protection in the event of a judgment for costs against a plaintiff if they are unsuccessful at trial. The previous year saw a number of new decisions that discussed both the potential recoverability of the insurance premium as a disbursement and whether the policy itself is producible in course of litigation.

The courts, thus far, have been consistent when considering whether the plaintiff’s premium for their after-the-event insurance was a compensable disbursement. In *Markovic v. Richards*, 2015 ONSC 6983, Milanetti J. did not accept that such a premium should be reimbursed by the defendants, noting that it would not be compensable as a taxable disbursement, that the premium appeared to only be payable if the case was successful, and that the expense was entirely discretionary. Milanetti J. further commented that ATE insurance “does nothing to advance the litigation, and may in fact even act as a disincentive to thoughtful, well-reasoned resolution of claims.”

Subsequent decisions on disbursements have followed *Markovic*. In *Valentine v Rodriguez-Elizalde*,

2016 ONSC 6395, Firestone J. followed *Markovic* and in commenting that ATE insurance was not an assessable disbursement, stated that “[such] insurance is not necessary for the plaintiff to advance or develop the various heads of damages claimed in this action.” A recent British Columbia decision, *Wynia v. Soviskov*, 2017 BCSC 195, also considered the novel issue of whether ATE insurance premiums was an assessable disbursement. The decision followed the provincial *Supreme Court Civil Rules* and a British Columbia Court of Appeal decision in determining that the cost of the ATE insurance coverage was not a proper or necessary disbursement incurred in the conduct of the proceeding. *Wynia* also cited *Markovic* approvingly.

ATE insurance policies have also factored into other costs decisions. In the costs endorsement in *Robbins v Sears Canada Inc.*, 2017 ONSC 2571, the plaintiff, who was unsuccessful at trial, attempted to argue that a six-figure costs award against her was unreasonable and would cause a great financial burden on her. She alleged that she was impecunious. Edwards J. ruled that there was no evidence before him of impecuniosity and that he was not prepared to consider her financial situation in proceeding to award costs to the defendant. However, Edwards J. further noted that the plaintiff’s Bill of Costs contained a disbursement for an adverse cost insurance premium. There was no further evidence on this insurance, and the disbursement was not in issue. Nonetheless, Edwards J. stated that “[where] the plaintiff clearly has some type of adverse cost insurance, and has not advised the court of the nature and extent of it, it is disingenuous for the plaintiff to argue impecuniosity...”

The production of an adverse costs insurance policy for inspection in the course of a proceeding has also

continued to be litigated. In *Abu-Hmaid v. Napar*, 2016 ONSC 2894, the plaintiff had refused to answer at discovery whether they had adverse cost insurance or not. At issue was whether Rule 30.02(3) of the *Rules of Civil Procedure*, which requires production of an insurance policy that may satisfy, indemnify or reimburse a party in a judgment, required production of the adverse costs insurance policy. Master Short ruled that the existence of ATE insurance was relevant to the resolution of personal injury disputes, and ought to be disclosed at the same stage as disclosure by a defendant as required by Rule 30.02. However, he ruled that the specifics of the policy did not have any probative value in the case before him; it was adequate to simply advise whether or not coverage of this nature had been obtained.

However, *Abu-Hmaid* was distinguished in *Fleming v Brown*, 2017 ONSC 1430, in which Grace J. undertook an analysis of Rule 30.02(3) in the context of a motion by the defendant for production of the plaintiff's ATE policy, the existence and limits of which had already been disclosed. Production of the policy, however, had been refused at discovery. Grace J. found *Abu-Hmaid*, and other authorities cited by the plaintiff, to be unhelpful given the express wording of Rule 30.02(3). Grace J. commented that, "[generally] speaking, obligations with respect to documentary discovery are determined by whether the document is 'relevant to any matter in issue'" and that Rule 30.02(3) served "to expand the obligation". All parties to a proceeding were required "to disclose and if requested, to produce for inspection policies of insurance that fall into the categories established" by Rule 30.02(3), which did not import the words "relevant to an issue in the action". Grace J. found that Rule 30.02(3) applied to policies of insurance "even if irrelevant to an issue in the action" and ordered production of the policy for inspection. He commented that the "policy's existence and terms may well play a role, even if only strategically, in how this action is conducted. In my view, that is enough to trigger the obligation to produce."

Further complicating matters was the recent decision in *Jamieson v. Kapashesit et al*, 2017 ONSC 5784, which distinguished *Fleming*. On the morning of the commencement of trial, the defendants brought a motion seeking production of the adverse costs insurance policy. The plaintiffs sought to distinguish

Fleming, not by commenting on the approach of Grace J. in that decision, but on the facts of the policy in *Jamieson*. In this case, the policy was a blanket policy taken out by the plaintiff's legal representatives and named only the law firm, with no reference to the plaintiff or any other clients. (In *Fleming*, the policy was taken out in the name of the plaintiff.) Since the policy applied to all clients of the law firm representing the plaintiff, it was argued that disclosing the terms could be a breach of solicitor/client privilege and may provide a strategic advantage to the defendants. Further, Rule 30.02(3) requires "a party" to produce a policy for inspection. The law firm in this case was not "a party" to the proceeding and the plaintiff did not have the policy within their possession, control or power. Cornell J. agreed with the plaintiffs and declined to order production of the policy. Cornell J. distinguished *Fleming* on the basis that the policy belonged to the law firm and not the plaintiff.

While there have been consistent decisions that an ATE insurance policy premium is not an assessable disbursement, the water is much murkier on that status of the production of these policies in a proceeding. Defence counsel and insurers should continue to inquire about the existence of such policies in the course of personal injury actions and seek production of those policies where appropriate.

Evan Bawks is an insurance defence lawyer whose litigation practice includes accident benefits disputes and tort cases involving motor vehicle accidents, property claims, and occupiers' liability claims.

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Communications 201



R. Henderson (January 24, 2018)

The previous article in this series, *Communications 101*, provided suggestions for improving customer satisfaction levels by changing the communications behaviour of the parties involved. This article focuses on the person receiving the communication and how their behaviour can impact the quality of the overall communication.

Body language and active listening skills not only help the person being communicated to in terms of understanding the content of a message but also assist the speaker by ensuring that the message that they thought they were conveying, is actually the message that the recipient receives and ultimately understands.

Body Language

I'm sure that we all have childhood memories of being told by an adult to; "look at me when I'm speaking to you" and "sit still when I'm talking" or "please stop what you're doing and listen to me". Now that we're adults, these annoying parental comments actually start to make sense. When you are looking at someone, you are most likely focused on them and what they are saying. Your attention also aids the speaker to stay focused on what they are saying and not get distracted by your behaviour. Much the same logic applies to the other two comments. If you are actively moving your body or performing other tasks, your entire focus is no longer on the person speaking and their message and you are likely distracting them. The scientific reality is that you can not give 100% of your mental capacity to multiple tasks at the same time. Someone who says that they are great at multi-tasking is simply good at performing multiple tasks at sub-optimal levels of concentration. Your lack of focus (as perceived by the speaker) may also interfere with the transmission of the message if the speaker's behaviour (volume or tone of voice) is altered due to anger.

Body language also covers facial expressions and body "shape". Facial expression can provide a lot of feedback to a speaker. Raised eyebrows, smiling and nodding give positive feedback to

the speaker and generally help both parties. Body shape refers to the overall posture that the receiver of the message takes. Slouching in a chair shows disinterest, sitting straight up with arms crossed can indicate impatience whereas a slightly forward position indicates interest.

Is body language important if you are not communicating in-person but rather by phone? Typically it is. Your “language” will come across to the speaker through your voice. If you are busily typing or doing other tasks while on the phone, the speaker might hear this and react as they would if you were visible to each other. At the very least, trying to multi-task will lead the receiver to miss parts of the message and some of the nuances of the communication. Poor “body shape” will manifest itself in your tone of voice.

Active Listening

Active listening skills can be used whether you are communicating in-person or via phone. Active listening begins with giving the speaker your attention. The next step is to show that you’re listening with appropriate (positive) body language such as nodding your head and maintaining eye contact. Whether you are on the phone or in person, you can show that you’re listening and involved by providing verbal feedback. Beyond the basic, “yes” and “uh huh”, ask questions. This will help you clarify the speaker’s message and help them to know whether to adjust their delivery in terms of content and speed. Try not to constantly interrupt with questions as this may bog down the conversation and take it off track. Having said that, since it is difficult to remember more than one or two points to get clarification on later in the conversation and while simultaneously absorbing what the speaker is currently saying, have a note pad handy. This works in meetings as well as on phone calls.

At this point I’m sure that many of you are saying...”that’s all well and good but 90% of my communications are via email”. Good point. The impact of body language is minimal for typed (text / email) communications but body language can impact your frame of mind which in turn impacts the tone of your typed / written message. If you are not totally focused on the message that you’re typing, you may come across as curt or rude and the message itself may not clearly convey what you want it to. Since you likely won’t be listening directly to the originator of the communication, it is difficult and not practical to utilize active listening skills. Asking for clarification of points in the original communication through a return communication is acceptable but a more practical solution is to have a phone conversation or in-person discussion. If the message is complex or controversial, you might want to give deep thought as to whether it is best communicated via text/email or by phone or in-person.

At the end of the day your communications will much more effective if all parties are actively and positively engaged.

Randy Henderson is responsible for Marketing & Client Management at Arcon Forensic Engineers.



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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 network 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 pleased to extend an invitation to join our sixth annual Local Insurance Associations Charity Curling Bonspiel.

We hope you can come out and join us at Westmount Curling Club on Friday, March 23, 2018. 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 served 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 23rd.

Prize Sponsorships:
 Charlene Ferris : charlene_ferris@cooperators.ca
 Joe Dalton : jdalton@encoregrp.com

Location: Westmount Curling Club
Date: Friday, March 23, 2018
Time: 9 a.m. – Start. Select preferred draw time on form below.
Price: \$56 (includes hst). \$226 for a team of 4 (includes hst).
Note: Wear warm clothing and flat, indoor shoes

7th Annual Local Insurance Associations Charity Curling Bonspiel

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

Price
 \$56 per person (includes hst). \$226 for a team of four (includes hst).
 Telephone registrations: 519-579-0184
 E-mail registrations: Conestogamail@insuranceinstitute.ca

Select Preferred Draw Time: AM PM

Payment Choice Method: (check one) Cheque Money order

Amount	Date
Signature	

Team Member Names:

Present Experience

None	Curled 1-10 games	Curled 10-20 games	League Curler
None	Curled 1-10 games	Curled 10-20 games	League Curler
None	Curled 1-10 games	Curled 10-20 games	League Curler
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Mail or fax payment to:
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Sponsorship Opportunities

When: Friday, March 23, 2018
 Where: Westmount Curling Club
 Time: 9 a.m. – Start. *Select preferred draw time on the registration form*

Title Sponsor: Taken— **PAUL DAVIS** **WINMAR.**
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Gold Sponsor: \$500.00—Covers the cost of complimentary drink ticket(s) for each attendee at lunch.

Silver Sponsor: \$350.00—Covers the cost of the rink rental for the event and instruction

Bronze Sponsor: A cash donation of your choice that will be contributed to any miscellaneous expenses and/or the total proceeds from the event, to be donated to the United Way of Kitchener Waterloo & Area.

Door Prize: Door Prize of your choice.

Thank you for your support and generosity!

Sponsor Company Name: _____
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All proceeds supporting The United Way



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Save the date: **March 9-10 2018 in Kitchener** for the 2018 Ontario General Insurance Hockey Tournament.

Team Entry Fee:

- \$1,100.00 Early Bird Discount for payments, registrations & team lists *received by January 19, 2018 @ 5pm*
 - \$1,200.00 If received AFTER that date

If you have any questions, or are looking for further information, please check out the website at: **www.ogihockey.com**

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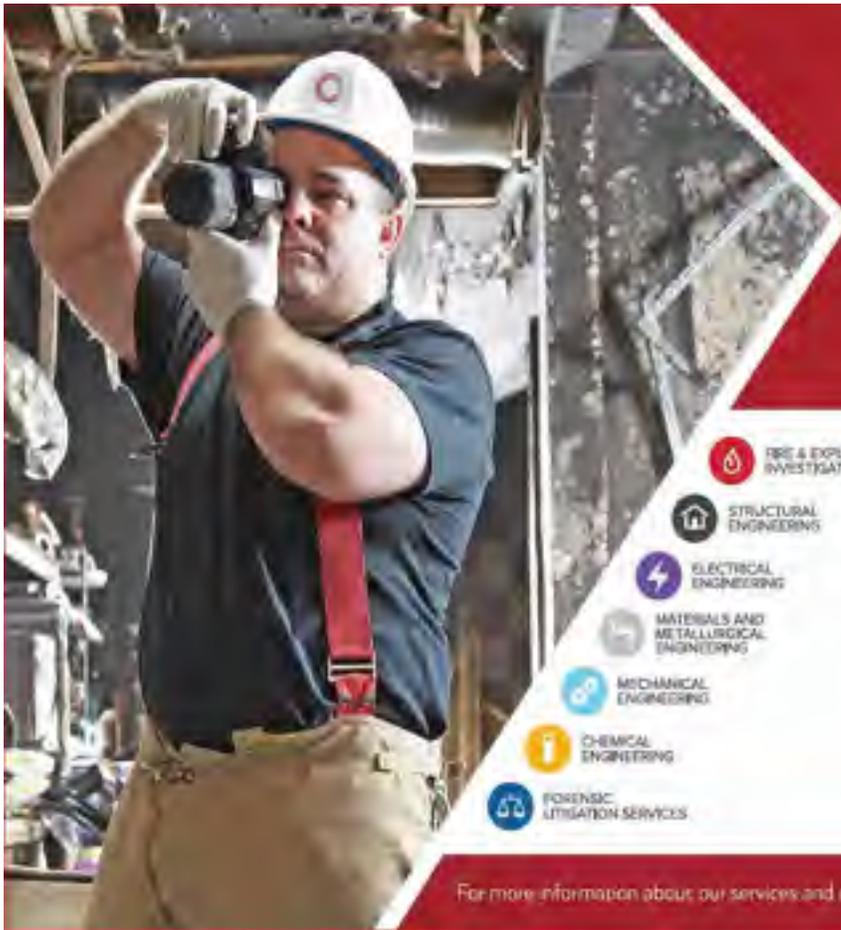
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*Thank
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On behalf of the K-W OIAA we would like to thank all of our Industry Partners for their continued support of the events held throughout the year.

In recognition of all that you do for the K-W OIAA Chapter, for the 2017-2018 we are waiving the social membership fee for all of our industry partners. We would ask that you still register through the website so that you receive emails notifying you of the upcoming meetings and events.

*please note that the monthly meeting charges will still apply

Congratulations!

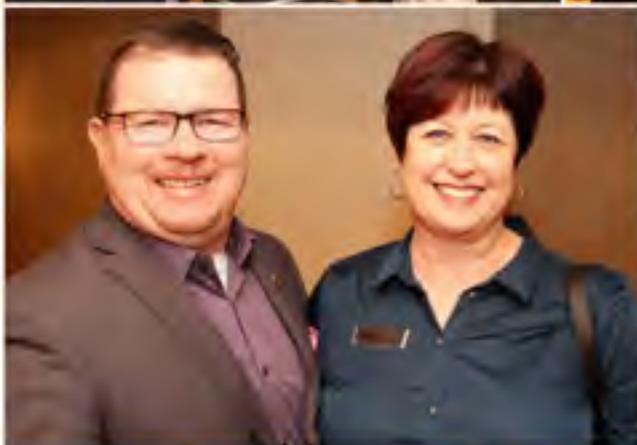
Chili Night in January was a success! Thank you to everyone who attended and tried some delicious chili! Thank you to all the Chefs who spent countless hours planning their recipes, and having their offices smell like chili all day long in preparation for the competition.

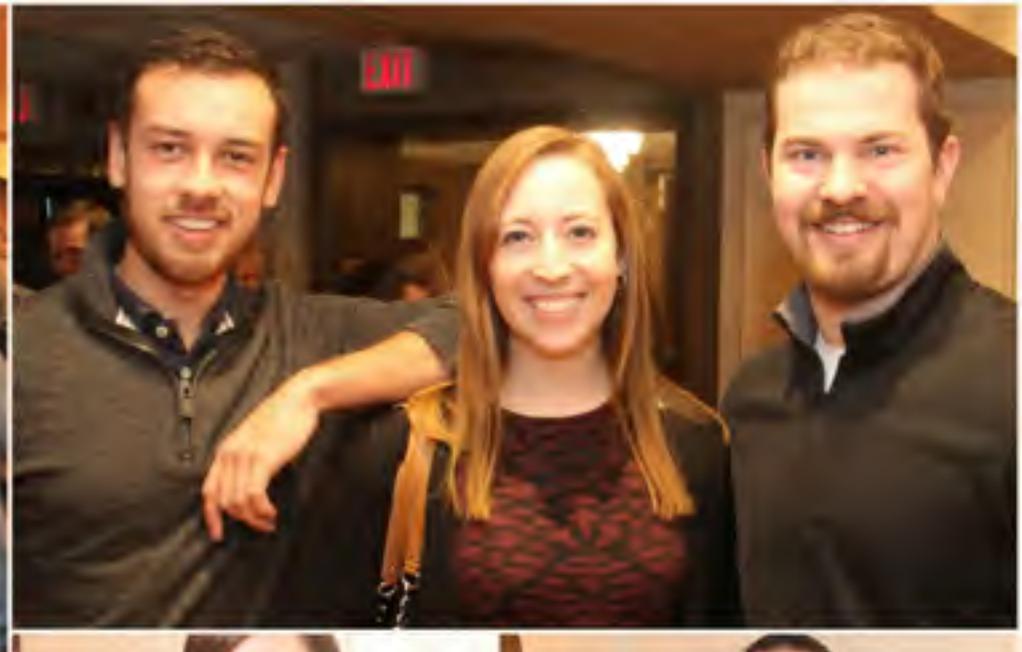
The ballots were counted, and ARS (Access Restoration Services), headed by Chef Chad Nichols, won People's Choice! Congrats to ARS!! Chef Sandor Dosman attended as the resident food critic, and tried all of the chili and deemed that the KW OIAA would win Critic's Choice – congrats go to Chef Ashleigh Leon!

We also hosted our first Trivia Night – which was lots of fun and competitive (in a good way)! Hope to see everyone out next year for Chili and Trivia Night!











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