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# PRESIDENT'S MESSAGE

## JANUARY 2018



Welcome to a brand new year! Hoping that everyone rang in the New Year with some great memories and lots of laughs. We hope that all of you are able to keep the resolutions that you've set for yourself.

We start of this year, with congratulating Kristin, our Social Media/Website Director, with the birth of her second baby! I'm covering off for a bit while she gets used to being a mom of two, so hopefully you'll be patient with me if I make some mistakes!

January brings in our Chili Cook-off and Trivia night, we mixed it up and have it later in the year than normal, but we hope that everyone can make it out. There is information on other upcoming events in the Bulletin, such as the Tri-Association Curling Bonspiel and the Ontario General Insurance Hockey Tournament.

We've got lots of great events coming up and we are looking forward to seeing everyone out.

Thank you,  
Charlene Ferris  
President of K-W OIAA



# K-W OIAA EXECUTIVE COUNCIL 2017-2018

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Email: aleon@millertomson.com

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**FirstOnSite**

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**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

**January 25, 2018- Chili Cook-Off: Manish Patel & Charlene Ferris**

NEW DATE\*\* Challenge the winners from the 2016 Chili Cook-off by bringing your best chili, or your trivia knowledge.

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

**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.**





## **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

January 2018



Happy New Year!

I hope everyone had the opportunity to enjoy a wonderful holiday season. Now that 2018 has arrived, our executive committee is looking forward to another great year ahead with new and innovative education and networking evenings. We are very thankful for the continued support of our vendor members throughout this past year.

Speaking of looking forward, the Ontario government has announced plans to make changes to the 10 year automated vehicle pilot project including changing the requirement of having a driver present during test drives. You may be looking into driverless vehicles beside you on the roads in Ontario much sooner than anticipated!

I am excited to kick the year off on January 25th at the chili cook-off! See you there!

Your Social Director,  
Ashleigh Leon





# PROVINCIAL DELEGATE REPORT



I had the pleasure of attending the 2017 OIAA Holiday Party at the Fairmont Royal York in Toronto in December. Just under 1,000 guests were in attendance and thanks to the generosity of our guests \$10,000 was raised and donated to Autism Ontario. Thank you to all who attended from the Kitchener-Waterloo Chapter.

The 26th edition of the OIAA Professional Development and Claims Conference is fast approaching and takes place on January 30th at the Metro Toronto Convention Centre. The primary focus of the Claims Conference is to provide OIAA members with industry networking opportunities and continuing education. In this regard the event features a trade show showcasing 150 industry partners and service providers and 9 high quality education seminars presented by leading industry experts. The OIAA Career Fair is also taking place throughout the day with students from all Ontario College Insurance Programs in attendance. The Career Fair is an excellent recruitment opportunity for insurers and industry partners.

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. If you are interested in being featured in a podcast or sponsorship opportunities, please contact Terry Doherty at [terry.doherty@aviva.com](mailto:terry.doherty@aviva.com)

## **2018 events:**

### **April 11, 2018**

April Meeting and Toronto Delegate Report – Location TBD

### **June 8, 2018**

2018 OIAA Annual Golf Tournament – NEW LOCATION – Cardinal Golf Club,

As always OIAA Provincial event details are available at [www.oiaa.com](http://www.oiaa.com)

Regards,

**Stephen Tucker**

**Kitchener-Waterloo OIAA Chapter, Provincial Delegate**



**Thursday, January 25<sup>th</sup> 2018**  
**5:30 p.m.**

# **Chili** *A flaming HOT time* **COOK-OFF**

**Golf's Steakhouse**

**Ballroom**

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**RSVP by Friday, January 19, 2018 on the K-W OIAA web site or e-mail:**

**Charlene Ferris – [charlene\\_ferris@cooperators.ca](mailto:charlene_ferris@cooperators.ca) or**

**Manish Patel – [mpatel@larrek.com](mailto:mpatel@larrek.com)**

**Join us for fun, food and prizes at our annual K-W OIAA Chili cook-off!**



**Our two-time winner from last year, Donald Perry, is not able to attend!**

**What does this mean for you? It means it is time for a new CHAMPION! Will you be able to take home the People's Choice Award and Critic's Choice?**

**Wishing all of our chili chefs the best of luck as you plan on how to bring home the hardware!**

# ANNOUNCEMENTS

## ARCON FORENSIC ENGINEERS

### Jillian Leblanc Elevated to Senior Collision Reconstructionist



Arcon Forensic Engineers is pleased to announce that Jillian Leblanc has been elevated to Senior Collision Reconstructionist in their Collision Reconstruction & Personal Injury Practice Group. This change is in recognition of Jillian's continued high quality work, positive client feedback, expanding industry involvement and ongoing commitment to enhancing her specialized knowledge. Her credentials include an Honours Bachelor of Science degree in Physical Science and her Professional Physicist designation along with the experience of having managed hundreds of reconstructions. She regularly shares her knowledge through articles in industry periodicals and presentations to insurers, lawyers and industry groups.

*Congratulations to Jillian!*



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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](http://www.ogihockey.com)**

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## 2017 : A Year in Review and a Look Ahead



Authored by:  
Emily Durst  
Associate, Waterloo  
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edurst@millerthomson.com

As 2017 has come to a close, it is a good time to take a look back at changes and developments in the law that will affect how adjusters handle claims going forward.

In one of the year's most anticipated decision, the Court of Appeal for Ontario has now ruled on the application of the rate of pre-judgment interest for general damages claims arising from an MVA. In the case of *Cobb v. Long Estate*, 2017 ONCA 717, heard together with *El-Khodr v. Lackie*, 2017 ONCA 716, the Court concluded that the 1.3% rate of pre-judgment interest found in the *Courts of Justice Act* is to be applied immediately to both pending and future claims. However, the Court upheld the trial judge's earlier ruling that a rate of 3.0% applied on the basis there was no reason to interfere with the trial judge's discretion in that regard. Moving forward, defendants may use the *Courts of Justice Act* rate when calculating pre-judgment interest, bearing in mind that it is subject to a trial judge's discretion.

In the same decision, the Court also ruled on the application of the indexed deductible for general damages. For all current and future claims, the new, inflation-adjusted deductible applies to all pending cases. Similarly, the Court ruled that costs are to be determined on the "net" amount for general damages. Now, costs are to be calculated after the statutory deductible is applied.

In one of FSCO's last decisions before transitioning to the LAT, Arbitrator Benjamin Drory released a

surprising and unexpected decision with respect to the constitutionality of the Minor Injury Guideline ("MIG") under the SABS. Ultimately, Arbitrator Drory found that the definition of "minor injury" is unconstitutional as it unjustifiably infringes upon a claimant's equality rights under the *Charter of Rights and Freedoms* on the basis of physical disability. While the decision has been criticized for evidentiary reasons, namely that the Attorney General of Ontario and the insurer were not called upon to make submissions, Arbitrator Drory stressed that his decision applied only to the case before him, suggesting it will not have wider application. Nevertheless, it is expected the Attorney General will make submissions if and when a claimant advances similar arguments in subsequent cases.

Whenever the Supreme Court of Canada rules on an issue, it is important to pay close attention. In the case of *Saadati v. Moorhead*, 2017 SCC 28, the Court ruled that an injured claimant does not need to have a diagnosed psychological / psychiatric injury in order to recover for a mental injury sustained in an accident. Because the law treats mental and physical injuries the same, the Court found that requiring a claimant to prove that a mental injury meets a recognized psychiatric illness when there is no corresponding requirement that a physical injury fall into a classificatory category would be treating those with mental injuries unfairly. This case places an increased burden on adjusters as it may be difficult to determine whether or not a claimant may assert a mental injury if they have not provided any expert reports evidencing a psychological or psychiatric diagnosis.

In a case that garnered media attention, the Ontario Superior Court considered whether a standard form exclusionary clause applies where the claim arose from a house fire set by the plaintiff's abusive husband who burned the house down and attempted to kill her. The plaintiff in *Soczek v. Allstate Insurance*

Co., 2017 ONSC 2262, argued that the standard exclusionary clause that excludes intentional or criminal acts by an insured under a homeowner's policy would be unfair in the circumstances. The Court ruled that the intentional act triggered the exclusion clause and granted summary judgment in favour of the insurer. Throughout the decision, however, the Court was critical of the application of the exclusion in the circumstances. In April 2017, an Ontario MPP announced his intention to introduce a Bill aimed at allowing an innocent co-insured to recover under a policy where appropriate.

Looking forward to 2018, there are several cases and issues the insurance industry will be closely following. We await a decision from a motion's judge on the question of whether jury trials in MVA cases are inherently unfair. The Plaintiff in *Kapoor v. Kuzmanovski*, 2017 ONSC 1790, brought a motion to exclude potential jurors who drive and pay insurance premiums paid on their behalf, on the basis that these jurors have an inherent conflict of interest. If the Court agrees, this will have significant impacts upon MVA litigation and the civil litigation system more generally. The motion was scheduled to be heard on December 18, 2017, with a decision pending.

As the Federal Government moves forward with legalizing marijuana, the insurance industry will be keeping a close eye on how it will affect client activities. For instance, how will commercial policies issued to licensed producers, dispensaries and cafes respond in the cases of third party liability claims? Personal lines will also be affected, particularly as it relates to automobile policies. Roadside determination of whether someone is driving while high is not as straightforward as determining whether a driver is drunk.

Finally, the rise of self-driving cars are expected to change the way in which we investigate liability and litigate MVAs, particularly in the absence of government regulations for autonomous vehicles. While autonomous vehicles have the potential to improve road safety, reduce traffic congestion, and produce many environmental benefits, the focus at present is on addressing the new and unique safety challenges that these vehicles create. MVAs involving self-driving cars create a novel mix of liability on the part of manufacturers, hackers and operators.

On behalf of everyone at Miller Thomson, we wish you and your family all the best for a happy, healthy 2018!

*Emily Durst is an associate in the Waterloo office of Miller Thomson. Emily has a broad practice in insurance defence litigation and alternative dispute resolution.*

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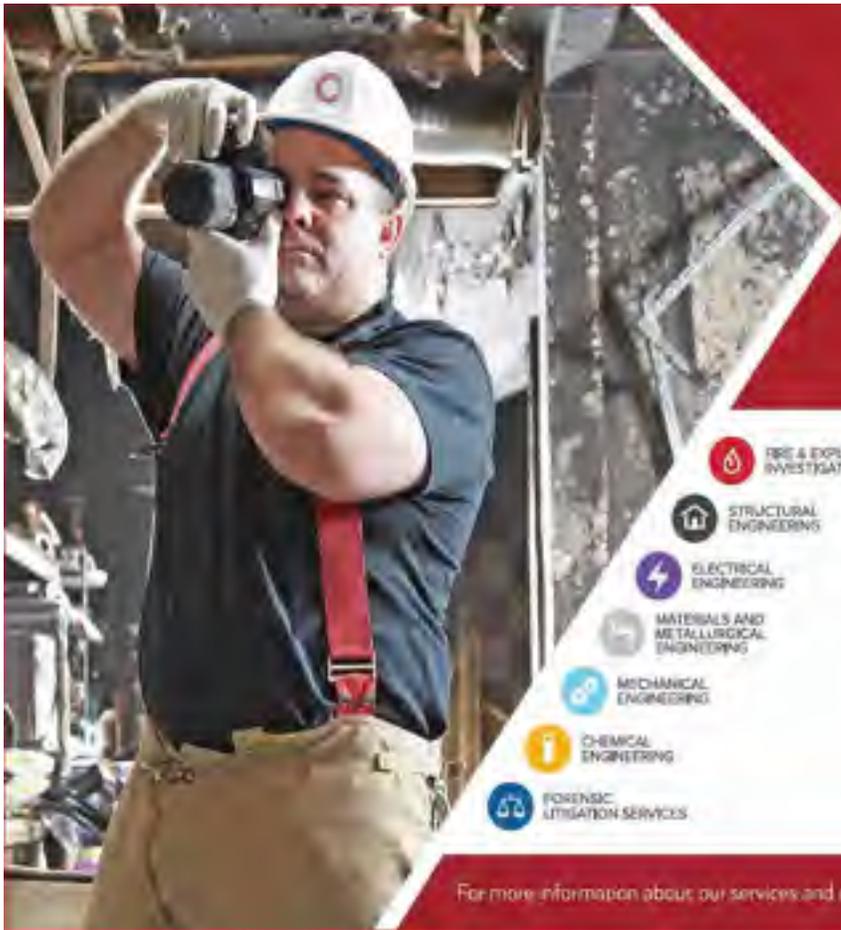
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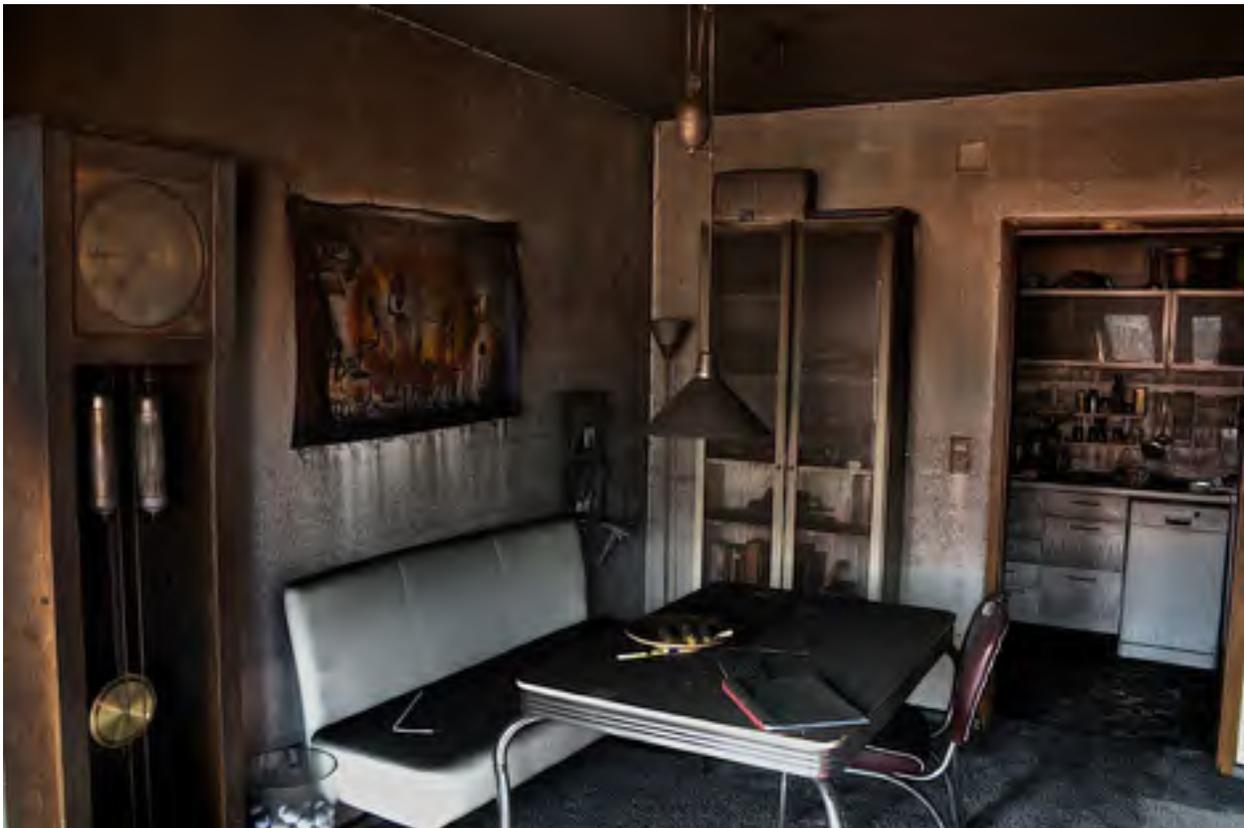
## Smoke and Soot Mapping Analysis and Clearance Sampling within a Building



**By Bob Caskanette**

*Bob is an Environmental Scientist with over 10 years of experience in the field of environmental consulting and engineering. He holds a B.A.Sc. (Honours) in Environmental Management with a specialty in Reclamation and Remediation and an Honours Diploma in Environmental Science.*

Following a fire loss, issues often arise pertaining to smoke odour and soot residue within a building and on contents. How far has the contamination reached? Have wall or ceiling cavities been compromised? What building materials and contents require removal and replacement? What items can be cleaned and salvaged? Should sealing and encapsulation of some areas be considered? Undertaking smoke and soot contamination mapping within a building will help answer these questions and establish a restoration protocol for the contractor to complete.



A detailed assessment of the building and building construction is essential. We offer a combination of air sampling and surface swab or tape lift sampling services that give an overall analysis of the building and/or contents in question. We can assess if incomplete products of combustion (smoke/soot) are present on a material or within an air space to establish how far the restoration needs to go to help avoid unnecessary costs.

For surface sampling there are two common options. The first is undertaking surface swab samples using laboratory grade Kimwipes saturated in either laboratory grade Hexane or Isopropyl Alcohol, depending on the surface material being sampled. Tape lift samples for microscopic evaluation of smoke/soot are also a good option, which can typically be analyzed by the laboratory more quickly and cost effectively. This is helpful prior to a fire restoration being completed to establish the scope of work required and following the restoration to identify if the project was completed successfully.

For air sampling there are several options available. Solid Phase Micro Extraction Fibre (SPME) sampling and more conventional Charcoal Tube sampling are viable options prior to the fire restoration being completed. However, often our eyes, a white glove test or olfactory systems are enough to tell what is contaminated as gross levels of contamination are often present. Laboratory calibrated SUMMA air canisters for total volatile organic compounds (TVOC) and target volatile organic compounds (VOC's) can be collected for an 8 hour or more conventional 24 hour air sample, which is a very useful tool to establish if building clearance has been achieved following the fire restoration prior to the building being reoccupied.

The results of a 24 hour clearance air test can be compared to available Health Canada Residential Indoor Air Quality Guidelines and other guidelines or industry recognized levels where available. Even if contents have been removed from the building and cleaned and building restoration was properly completed, occupants may still think an issue exists. Whether the issue is psychosomatic or legitimate, we can assess buildings and contents to get you the answers you need. There will always be people that want everything brand new no matter what you tell them and costs can rise very quickly. There are also people who may have hypersensitivities to certain contaminants which may complicate the process. A consultation with a medical doctor in that instance may also be required.

The samples (other than surface tapelift samples) are analyzed by Gas Chromatography Mass Spectrometry (GCMS) at an accredited laboratory. Our laboratory experts can identify the compounds found within the samples and can even assist us with determining the source of the particular compounds identified in special circumstances.

A professional report is then generated outlining the results of the testing to assist you with making an informed decision. These may be the critical answers you need to handle a claim both quickly and economically.

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*Thank  
you*



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

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