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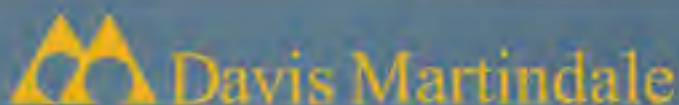
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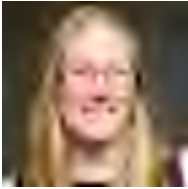






# PRESIDENT'S MESSAGE

## OCTOBER 2016



Hello All,

Fall is in the air. I personally love this time of year, the many colours on the leaves, the cool crisp air, apples, pumpkins, and of course anything pumpkin spice. I know I am not the only one who loves this time of year, lets hope it stays for awhile and winter stays away.

On Thursday, we held our annual tradeshow at the Crowne Plaza Kitchener- Waterloo. This was a new venue to us and it was not without it's challenges. The event was successful, we had over 200 people in attendance, and the food was phenomenal. Thank you to all of our industry partners for your support! I hope that all adjuster members in attendance enjoyed the evening as well.

The 50/50 draw was a whopping \$368. Many congrats to the winner. A charity will be chosen by the president and executive council in the next month.

Due to the recent resignations of the K-W President and Vice President, we are currently accepting nominations from any K-W adjuster member in good standing that is interested in running for these positions. If you are interested in one of these positions please let Catherine Groot, OIAA Past President ([cgroot@bellnet.ca](mailto:cgroot@bellnet.ca)) or Cyndy Craig, K-W OIAA Past President ([ccraig@archinsurance.com](mailto:ccraig@archinsurance.com)) know by October 21, 2016. A by-election will be held at K-W's next meeting on October 27, 2016.

This month, we look forward to hearing from the contractors in the industry at our Round Table Discussion. This will surely be a large event, and we look forward to seeing everyone out. When you attend this event consider bringing out an adjuster with you so they can see the fantastic events that are put on in this chapter.

The executive and provincial conference committee are busy finalizing all the planning and details for the Provincial Conference being held May 4- 6, 2017. This event will be great and we look forward to being able to open registration soon.

As always, if you have any questions or concerns relating to our chapter at any time please do not hesitate to contact me at [jen.guttridge@gmail.com](mailto:jen.guttridge@gmail.com) or any one of our executive members.

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

Jennifer Brown  
President of K-W OIAA

## This Month's Cover

**K-W OIAA is honoured to host the 2017 Provincial Conference & Trade Show – May 4-6, 2017!**

# K-W OIAA EXECUTIVE COUNCIL 2016-2017

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



# EVENTS SCHEDULE 2016-2017

## **September 29, 2016- Trade Show**

The annual tradeshow will be held at the **Crowne Plaza Kitchener-Waterloo**. Reserve your dinner tickets for this event and be ready to mix and mingle with those in the insurance industry, while learning about all of the great services local vendors have to offer.

## **October 27, 2016- Contractor's Round Table Stephen Tucker & Cyndy Craig**

## **November 24, 2016- Annual Chili Cook Off: Manish Patel & Cyndy Craig**

## **January 26, 2017- Liability Topic: Stephen Tucker & Jennifer Brown**

## **February 23, 2017- Accident Benefits- Ashleigh Leon & Leeann Darke**

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

## **April 1, 2017- Tri- Council Curling Bonspiel: Westmount Golf and Country Club**

## **April 27, 2017- Election Night- Jennifer Brown, Jennifer Mohr, Jaime Renner**

## **May 4&5, 2017- OIAA Provincial Conference-**

## **June 29, 2017- John McHugh Memorial Golf Tournament Jennifer Brown**

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



## **Feed the Minds of Youth.**

In support of The Learning Partnership's  
**Take Our Kids to Work™** Day.

**Wednesday, November 2, 2016**



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# SOCIAL CHIT CHAT

October 2016



Thank you to everyone who attended our annual Tradeshow on September 29th. As always, it was a great event and we could not do it without the continued support of our amazing industry partners! Also a thank you to all of those who completed the survey for us - your input is very important to the continued success of the Tradeshow and all of our local events.

With the late season flooding that occurred in Windsor and Tecumseh recently we are again reminded of our changing weather patterns and the huge affect these weather events are having on the industry. We certainly wish all of the residents affected by the floods well.

Please be sure to keep an eye out in the coming months for information about the Provincial Conference.

And .... GO JAYS GO!

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](mailto: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.





# TORONTO DELEGATE REPORT



The September Kick-Off hosted by incoming President Ian Gallagher took place at Ripley's Aquarium in Toronto on September 21st. The event was a sellout and the venue was spectacular. It was a great event for networking and to learn about all of the education events that Ian has planned for 2016-2017. I also had the pleasure of attending the Kitchener-Waterloo, Hamilton and Niagara Joint Seminar on changes to the SABS and LAT presented by Schultz Frost LLP on September 26th. The seminar was very informative and Redstone Winery did not disappoint.

On the local front, a huge thank you to Jennifer Brown and Cyndy Craig who stepped in on short notice to ensure that the trade show ran as smooth as possible following the sudden resignation of our President and Vice President in the days leading up to the event. I would also like to thank our local industry partners for your ongoing support and feedback. We are listening and the executive will do our best to implement your ideas moving forward.

Here is a list of upcoming Toronto OIAA events.

October 12, 2016

Past President Night – Sandman Hotel Airport, Toronto, ON

December 14, 2016

Christmas Party - Fairmont Royal York, Toronto, ON

Sign up for Toronto events at [OIAA.com](http://OIAA.com). You can follow OIAA events on Twitter, @OIAAOfficial, or on Facebook.

**Regards,**

**Stephen Tucker**

**Kitchener Waterloo OIAA Chapter, Toronto Delegate**



## Insurer Hits Grand Slam in Fraud Case

Monika Bolejszo | 519.279.6867 | [mbolejszo@samislaw.com](mailto:mbolejszo@samislaw.com)

Score one for the good guys: An auto insurer hit a grand slam against its insured in a fraud case over property and accident benefits claims.

In *RBC v. Field*, the claimant was involved in a motor vehicle accident while driving with a suspended licence. She immediately applied to her insurer, RBC, for property damage and accident benefits claims.

RBC investigated the claim and realized that her license was suspended. When the insurer confronted the insured about the licence, the insured advised that the licence was suspended because of an MTO error over a ticket and that she had a trial date scheduled to deal with the charges. She also showed the insurer documents supporting her story, which were apparently fabricated, including fake emails she said she received from the courthouse about her ticket.

RBC accepted her claims and paid \$229,672.70 in income replacement, housekeeping, and visitor expenses benefits. It also paid roughly \$39,266.50 in insurer examination expenses with respect to those claims.

When RBC discovered that the claimant had lied about her claim, it sued her to recover the amounts that it would not have had to pay had she not fibbed about the circumstances surrounding her suspended licence. More specifically, if she was honest about her suspended licence, she would not have been entitled to any of the income replacement, housekeeping, or visitor expenses benefits, or any of the property losses that RBC had paid.

To prove its case in fraud, RBC had to prove the following four elements on a balance of probabilities:

1. A false representation made by the defendant;
2. Some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness);
3. The false representation caused the plaintiff to act; and
4. The plaintiff's actions resulted in a loss.

## **1. False Representation**

The trial judge found that the claimant made a false statement to an RBC adjuster persuading her that her license was suspended in error by the MTO or the Provincial Offenses Court in Toronto. The claimant produced falsified bank statements and a falsified email from an employee at the courthouse to show that she had paid the fines that resulted in her suspended license prior to the accident.

The first element was proven.

## **2. Knowledge of the Falsehood**

The trial judge found the claimant made admissions in her examination for discovery and cross examination at trial that showed she had knowledge that her representations to RBC were false. This was confirmed by the falsification of an email from a court official and bank statement along with evidence that showed that the fines which led to her licence being suspended were paid three days after the accident. Further, the MTO sent the claimant a Notice of Suspension to the claimant several months prior to the accident.

The second element was proven.

## **3. Representations Caused RBC to Act**

In order to prove that the defendant's statements caused the plaintiff to act, a plaintiff needs to prove that there is a causal link between the statements and the damages. In this case, RBC was able to show that it relied on the claimant's statements that her licence was erroneously suspended, and relied on the falsified documents the claimant submitted. RBC had made statements to the claimant that her claim would be processed once her license had been reinstated; however, the judge found that any statements made by RBC to this effect were based on the premise that the claimant's license was suspended in error.

The third element was proven.

## **The Representations Resulted in a Loss**

To prove civil fraud, there needs to be evidence showing that the defendant's representations caused the plaintiff's loss. RBC relied on the claimant's representations, which caused RBC to pay her roughly \$250,000 under her claims for property damage and accident benefits. These payments would not have been payable had she been honest, as she was not authorized by law to operate a vehicle at the time of the accident and was driving with a suspended licence.

The fourth element was proven.

The claimant raised imperfect compliance as a defence, indicating that it should entitle her to relief of forfeiture. However, the judge relied on established case law that that there is no relief from forfeiture when the insured commits fraud.

With respect to damages, the judge awarded RBC the amounts claimed for the accident benefits and property claims paid. He held that the claimant was not made aware that the insurer examinations would be incurred or that RBC was suffering a loss because of those assessments. He also found that RBC did not establish that there was a link between the



claimant's statements and the assessment losses RBC incurred. Those losses were not recoverable.

Finally, RBC claimed punitive damages against the claimant. The judge held that RBC's claim for punitive damages was made out. He found that there is a doctrine of mutuality which imposes a duty on both the insured and insurer to act in good faith and that the claimant breached the duty of good faith. He found that this was an independent wrong, distinct from her breach of a statutory condition. The judge awarded punitive damages of \$24,000.

### Takeaway

Where the circumstances of claim appear suspicious, there is a good chance that the claim itself is sketchy. Insurers should identify red flags in odd claims and investigate them accordingly.

Kudos to the insurer in this case for not only uncovering a fraud, but also for successfully pursuing an action against its insured. Of course the insurer will likely never recover any of the damages it won in the case, but winning a rare fraud decision is a great reward for the insurer and the industry.

See [RBC v Field](#), 2016 ONSC 5584 (CanLII).

Monika Bolejszo is a lawyer at Samis+Company's Waterloo Office.  
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# The Contractors Are Coming!



**Come join us for the first educational meeting of the year - Contractors Round Table Discussion**



**All the questions you are afraid to ask will be asked and answered.**

**Thursday October 27, 2016 at Golf  
Steakhouse**

If you have any questions, please contact:

**Stephen Tucker**  
Toronto Delegate  
519-497-4632

**Cyndy Craig**  
Past President  
647-293-5436





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## **FOUNDATION AND RETAINING WALLS**

**By Shuo (Nick) Yu**

### **Foundation walls**

We often receive assignments to conduct a structural assessment of foundation walls in buildings. The foundation wall is one of the most important structural components as the whole superstructure and roof bear on the foundation walls. If the foundation walls fail, everything above is likely to sustain damage or even collapse.

The Ontario Building Code (OBC) requires that foundation walls extend below grade to prevent frost penetration below. The depth of foundation depends on the soil and local weather conditions, but 4 feet is typical as a minimum. The foundation walls also need to extend a minimum 6” above grade to protect the wood framing above from contact with soil, and prevent surface water from overflowing the foundation.

The most commonly used materials for foundations include cast in place concrete, concrete block, brick, and stone and mortar for some old houses.

### **Foundation damages**

Foundation walls are buried below grade so they are exposed to more loads than the exterior walls above grade, due to lateral soil pressure, soil vibration, and hydrostatic forces from ground water. If the basement is finished damage is invisible until the homeowner notices the wall is bowed or the wet. Some examples follow.

**Lack of lateral support:** The soil outside the foundation walls keeps pushing the walls inwards. The deeper the foundation extends, the larger the soil pressure is. Without sufficient lateral supports, the structural integrity of the foundation wall is compromised. Usually the floor system above can be considered as a lateral support to prevent the top of the foundation from moving inwards. During construction the walls can be pushed in during backfilling before the floor system framing is in place.

We recently had an assignment to determine the cause of the foundation movement in a basement. A kitchen drainage pipe in the affected area kept leaking over the years. As a result, the wood framing beside the drain line showed signs of considerable long term water damage including staining and rotting. The anchor bolts were installed close to the inner edge of the sill



plate making it easier for them to push through the rotten wood. Over the years with insufficient lateral support, the foundation wall shifted and was out of plumb.

Lack of reinforcement: If proper lateral support is provided, is the foundation wall safe from the soil pressure? Sadly, the answer is no. The OBC has requirements of the height from the finished ground to finished basement level. Vertical reinforcement will be required once the foundation itself is no longer able to hold the soil pressure.

For example, a concrete block foundation wall without vertical reinforcement will not shift at the top or bottom. On the contrary, you can expect a horizontal crack within the joint mortar at the mid height. The block wall is supported at top and bottom by floor systems, but in the middle, the soil forces act just on the block and mortar and overload the strength of unreinforced blocks. Adding steel into the wall strengthens it to prevent this type of failure.

Concrete foundation cracks: Cracks are the most common damage observed in poured concrete foundations. There are many causes of concrete cracks, some are unavoidable while others result from poor workmanship.

The unavoidable factors are drying shrinkage and annual contraction/expansion, especially for a large area of concrete foundation wall. These are the characteristics of concrete one cannot avoid. These cracks are not caused by poor design/construction activities and do not lead to significant safety issues, other than potential water leak.

To fix the water leaking through the cracks in the concrete foundation walls, materials are usually injected from the inside of basement. Epoxy is normally used for structural repairs and bonds with the concrete and prevents propagation of the crack, sealing the crack against leaks.

Some new homes are showing cracks within the concrete foundation, which are caused by premature removal of framework and backfilling while the concrete is not fully cured. Sometimes the truck runs out of concrete during the pouring and the rest of the foundation has to be poured later. This will create a cold joint between the new concrete and the older material.

The OBC requires that the foundation walls bear on undisturbed soil. However, during the construction, the excavator may dig too deep. If the contractor backfills where they excavated deeper and build the footing and foundation on backfill, differential settlement is likely to occur over the years. The crack may extend from the top of the foundation all the way down to the footing.

## **Retaining walls**

Similar to foundation walls, retaining walls are designed to retain soil and/or rock and used to accommodate changes in grade. There are several types of retaining structures, including gravity, cantilever, sheet pile, and anchored earth walls. Gravity retaining walls are usually constructed with heavy materials such as concrete and gabion, and use the weight to resist soil pressures. Sheet piles are driven into the ground to resist soil pressures. Cantilever walls are

typically made of reinforced concrete. The weight of the soil on the base slab is transferred to the stem to resist the lateral pressure of the soil retained. Anchored earth walls have strips whose ends are anchored into the ground. The resistance to movement is provided by the anchors. Usually the ties/strips are placed at mid-height of the retaining wall. The commonly used materials for retaining walls include cast in place concrete, reinforced concrete, brick/block, stone, timber, gabion, etc.

### **Retaining wall damages**

There are several types of damage to retaining walls such as active water penetration, settlement, sliding, overturning, and deteriorated materials.

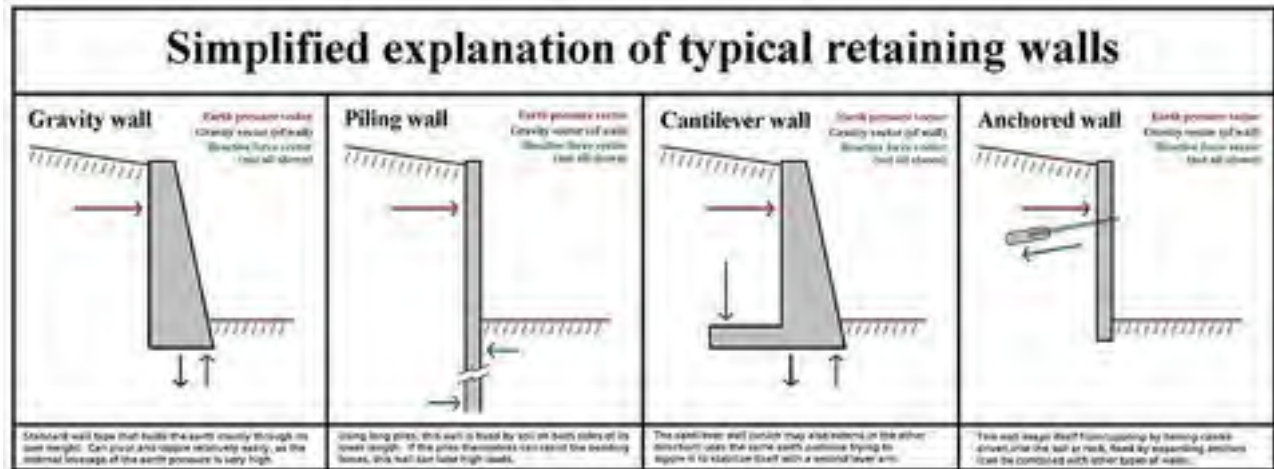
Proper water drainage behind the retaining wall is critical regardless of type and material of the retaining wall. In the winter season, water penetration will lead to freeze and thaw and cause severe damage to the wall.

Settlement can be caused by improper soil compaction during construction or inadequate drainage. Sliding failure occurs when the ground pressure is larger than the friction at the footing of the retaining wall. Overturning occurs when the retaining wall rotates about its toe when the resisting moment about the toe is exceeded. Unlike foundation walls, retaining wall damages are usually visible.

Wood timber retaining walls are typically not high and are usually used around residential structures. Deterioration of the timber retaining structure leads to rotting and cracking. Damage to gabion retaining walls include broken wires and missing aggregates in the cages. Concrete retaining walls may have cracking, spalling, or rusting of reinforcement.



Horizontal crack at mid-height of block foundation



Several types of retaining walls

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# Feed The Minds of Youth

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## Registration & Consent Form

Thank you for your interest in the Feed the Minds of Youth luncheon hosted by your local institute or chapter.

This Registration and Consent Form **must** be completed to participate in this event. For Part I and II, please fill in the following information and sign the consent form (Part II) to reserve your place for this event. Please fax the completed form prior to the event to your local institute or chapter.

### PART I – REGISTRATION

This section must be completed by the accompanying adult and student.

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|---------------------------------|------------------------------------|--|--|
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| BUSINESS ADDRESS:               |                                    |  |  |
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| PHONE:                          |                                    |  |  |
| ARE YOU THE PARENT OR GUARDIAN? | YES OR NO<br>Please circle one.    | IF NOT, STATE RELATIONSHIP TO STUDENT: |  |
| NAME OF ACCOMPANYING STUDENT:   |                                    |  |  |
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| SCHOOL ADDRESS:                 |                                    |  |  |
| HOME ROOM TEACHER'S NAME        | MR. MRS. MS.<br>Please circle one. |  |  |
| WHAT GRADE IS THE STUDENT IN?   |                                    | STATE ANY FOOD ALLERGIES:              |  |
| PLEASE LIST ANY SPECIAL NEEDS   |                                    |  |  |



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## Photography

My child may be photographed, interviewed, or videotaped on this day which may be used for marketing and/or promotional purposes by the Insurance Institute of Canada. Yes\_\_\_\_\_ No\_\_\_\_\_

## Elements of Risk

All experiential learning programs, such as field trips, co-operative education, job shadowing and *Feed The Minds of Youth*, involve certain elements of risk. Injuries may occur while participating in this activity without any fault of the student, the school board, or the host organization. By allowing your child to take part in this activity, you are accepting the risk that your child may be injured.

For more information see the recommendations for Workplace Health & Safety on The Learning Partnership's website at [www.thelearningpartnership.ca](http://www.thelearningpartnership.ca).

**I understand that there are risks associated with my child visiting a workplace. My child and I have reviewed the Elements of Risk section, identified above, and consent to another individual being responsible for my child (where applicable).**

Parent/Guardian Signature \_\_\_\_\_ Date \_\_\_\_\_

Student Signature \_\_\_\_\_ Date \_\_\_\_\_

## PART II – CONSENT (TO BE COMPLETED IF NOT ACCOMPANIED BY PARENT/GUARDIAN)

**Parent/Guardian:** If you are not accompanying your child to this event, please complete the section below. All other areas are to be completed by the student and parent /guardian.

I, \_\_\_\_\_ hereby give consent to  
Parent or Guardian  
 \_\_\_\_\_ of \_\_\_\_\_  
Adult Accompanying Child Name of Organization  
 to be responsible for \_\_\_\_\_ for the  
Name of Student  
 duration of the 'Feed The Minds Of Youth' event hosted by the Insurance Institute Of Canada.

## Emergency

In case of emergency, please contact:

| Name of Contact | Relationship to student | Contact Numbers |
|-----------------|-------------------------|-----------------|
|                 |                         | 1.              |
|                 |                         | 2.              |
|                 |                         | 1.              |
|                 |                         | 2.              |



You turn the ignition on and hear the engine roar to life, followed by the “beep, beep, beep” reminder to fasten your seatbelt. Most of us turn up the music and tune out the signal of one of the most important safety features in your car.

Seatbelt use in Canada leaped from a mere 26% in 1980 to 96% in 2011.<sup>1,2</sup> A large part of this increase can be attributed to seatbelt laws. These laws began to trickle into provincial legislation in 1976, with the last province jumping on board in 1987.<sup>3</sup> The increase also may be due to changing societal standards. My parents grew up during a time when it was normal not to wear a seatbelt, and it was perfectly fine to hold your baby on your lap when you were in the car. Even the child car seats at the time barely afforded any protection. Times have luckily changed!



Figure 1 : My mom, seated in what passed for a car seat in 1960.

Still though, that last 4% of people persist in coming up with reasons not to wear their seatbelt. Do they know something we don't? Should we ban seatbelt use altogether and go back to the way things used to be? Is it safer not to wear seatbelts? To answer these questions, let's take a look at some of the reasons why some people refuse to buckle up.

#### ***#10: The airbag will save me.***

Airbags are not meant to be the only restraint system you use; they are referred to as a supplemental restraint system. They provide additional protection when used in conjunction with your (properly worn) seatbelt. In a study of frontal collisions where all vehicles involved had front airbags, it was found

<sup>1</sup> Sen., A., Mizzen, B. [“Estimating the Impact of Seat Belt Use on Traffic Fatalities: Empirical Evidence from Canada”](#), Canadian Public Policy, Vol. 33, No. 3, September 2007, pp. 315-335.

<sup>2</sup> World Health Organization

<sup>3</sup> See reference #1.



that unrestrained occupants were still more than twice as likely to die at any severity of crash as those wearing seatbelts.<sup>4</sup> Furthermore, airbags will only deploy if the impact is significant enough to warrant one; they are not meant to deploy in minor collisions. Thus, if you are not wearing a seatbelt in a minor collision, you may not have any restraint system available to help protect you.

**#9: You don't need to wear a seatbelt in the backseat.**

While the rate of seatbelt use is nearly 96% for drivers, it is only at 89% compliance for rear seat passengers.<sup>5</sup> The higher rate for drivers may be partially explained by the seatbelt reminder systems. People would rather wear their seatbelt than listen to that annoying “beep” in the vehicle telling you to buckle up. Such systems are not yet in place for rear seat passengers.



Passengers in the rear seat may have a false sense of security being behind a cushioned seat, rather than a solid steering wheel or dashboard. While the risk of injury for rear occupants has typically been found to be lower than that of front occupants, there is still a significantly higher risk of injury for unbelted rear adult occupants compared to belted. One study of frontal impacts in vehicles of model years 2000 to 2006 indicated that unbelted rear seat passengers had more than 11 times the risk of serious injury in comparison to belted rear seat passengers.<sup>6</sup> It is just as important for rear seat passengers to buckle up as it is for front seat occupants.

**#8: I'm pregnant, so I shouldn't wear a seatbelt.**

Some women are afraid that the seatbelt will hurt the fetus. As long as the seatbelt is worn properly (your vehicle's Owner Manual will provide instructions on this), the seatbelt will absolutely help protect the mother and her unborn child. One study of 57 pregnant women who had been in a collision estimated that properly wearing a seatbelt reduces the risk of adverse fetal outcomes (including premature birth, injuries or death) by 84%. The study found that the best way to protect the fetus is by protecting the mother from injury, and the best way to protect the mother is by wearing a seatbelt.<sup>7</sup>

**#7: I don't want to get tangled in the seatbelt or trapped in the car. It's better to be thrown from the vehicle in a collision.**

The National Highway Traffic Safety Administration (NHTSA) studied the outcome of 400,000 occupants that were in fatal collisions between 2003 and 2007 to determine the factors involved in occupant ejection. The NHTSA found that unbelted occupants were nearly 18 times more likely to be ejected than those wearing a seatbelt.<sup>8</sup> Some people think that being thrown from the vehicle is better; however, this could not be further from the truth.

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<sup>4</sup> Ryb, G.E. et. al. "Delta V, Principal Direction of Force, and Restraint Use Contributions to Motor Vehicle Crash Mortality," The Journal of TRAUMA Injury, Infection and Critical Care, November 2007.

<sup>5</sup> World Health Organization

<sup>6</sup> Esfahani, E.S., Digges, K., "Trend of Rear Occupant Protection in Frontal Crashes over Model Years of Vehicles," Society of Automotive Engineers, Paper #2009-01-0377, 2009.

<sup>7</sup> Klinich, K.D. et. al., "Fetal Outcome in Motor-Vehicle Crashes: Effects of Crash Characteristics and Maternal Restraint," American Journal of Obstetrics & Gynecology, April 2008.

<sup>8</sup> Burgess, M., Starnes, M., "Factors Related to the Likelihood of a Passenger Vehicle Occupant Being Ejected in a Fatal Crash," National Highway Traffic Safety Administration, December 2009.

The NHTSA estimated that the risk of fatality of ejected occupants is 2.3 times that of those who are not ejected.<sup>9</sup> The body of a vehicle is built to endure impact forces and absorb the energy from an impact, so as to preserve the integrity of the passenger compartment as much as possible. You also have airbags inside the vehicle which will help cushion contact to the steering wheel or side windows. If you are thrown from the vehicle, you may end up being thrown dozens of metres away, striking the pavement at a significant speed, or being hit by another vehicle. In the case of a rollover, the vehicle may even roll onto you. Staying inside of the vehicle is your best chance for surviving the collision, and your seatbelt can help you do that.

***#6: Wearing a seatbelt is not comfortable, especially if I want to sleep.***

You know what's not comfortable? Being thrown through a windshield. I don't think I need to elaborate on this one!

***#5: I'm not going fast enough to get injured.***

I have heard of some people that only wear a seatbelt when they are on the highway, as they believe that there is no need to wear a seatbelt while driving at slower speeds than that. Most people would be surprised at how much a collision at lower speeds can throw you around when you're not wearing a seatbelt. The images in Figures 2 and 3 show the difference in movement between a crash test dummy wearing a seatbelt, and one which is unbelted, at an impact speed of only 30 km/h.<sup>10</sup> Keep in mind, the force of the impact was not high enough to trigger the airbag deployment.



Figure 2: Belted crash test dummy during a 30 km/h impact.

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<sup>9</sup> Ibid.

<sup>10</sup> Deutsche Welle, 2013. "[Drive It! The Consequences of Driving Without a Seatbelt](https://www.youtube.com/watch?v=...)", Retrieved from [www.youtube.com](https://www.youtube.com). Crash test conducted by Allgemeiner Deutscher Automobil-Club (ADAC), Germany.



Figure 3: Unbelted crash test dummy during a 30 km/h impact.

As you can see in the photographs, the chest of the unbelted crash test dummy impacted the steering wheel and its head struck the windshield. The belted dummy, meanwhile, has not impacted either. The seatbelt held the occupant in place and prevented their torso from being thrown forward. Simply buckling up can greatly reduce your injuries in any collision, whether it is low-speed or not.

#### ***#4: Seatbelts cause injuries.***

Study after study has shown that the use of seatbelts decreases the risk of fatality and injury across the board. A study of fatal collisions in the United States (where at least one occupant died), showed that the chances of an unbelted occupant dying were nearly twice that of someone wearing their seatbelt.<sup>11</sup> Is it possible for a seatbelt to injure you? Of course it could. In moderate to severe collisions, seatbelts can cause bruising as well as chest and abdominal injuries. However, as seen in the images from the previously mentioned crash test, a seatbelt can prevent your chest and head from striking components and surfaces inside the vehicle, which will almost certainly cause much more serious injuries than the seatbelt itself. So yes, you may still be injured by the seatbelt, but your injuries will be lessened in comparison to not wearing a seatbelt. "Seatbelts save lives." It's not just a catch phrase.

#### ***#3: I'm a great driver, I won't crash.***

Maybe you won't cause the collision, but someone else might! You may be the best driver in the world, but unfortunately, everyone else on the road is prone to making mistakes. Banking on your driving ability to save you is like playing Russian Roulette. There are some collision scenarios which are completely unavoidable because they happen too quickly for a driver to react; a car turns left in front of you, someone cuts you off and slams on the brakes, someone crosses the centreline or runs a stop sign...the list goes on. We are never afforded the opportunity to choose when, where or how a collision will occur, and so you must always be prepared for the worst. It's better to be safe than sorry!

#### ***#2: I'm not going far enough to get into a collision.***

Another excuse for not wearing a seatbelt, which I have actually seen in statements from injured occupants involved in a collision, is "I was close to home." Most people are only concerned about safety when embarking on longer road trips. In reality, the majority of traffic collisions occur within a few kilometers of home, likely because that is where we spend the majority of our driving time. A survey conducted by Progressive Insurance in the United States found that 52% of reported crashes occurred within only 8 km of home.<sup>12</sup>

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<sup>11</sup> Mayrose, J. et. al. "Influence of the Unbelted Rear-seat Passenger on Driver Mortality: "The Backseat Bullet"", Academic Emergency Medicine, February 2005, Vol. 12, No. 2.

<sup>12</sup> Progressive Insurance News Release, "Claims Survey Finds There's No Place Like Home – For Vehicle Crashes," May 6, 2002. Retrieved from [www.progressive.com](http://www.progressive.com).



### **#1: It's my life, I can do whatever I want.**

What a lot of people do not realize is that by not wearing a seatbelt, they are not just putting themselves at risk. They are also putting the other belted passengers at a higher risk for serious injury and death. Impacts cause unrestrained occupants to become moving projectiles.

Studies have looked at the risk that belted occupants face when they are in the path of an unbelted occupant during a collision. An example of this would be a belted driver with an unrestrained right front passenger, wherein the impact was on the driver side (and consequently, the collision force causes the right front passenger to travel towards the driver). Research that looked at all types of collisions found that belted occupants had a 90% increased risk of injury when exposed to an unbelted passenger, and a 4.8 times greater risk of death.<sup>13</sup> In fatal head-on crashes, a belted driver seated in front of an unrestrained rear seat passenger had a 2.3 times greater risk of death compared to sitting in front of a restrained passenger.<sup>14</sup> Bottom line: If you don't want to buckle up for yourself, do it for your fellow passengers. Don't let your risky choices harm them.



**Figure 4: Capture taken from a crash test video of a frontal impact with an unbelted child crash test dummy in the rear seat.<sup>15</sup>**

### **What does it all mean?**

Hopefully by this point I have successfully disputed every reason for you not to wear your seatbelt, and we can all agree that we should keep seatbelt laws. You might be wondering, why bother writing this article at all? If 96% of people are buckling up, that's great right? I mean, that's an A+ in school! The problem is, this is a life and death situation that is not improving. The Ontario Provincial Police reported that the number of deaths of occupants not wearing seatbelts (during the period of January 1<sup>st</sup> to mid-September 2015) was actually on the rise, compared to the same time period in 2014.<sup>16</sup>

The OPP also published a report only a year ago which stated that in the last decade, lack of seatbelt use was a factor in 856 collision fatalities. Males comprised an overwhelming 75% of the fatalities, and in

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<sup>13</sup> MacLennan, P.A. et. al., "Risk of Injury for Occupants of Motor Vehicle Collisions from Unbelted Occupants," Injury Prevention 2004, Vol. 10, pp 363-367.

<sup>14</sup> Mayrose, J. et. al. "Influence of the Unbelted Rear-seat Passenger on Driver Mortality: "The Backseat Bullet"", Academic Emergency Medicine, February 2005, Vol. 12, No. 2.

<sup>15</sup> Posted by the Road Safety Foundation. Retrieved from [www.youtube.com](http://www.youtube.com).

<sup>16</sup> CBC News Toronto, "Deaths Related to Not Wearing Seatbelts on the Rise: OPP," September 22, 2015. Retrieved from [www.cbc.ca](http://www.cbc.ca).

particular, the 25 to 34 age group had the highest rate of fatalities due to lack of seatbelt use.<sup>17</sup> So, if you are a young male who does not bother to wear a seatbelt, you are at a significantly higher risk of dying in a collision than the rest of us. This is what bothers me most about people not wearing seatbelts – **most of these deaths are preventable.**

Clearly, there is a lot at stake when someone chooses not to wear their seatbelt. Lack of seatbelt use can increase the risk of death and serious injury to not only you, but also to your fellow passengers. The take-home message is this: wearing a seatbelt is your best bet for both surviving a collision, and for sustaining as few serious injuries as possible. Spread the word, and pass on this research next time one of your friends or family members complains about wearing a seatbelt. Let's get that last 4% onboard, and aim for a future where no one has to die on the roads. Be smart – BUCKLE UP!

#### About the Author:

##### **Executive Summary**

Jillian specializes in collision reconstructions including investigations of potential fraud relating to staged collisions and has extensive experience with automobile Event Data Recorder data retrieval and analysis. Her credentials include an Honours Bachelor of Science degree in physical science and her Professional Physicist designation along with a multitude of specialized courses in collision reconstruction. In addition to having managed over 250 reconstructions, Jillian has participated in automobile crash testing and research projects. She shares her knowledge through articles in industry periodicals and presentations to insurers, lawyers and industry groups.

##### **Areas of Expertise**

- Automobile, motorcycle, pedestrian and cyclist collisions
- Suspected staged vehicle collisions (insurance fraud investigations)
- Vehicle examinations, including Event Data Recorder data retrieval and analysis, airbag deployment and seatbelt usage assessment
- Scene examinations
- Night-time visibility assessments

##### **Qualification & Certifications**

- H.B.Sc., Physical Science, McMaster University
- P.Phys. - Professional Physicist
- PC Crash - Essentials Workshop
- Advanced Crash Reconstruction Utilizing Human Factors Research - Northwestern University, Center for Public Safety
- Accident Investigation Part 1 – Northwestern University, Center for Public Safety
- Vehicle Crash Reconstruction Methods – Society of Automotive Engineers
- Automotive Damage Appraisal – Centennial College
- Data Analysis and Statistical Inference – Duke University
- Human Factors Collision Analysis, Theory and Practice
- Crash Data Retrieval Operators Analysis and Applications – Toronto Police College
- ARC-CSI Crash Conference (2012)
- Society of Automotive Engineers (SAE) International Congress and Exposition (2012)

##### **Professional Associations**

- Canadian Association of Physicists
- Society of Automotive Engineers

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<sup>17</sup> Dubinski, K., The London Free Press, "[Ontario Provincial Police Release Crash Data on 3,500 Road Deaths Since 2005](#)," March 23, 2015. Retrieved from [www.lfpress.com](http://www.lfpress.com).

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## Double Count Me Out: Confusion Persists when Rating Brain Injuries and Mental and Behavioural Disorders



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Concerns about “double counting” in the context of catastrophic impairment determination under the various versions of the *Statutory Accident Benefits Schedule* (“Schedule”) are nothing new. Although the question has been addressed in numerous cases over the years, confusion persists.

Director’s Delegate Blackman addressed some of this confusion in his July 6, 2016 decision in *Allen and Security National Insurance co./Monnex Insurance Mgmt. Inc.* (P15-00018) by reminding everyone that “symptoms” are not synonymous with “impairments” and that determining the cause of the impairment is a role incumbent upon the Arbitrator.

Mr. Allen suffered both a physical brain injury and a separate psychological mental and behavioural disorder. He sought catastrophic impairment determination under clause 2(1.2)(f) of the 1996 Schedule on the basis of an impairment or combination of impairments that resulted in 55% or more whole person impairment (WPI).

Arbitrator Smith of ADR Chambers opined that double counting would occur if percentage ratings were obtained from both Chapter 4, Table 3 (Nervous System: Emotional or Behavioural Impairments) and Chapter 14 (Mental and Behavioural Disorders). He therefore only assigned an emotional or behavioural impairment rating under Chapter 14. He did not provide a rating under Chapter 4, Table 3. He ultimately reached a 52% WPI (50% rounded down),

including 28% Chapter 3 (Musculoskeletal System), 14% Chapter 4, Table 2 (Nervous System), 4% Chapter 13 (Skin) and 20% Chapter 14 (Mental and Behavioural Disorders).

Director’s Delegate Blackman held that Arbitrator Smith made several errors of law in his conclusion:

1. He seemingly rated symptoms rather than impairments, specifically when concluding that it made no sense to rate, “the same set of symptoms twice for the same set of symptoms, each obtained in isolation from the other”.
2. He failed to make a determination on causation, as it relates to emotional or behavioural disturbances. This was particularly problematic because determining the cause of the impairment is key to ensuring that the impairment rating doesn’t underestimate or overestimate the level of impairment.
3. He only rated brain impairment at Chapter 4, Table 2, instead of providing separate ratings under both Table 2 and Table 3. The more severe of the two is what represents the appropriate level of cerebral impairment. This number is then combined with the other impairment ratings using the Combined Values Chart.

The question of ratings under Chapter 4 of the AMA Guides was remitted back to arbitration for determination. In Director’s Delegate Blackman’s view, the key to distinguishing Chapter 4, Table 3 from Chapter 14 is causation. Emotional or behavioural disturbances under Chapter 4, Table 3 result from neurologic impairments, while Chapter 14 addresses impairments that result from mental

disorders. The Arbitrator *must* address causation, even where it seems impractical to do so.

While it may be tempting to view this decision as some sort of a victory for Mr. Allan, that's not necessarily the case. Adjudicators are not restricted to determining a WPI rating within the ranges outlined by the experts. As Director's Delegate Blackman's decision indicates, a WPI range is not very helpful if the expert does not comment on whether emotional or behavioural impairments resulted from Chapter 4 Nervous System injuries or Chapter 14 Mental and Behavioural disorders before the appropriate ratings are assigned. It appears that Mr. Allen's expert did not provide any direct guidance in this regard, at least not in his written report. It is therefore yet to be seen whether Mr. Allen will ultimately be able to obtain a more favourable result at the new hearing.

*Hermina Nuric is an associate in the London office of Miller Thomson and practices in the area of Insurance Defence.*

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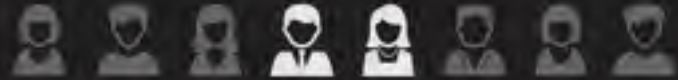
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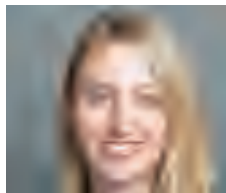
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