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# PRESIDENT'S MESSAGE

## SUMMER 2017



Hello,

Welcome to Summer!

Thank you to all of our members and industry partners for this amazing year! The 2016- 2017 year has been a successful year. Without our members and industry partners we would not have had the successful year we had.

To start our year we held our tradeshow at the Crowne Plaza as a trial run for the Provincial conference. After the Tradeshow we changed venues and started planning the 2017 Provincial conference again. We have had large turn outs at all of our monthly events, thank you to those who planned the monthly meetings for bringing out some great speakers.

Maytoberfest was a blast, it saw over 700 people attend the tradeshow and mix and mingle. 325 people attended the educational events and traditional fest hall. This event would not have been as great as it was without the amazing executive team, volunteers, sponsors and industry partners. Thank you to everyone for this event. It was my honour and privilege to be a part of it.

In June, we held the annual John McHugh Charity golf tournament at Ariss Valley Golf Course. We were able to raise \$9090 For Kidsability. This is an exceptional accomplishment and I am proud to be a part of this chapter that is able to give so much to the community.

This was my second term as president, it has been an honour. I am grateful for having been given the opportunity to return as your president. I am now passing the reigns back to Charlene for her to have another term as President. The executive team in place for the coming years is a amazing, having provincial conference strengthened our bond and made us a better group and I look forward to seeing what this group can accomplish next year and in the years to come.

Thank you,

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

Jennifer Brown  
President of K-W OIAA

# It's time for our own 'Game of Drones'!

Join us on Thursday, September 28, 2017 as we kick-off our 2017-2018 OIAA year! The Crawford drone team will be joining us with a drone presentation and providing information on how drones can be used with insurance claims. Dinner will be a catered BBQ. This is a casual outdoor event so please dress for the outside weather (we will move inside should weather not cooperate with us).



Location: Wilmot Rod & Gun Club (2607 Bleams Rd, New Hamburg, ON N3A 3J2)

Time: 5:30pm social time, dinner at 6:30 with presentation to follow.

Space is limited. As such, we will not be accepting any ticket purchases at the door

Purchas your tickets today at <http://www.kw-oiaa.ca/>



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### Subrogation

Subrogation requires a distinct and different skill set from the defence of liability, coverage or property claims. Our firm has a strong track record in advancing subrogated claims on behalf of its clients, bringing a practical and common-sense approach to subrogation. Above all else, we ensure that insurers don't throw good money after bad in pursuing claims where liability facts are poor and target defendants cannot satisfy a judgment.

### Bodily Injury Litigation

Our lawyers have experience in all aspects of motor vehicle bodily injury litigation in Ontario. We have a thorough understanding of the threshold for pain and suffering damages in Ontario, the large body of law interpreting the threshold over the last twenty years and the interplay between first- and third-party compensation systems. We work with recognized science and medical experts to obtain opinion evidence where necessary and provide strategic counsel to help our clients manage risk.

### Coverage

We have experience acting as coverage counsel for both insurers and corporate policyholders. We provide coverage opinions with respect to a variety of types of insurance coverage, including liability, property, errors and omissions, automobile, and fidelity bonds. We have also litigated insurance coverage cases at the Ontario Superior Court of Justice and Ontario Court of Appeal, addressing a diverse range of coverage issues. Our coverage lawyers also publish and speak regularly on the interpretation of insurance policies.

### First-Party Accident Benefits Claims

Ontario's first-party auto compensation framework has undergone major change on several occasions since 1990. Our lawyers have skillfully guided Ontario's property and casualty insurers through those changes.

### Priority and Loss Transfer Disputes Between Insurers

Ontario's Insurance Act contains priority and loss transfer rules that address which insurer is responsible for paying first party benefits to a claimant in any given case. Disputes between insurers are resolved through private arbitrations pursuant to the Arbitration Act, 1991. This is an active area of insurance-related litigation unique to Ontario and our lawyers have expertise and a strong track record in this area.

### Premises Liability

We act for a number of different insurers and institutions who self-insure property and casualty risks in premises liability matters. Claims of this nature require general bodily injury law expertise as well as an understanding of commercial leasing contracts and overlapping injury reparation systems. We understand the legislative framework, common law principles and contractual risk shifting that inform the defence of premises liability claims.

### Property Losses

We act for insurers in first-party claims advanced by their insureds when disputes arise in the course of adjusting a loss, whether the issue is one of coverage or valuation. We understand that claims advanced by insureds can present special risks to an insurer for extra-contractual damages. We keep this issue at the forefront in handling claims of this nature.

### Additional Expertise

In addition to expertise in specific areas of insurance law, we also provides clients with counsel on issues such as policy wording and endorsements, underwriting strategies, government relations and media information requests.

## LEADERSHIP

Samis+Company provides our client community with in-house training and education on developing issues and trends. We also share our legal knowledge with the broader insurance community. For example, we regularly serve as instructors for the Insurance Institute of Ontario and have developed and presented programs that lead the industry on issues such as personal injury compensation, environmental law and insurance, and subrogation trends and best practices. In addition, the insurance community frequently calls on us to present on current legal issues to organizations such as:

- Canadian Insurance Claims Managers Association
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- Ontario Mutual Insurance Association
- Ontario Insurance Adjusters Association
- Canadian Insurance Adjusters Association
- Ontario Risk and Insurance Management Society
- Insurance Institutes of Canada and Ontario
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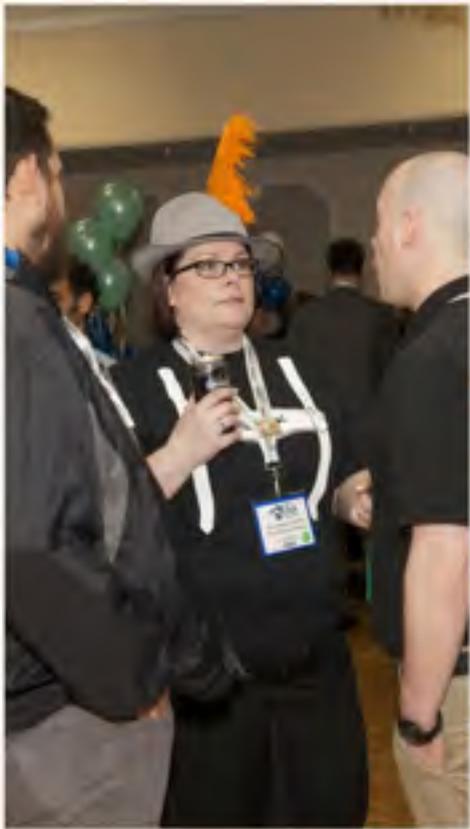
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## Everyday Safety Hacks from Forensic Engineers



By Randy Henderson, Arcon Forensic Engineers

As insurance adjusters, you likely see on a daily basis the truth in the old adage that most accidents happen in and around our homes. In the area of forensic engineering, we often see claims that could have been prevented had people been a little more patient, careful and observant in their daily lives. The purpose of this article is to share with you some wisdom gleaned by forensic engineers through their investigations of the causes of insurance claims. We'll begin with simple 'hacks' to prevent property related claims, and then provide suggestions for avoiding collisions and personal injuries.

### Fires

We've all heard it a million times but **replace your smoke detector batteries** with every change in season, regardless of whether they are hard wired or not. While they don't prevent fires, alarms often prevent loss of life and can reduce the severity of a loss.

**Don't power window air conditioners with extension cords.** Extension cords are designed to provide temporary power and are not meant to be a long term wiring solution. Even if you are using a cord that is suitable for the electrical load, it is still only meant for temporary power supply.

**Clean the lint trap in your dryer after every load** and periodically (depending on frequency of use) check the dryer exhaust to ensure that there is no build up of lint. Airborne particles of lint can lead to dryer fires.

Only use candles for ambience during a romantic dinner and never as a light or heat source. **Be sure to extinguish the candle** regardless of the dinner result.

### Floods

A common but often overlooked use of batteries in a home is the thermostat. Batteries provide back-up in the event of a power outage. You might ask, who cares? If you are on vacation the first week of February and there is an **extended power outage and your thermostat is offline because the batteries are dead...**you might come home to burst pipes and water damage.

Toilet supply lines are a common point of failure in a home's plumbing system. **Consider replacing the supply line every 10 years** with a good quality replacement. The problem with toilet supply lines is that there is usually no local shut-off valve, and the damage resulting from a second floor toilet failure can be extensive. If you are a DIY plumber and the instructions say "hand-tighten", don't apply a pipe wrench and as much force as you can muster just to "make sure". Excessive force can cause parts to weaken, fracture and eventually break.

Floods can also originate from a washing machine or dishwasher. Consider only running such appliances when you are at home, just to be on the safe side.

Winterize your outdoor hose bibs by **turning off the water supply to the external bib and then draining any residual water** by opening the external tap. The internal shut-off should be in the basement just inside the wall from the external connection.

**Never, never, never turn the heat off when you go on vacation during the winter and make sure that all of your windows are shut!**

### Collisions

Focus and patience are often found to be lacking by at least one of the drivers involved in a collision. A lack of focus lengthens the perception-reaction time of a driver which in turn decreases the ability to avoid a collision. One of the greatest sources of distraction is the general use of a handheld or mounted device such as a phone or GPS unit. **Even talking on a hands-free enabled device is just as distracting as talking on a hand-held phone.** I'm sure we've all missed a turn-off because we've been talking on the phone while driving.

**Don't speed.** It's obvious, the faster you drive, the longer the distance required for safe stopping. The greater the distance to stop, the less chance you have to avoid a collision. For example, driving 10 km/h over the posted speed in a 60 km/h zone will increase your dry-road braking distance by over 30% - from 18 metres to 24 metres.

**Always allow for a 2 second following distance between you and the car ahead.** This gap is related to the typical perception-reaction time of a driver and braking capability under ideal conditions. The faster you're travelling, the bigger the gap. In inclement weather, allow for an even longer gap to account for slowness in driver reactions and reduced friction, control and visibility.

**Wear your seatbelts.** In nearly every instance they can significantly reduce the rate of severe injury (and are responsible for twice the reduction in head & spine injuries).

When turning left, never assume that drivers approaching from the opposite direction are planning to stop. If you are one of those drivers, **don't use an amber light as a signal to speed up.** Also don't try and "shoot the gap" between cars when turning left. As an indication of whether you routinely cut it too close when you turn left, look in your rear-view mirror after you complete your turn and count the seconds that pass until you see the oncoming car that you turned in front of. If it's less than three seconds, you might want to wait for a bigger gap in the future.

When it comes to transport trucks, buses and specialty vehicles such as cement mixers, size matters. Drivers of these vehicles can not react as nimbly or brake as quickly as someone in a car and do not have the same field of vision as drivers of cars. Give way and stay alive. The same logic exists with pedestrian and vehicle interactions. **As a pedestrian, do not text and walk, especially at intersections.** Wear

reflective clothing when walking or cycling at night. When walking in the dark, people often assume if they can see the car, the car's driver can see them. Quite often, this not the case.

### Personal Injuries

Pedestrians can reduce their chances of a slip, trip and fall by minding the following suggestions. **Always watch your step** to account for step heights and even changes in seemingly level surfaces in order to detect slight variations that could spell danger. By extension, don't shuffle your feet when you walk. This can cause you to catch minor variations caused by heaving between poured concrete on the sidewalk or changes in surfaces, such as between carpet and tile. **Do not wear Crocs on wet surfaces** – their sponginess makes them conform to the walking surface, trapping water and becoming very slippery. Do not wear running shoes in sub-zero weather on snow/wet surfaces; the sole material hardens at these temperatures and loses ability to grip the surface.

We hope that you find these “hacks” useful. Completely random “accidents”, where the confluence of variables leading to the incident are essentially unpredictable or beyond control, are rare. There is usually a pretty simple decision point leading up to the “accident” where a human made a poor decision.

Randy is responsible for client management and business development at Arcon Forensic Engineers. This article contains input from forensic investigators Jillian Leblanc, Daniel Couture and Alan Morris.

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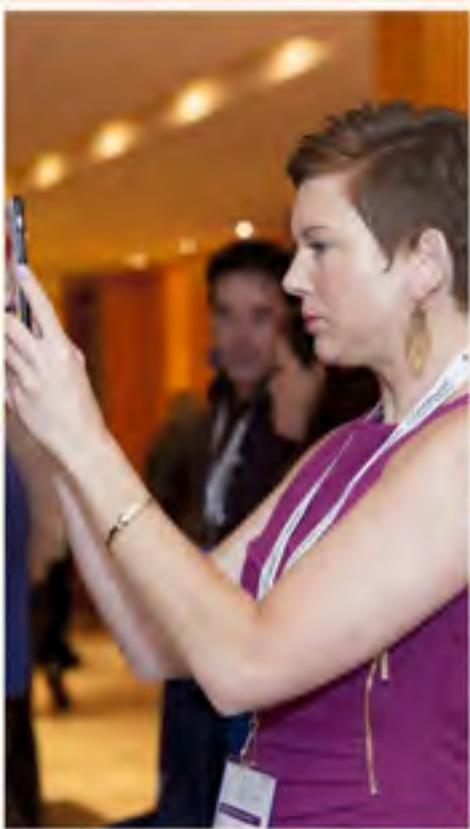


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## Case Comment: Duty of Care Under the *Occupiers' Liability Act*



Authored by:

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In this case, the plaintiff, a parishioner of the defendant church, volunteered to paint the church's interior walls and ceilings. After assuring a supervisor of the defendant that he was comfortable painting from a ladder and had previous experience doing so, the plaintiff attended for painting duty on multiple occasions over several weeks using an eight foot stepladder. Unfortunately, while working from the stepladder, the plaintiff fell, resulting in a head injury and coma for 25 days. He subsequently commenced an action against the defendant church, arguing that it breached its duty to ensure his reasonable safety while he was voluntarily working on the premises. In response, the defendant brought a motion for summary judgment.

In granting the defendant's summary judgment motion, the Court considered subsection 3(1) of the *Occupiers' Liability Act*, which imposes on an occupier a duty to take reasonable care so that persons entering on its premises are reasonably safe, such that conduct is negligent if it creates an objectively unreasonable risk of harm. In reviewing the governing principles under the *Occupiers' Liability Act*, the Court reiterated the principle that the duty of occupiers to make their premises reasonably safe for people entering on them is not absolute and that occupiers are not insurers liable for any damages that may be suffered by people entering their premises.

After a thorough consideration of all the evidence, the Court granted the defendant's summary judgment motion, finding that it provided a reasonably safe environment that ensured the reasonable safety of the plaintiff. In making this determination, the Court was mindful of the fact that the integrity of the stepladder in question was confirmed through expert evidence, as well as the fact that the floor on which it was placed was flat, solid and clear of debris. As such, the stepladder was suitable for its purpose, which was supported by the fact that there were no complaints about it by the plaintiff or others. The Court specifically noted that the use of a stepladder itself does not inherently constitute an objectively unreasonable risk of harm.

In addition, the Court indicated that even if it could have been said that the stepladder presented an objectively unreasonable risk of harm, the plaintiff, due to his head injury and amnesia, could offer no evidence as to the cause or mechanics of his fall. As such, the requisite causal nexus could only have been made by speculation and conjecture, which the Court was not prepared to do.

After an extensive consideration of all relevant factors, the Court, putting aside its sympathy for the unfortunate plaintiff, held that the defendant provided a reasonably safe environment for the plaintiff. As such, it granted the defendant's motion for summary judgment dismissing the plaintiff's claim.

The decision in *Baltadjian* reminds us that the *Occupiers' Liability Act* does not create a standard of perfection or presumption of negligence against occupiers whenever individuals are injured on their premises. Rather, a plaintiff must

be able to point to some act, or failure to act, on the part of the occupier which caused or contributed to his or her injury before liability will be established. Unfortunately, this fundamental principle is frequently forgotten by many plaintiffs, who too often presume that when an accident occurs on an occupier's premises, the occupier is automatically negligent.

*James Prior is a Partner in the Waterloo office. His legal practice focuses on insurance defence, including the defence of personal injury and property damage claims, as well as commercial general liability and subrogated recovery matters.*

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Meet Michael Prosia. Michael has spent the better part of the last decade honing his skills in Brazilian JiuJitsu. If his time on the mats has taught him anything, it's that making the right decision is only half the battle – the right decision needs to be executed properly. That's why he is a valued member of our insurance defence group – another lawyer who takes great pride in making sure all of our clients' cases are handled with the care and precision you've come to expect from Canada's law firm.



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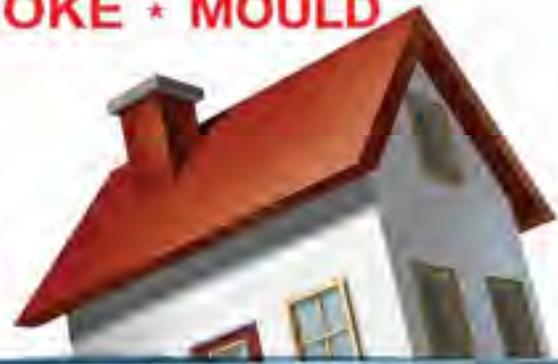
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