

# W/P

**Without Prejudice**

Official Journal of the Ontario Insurance Adjusters Association

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is in  
the air!*

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# THE WP RADIO

PODCAST NETWORK

With 2020 being an extremely different year for the world, it's never been more apparent that things can change for us in the blink of an eye. I'm certain everybody is on the same page of wanting to get back to normal as soon as we can, but when that happens is far beyond any of our control.

In the meantime, we're always looking for ways to expand the reach of the association, connect with people and create great experiences for our members. WP Radio has been something that over the past three years, has really evolved into something that is consistently seeing year-over-year growth and even the pandemic did not stifle that.

In 2020 alone, WP Radio reached over 3,000 listeners from Apple Podcasts, SoundCloud and YouTube and an entirely new roster of podcasts and episodes will be released in the coming year.

On the distribution end, we're very excited to announce that all episodes of WP Radio are now available on Spotify. Our first podcast release of 2021 is brought to you by Arcon Forensic Engineers, called "Guess What I Learned Today", which will be releasing every month throughout the year.

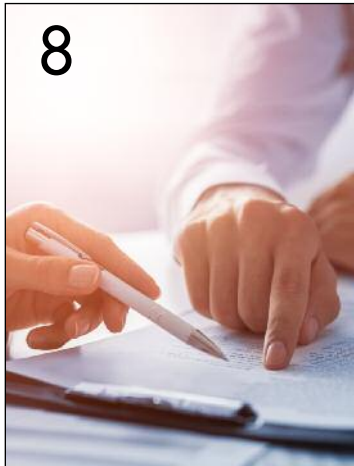
More projects will be announced for the OIAA and WP Radio in the coming year, and we look forward to connecting with you all as 2021 progresses.

If you or your company are interested in sponsoring a podcast and being part of the 2021 roster, please contact [terry.doherty@aviva.com](mailto:terry.doherty@aviva.com) for more information.

We want to thank all of our listeners and sponsors for their continued support, and we look forward to a great 2021 year

- The WP Radio Team

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**Simone Cybulski**  
President, OIAA



## ***President's Message***

### ***Congratulations Jennifer Brown!!!***

It is my pleasure to congratulate and welcome Jennifer Brown from our Kitchener-Waterloo Chapter and our very own *WP* Editor as the incoming Secretary for the 2021/2022 OIAA year.

Jennifer's commitment, dedication and drive has been very much appreciated and seen by many over the past few years and I am excited to have her join the senior executive; I can only imagine how successful she will be during her Presidency in 2025/2026.

April is another exciting month of elections. Our Toronto Delegate Election will take place on April 13th. We have three candidates – Zohair Nassur from The Co-operators Insurance, Bryan Levisauskas from Sedgwick and David Montgomery from Crawford and Company.

Thank you Zohair, Bryan and David for putting forth your names and good luck to all of you.

Members; be sure to vote on April 13, 2021!

We did it! We survived another winter and have moved into Spring. Unfortunately, this Spring looks a bit like last Spring, as COVID is still amongst us and we are still dealing with and facing this pandemic.

I hope everyone is staying healthy and safe; and I hope in the very near future we can once again get together in person!

***"Spring is a time to find out where you are, who you are, and move toward where you are going." – Penelope Trunk***

**Simone Cybulski**  
President,  
Ontario Insurance Adjusters Association



## Monthly Webinar Series April Edition

# Business Interruption Claims and Covid-19

**Presented by: Stephen Dodd**  
**Director, Crawford Forensic Accounting**

**Date: April 15th at 10am**

**Member Cost: Free    Non-Member Cost: \$50.00**



Stephen Dodd, Director at Crawford Forensic Accounting Services, has working in a forensic accounting role since 2013. He has been engaged in a wide variety of assignments over the years including economic damage quantification, business interruptions & loss of earnings, stock and contents losses, and extra expense calculations among others. He also has experience working on catastrophe claims and has handled files resulting from everything including Hurricanes to the Fort McMurray Wildfire. Stephen obtained his Masters of Business Administration from Wilfrid Laurier, and is a Chartered Professional Accountant and Certified Management Accountant.

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Seminars/Education & .....	Kyle Case .....	All Committee Members	Industry Collaboration .....	Simone Cybulski.....	Rhu Sherrard, Kyle Case
Adjuster Training					Terry Doherty, Shawna Gillen
Strategic Planning .....	Kyle Case .....	Tena Allen, Claire Richardson, Sarah Graves, Jennifer Brown			
Bursary .....	Mike Bottan.....	Laura O'Hearn, Claire Richardson			
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2021 Career Fair (TBD).....	Rhu Sherrard.....	Kyle Case, Terry Doherty	Membership .....	Shawna Gillen.....	All Chapter Delegates
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			Constitution/Incorporation.....	Kyle Case.....	Terry Doherty, Shawna Gillen
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			Mentoring.....	Kyle Case	
			Nominating .....	Leanne Hardman	
			Vendor Relations/Sponsorship...	Kyle Case.....	Terry Doherty, Shawna Gillen
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			Holiday Party .....	Jennifer Brown .....	All Chapter Delegates,
			- OIAA Hands of Hope		Senior Executive
			Golf Tournament .....	Carrie Evans.....	Zohair Nassur, John Slattery
			September Kick Off.....	Zohair Nassur.....	Carrie Evans, John Slattery
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# W/P

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*What Are the Best Practices Insurers Should Follow When Seeking Repayment of Benefits Under the Statutory Accident Benefits Schedule?* (page 8)

Geoff Keating is a partner with the firm of Kostyniuk & Greenside Lawyers, practicing in the area of insurance defence and specializing in the area of no-fault statutory accident benefits. He has proudly acted as lead Counsel in numerous accident benefits dispute hearings since his call to the bar in 2013. When not working, Geoff enjoys spending time with his wife, Lidia, and training in Muay Thai.



### Veronica Gorrell

*The New Notice Requirement for Falls on Ice* (page 18)

Veronica L. Gorrell began working with Agro Zaffiro as a summer student in 2018 and returned to complete her articles with the firm in 2019. She joined the civil litigation group as an associate lawyer after her call to the bar in 2020. Her practice consists primarily of insurance defence litigation, property damage and subrogation claims.



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*Working from Home: The New Worldwide Trend* (page 40)

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*Medical Malpractice and the New Normal: "Hit with COVID-19 during a hospital visit? We'll hit back."* (page 46)

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*Medical Malpractice and the New Normal: "Hit with COVID-19 during a hospital visit? We'll hit back."* (page 46)

Margot Mary Davis is a 2018 Ontario call to the bar. She is interested in policy issues surrounding law like combatting counterfeit goods and developing sui generis policies for orphan drugs. She is also a published author.

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**What Are the  
Best Practices Insurers  
Should Follow When  
Seeking Repayment of  
Benefits Under the  
Statutory Accident  
Benefits Schedule?**





While repayment is an indispensable tool in mitigating exposure, the procedural requirements can be complicated, with non-compliance potentially barring an insurer from recovery.

The purpose of this article is to provide a concise roadmap for all stages of the repayment claims handling process.

*By Geoff Keating,  
Partner,  
Kostyniuk & Greenside Lawyers*

## Determining Whether the Insurer is Entitled to Seek Repayment

At the start of any repayment claim will be the question of whether an insurer can actually claim for repayment. Section 52 of the *Schedule* specifies the circumstances in which repayment can be sought.

Specifically, subsection 52(1) indicates that a person is liable to repay to an insurer:

*“(a) any benefit described in this Regulation that is paid to the person as a result of an error on the part of the insurer, the insured person or any other person, or as a result of wilful misrepresentation or fraud;*

*(b) any income replacement or non-earner benefit under Part II that is paid to the person if he or she, or a person in respect of whom the payment was made, was disqualified from receiving the benefit under Part VII; or*

*(c) any income replacement, non-earner or caregiver benefit under Part II or any benefit under Part IV, to the extent of any payments received by the person that are deductible under this Regulation from the amount of the benefit.”*



As per the above, an insurer is entitled to claim repayment of any benefit payable under the *Schedule* where payment of the benefit was due to error or was as a result of wilful misrepresentation or fraud.


With respect to income replacement and non-earner benefits, a repayment claim can arise where the insured person was disqualified from receiving the benefit under Part VII of the *Schedule*. The disqualification criteria under Part VII are numerous. Generally speaking, they relate to situations where a vehicle is uninsured, the driver is unlicensed or did not have consent from the owner to operate the vehicle, where the insured person was involved in a criminal act at the time of the accident, or where the insured person has made, or knows of, a material misrepresentation that induced the insurer to enter into the contract of automobile insurance or who intentionally failed to notify the insurer of a change in a risk material to the contract.


It is important to note that, in situations where an occupant of a vehicle knows or ought to reasonably know that the vehicle is being operated by an excluded driver, they are still permitted to recover accident benefits under a motor vehicle liability policy that lists them as a named insured. This exception extends to the excluded driver.

In situations where criminal charges have been laid, an insurer is entitled to hold amounts payable for income replacement and non-earner benefits in trust, until the final disposition of the criminal charge. In the event that the insured person is convicted, amounts held in trust will remit back to the insurer.

Finally, an insurer is entitled to seek repayment of lost educational expenses, visitor expenses, damage

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**After determining that repayment can be claimed, an insurer must provide notice of its repayment demand to the person from whom repayment is being sought.**

to clothing etc., and income replacement, non-earner, caregiver, house-keeping, and cost of examination benefits, where the insured person has received payment that is deductible from any of these benefits under the *Schedule*.

Subsection 52(1) has remained in place and unchanged since the introduction of the current version of the *Schedule* on September 1, 2010. It is important to note that while the prior version of the *Schedule* included similar provisions, there are important differences. The information outlined in this article should not be relied upon exclusively with respect to repayment claims where the date of loss pre-dates September 1, 2010.

It should also be noted that an insurer is entitled to receive interest on the amount to be repaid.

Practically speaking, the interest collectible is trivial, payable at the minimum rate at which the Bank of Canada makes short term advances to major financial institutions (currently 0.5% annually) and beginning to accrue from 15 days after valid notice of the repayment demand is given.

**Providing Valid Notice of the Repayment Demand**

After determining that repayment can be claimed, an insurer must provide notice of its repayment demand to the person from whom repayment is being sought. Such notice is required by subsection 52(2)(a) of the *Schedule* and without it, an insurer will not be able to receive repayment. As such, it is critical for any repayment claim that notice of the repayment demand be provided.



Of equal importance is that the notice of repayment demand be valid. In the event that such notice is considered invalid, subsection 52(2)(a) will be deemed not to have been satisfied, and the insurer will not be able to receive repayment.

In terms of what constitutes valid notice, subsection 52(2)(a) indicates that an insurer must provide notice of the amount that is required to be repaid. Unfortunately, and somewhat perplexingly, compliance with the requirements of subsection 52(2)(a) is not sufficient. A review of the decisions from the Licence Appeal Tribunal confirms that an insurer is required to provide the following information in its repayment demand letter:

1. That there has been overpayment of a benefit;
2. The nature of the benefit that has been overpaid;
3. The time period over which the benefit to be repaid was initially paid;
4. The amount of repayment sought;
5. That repayment of this amount is sought in accordance with section 52 of the *Schedule*; and,
6. Valid right to dispute notice.

While the amount sought to be repaid need not be “perfectly correct”, it should be “substantially correct”.

It is of paramount importance that an insurer provide notice compliant with the above noted requirements and not simply rely upon the wording of subsection 52(2)(a). Minor deviations may ultimately be forgiven by the Licence Appeal Tribunal, however a lax approach will only serve to create unnecessary and avoidable risk.

While a finding of invalid notice can constitute a costly error given the time and expense associated

with obtaining a decision from the Licence Appeal Tribunal, there are even more severe consequences that can result. In cases of repayment based on all criteria aside from wilful misrepresentation and fraud, subsection 52(3) requires that notice of the repayment demand be provided within 12 months of the date upon which the benefits to be repaid were originally paid. Effectively, subsection 52(3) states that if an insurer fails to provide notice of the repayment demand within 12 months of the payment, it will be barred from recovery unless it can establish that the benefit was paid due to misrepresentation or fraud.

An unfortunate and all too common example of the 12-month rule in action is as follows: An insurer believes it has overpaid benefits due

to error. It issues an invalid repayment demand letter within 12 months of the initial payment. At some point thereafter, the insurer realizes that the notice is invalid. It must now prepare a second notice letter. By this point, over 12 months have now passed from the date the benefit was paid. There has been no misrepresentation or fraud, and therefore, the insurer will be barred from seeking repayment.

In light of the above, when factoring in the litigation costs and delay associated with taking a disputed repayment claim to decision at the Licence Appeal Tribunal, as well as the prohibitive consequences for failure to comply with the 12-month rule, best practices dictate that an insurer always put its best foot forward through the provision of proper repayment demand notice.



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### **Commencing an Application for Repayment**

In the event that valid notice of the repayment demand is made, with the person from whom repayment is sought either refusing to repay the benefit or simply not responding, the next substantive step will usually be for the insurer to commence a proceeding for repayment with the Licence Appeal Tribunal.

A repayment claim is subject to limitation rules, and as such, the proceeding must be commenced (through the issuance of an Application) within two years of sending the repayment demand letter.

While this step will necessitate the expense of retaining legal counsel, in cases where misrepresentation/fraud are not alleged, the proceedings are generally quite straight forward in nature, and should not involve excessive legal fees.

### **Enforcing Repayment**

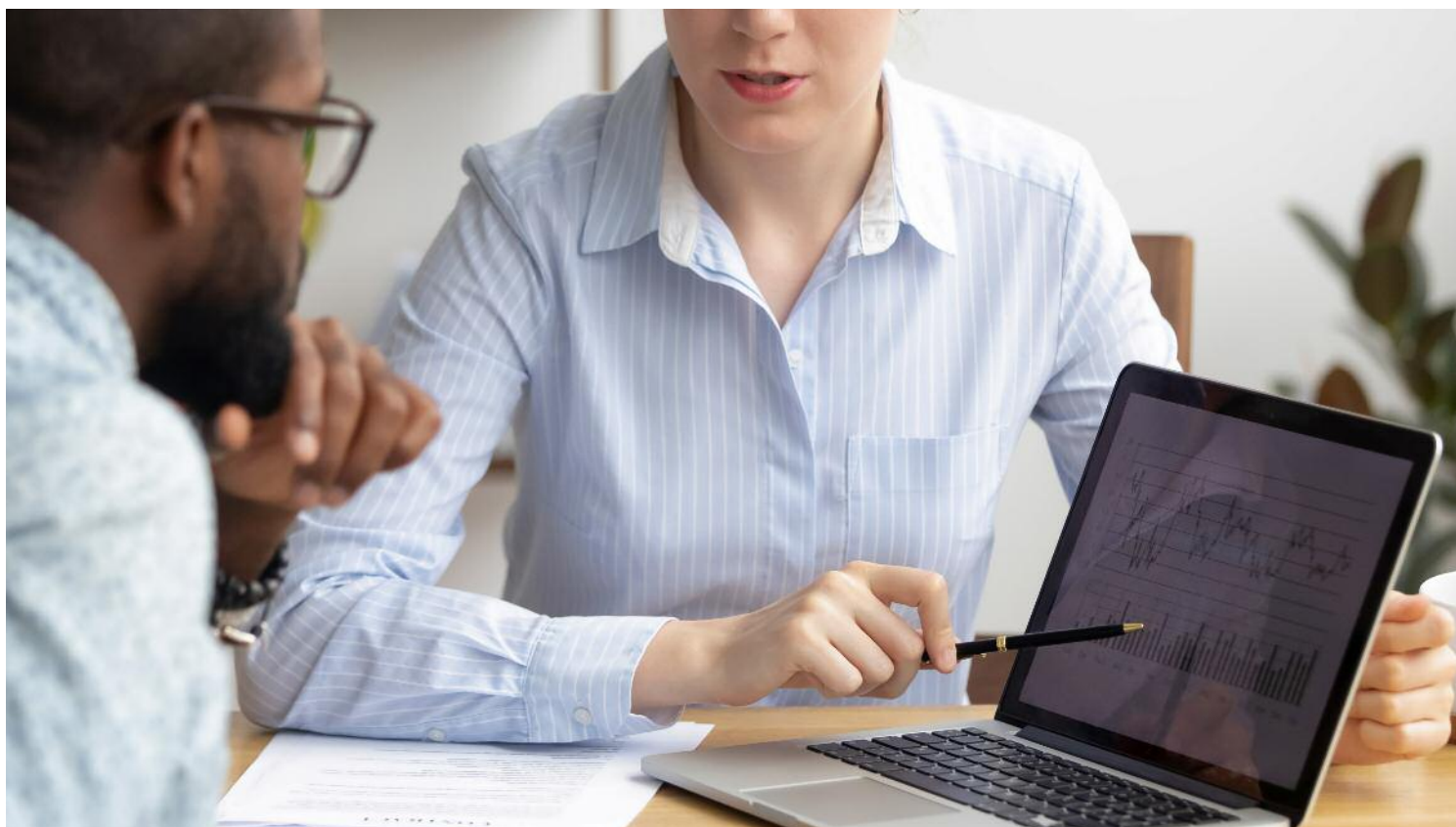
Even in the event that an order for repayment is successfully obtained, an insurer will still often need to take steps to compel actual repayment.

Under section 19 of the *Statutory Powers and Procedures Act*, an order from the Licence Appeal Tribunal may be filed with the Superior Court of Justice by the insurer, and when it is, it shall be deemed to be an order of the Court and may be enforced as such. Once the order is filed, the insurer can access the enforcement provisions under the *Rules of Civil Litigation*, including, but not limited to, writ of seizure and sale, and garnishment.

### **Exploring Alternatives to Commencing an Application and Enforcing an Order**

The above noted methods of enforcement, while effective, do involve additional expense and delay.

**Even in the event that an order for repayment is successfully obtained, an insurer will still often need to take steps to compel actual repayment.**



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As such, best practices dictate that an insurer consider alternative methods to obtain repayment.

In cases where the benefit for which repayment is being sought is an income replacement or caregiver benefit that continues to be paid to an insured person, an insurer may, upon providing notice, reduce each subsequent payment of the benefit by up to 20% in order to claw back the repayment.

This claw back repayment method is preferable for two reasons. Firstly, it permits an insurer to begin collecting money owed without having to seek a Tribunal order or pursue enforcement. Secondly, it provides a method of collection from persons who do not own any assets and who do not earn income. An insurer should always consider it a primary means of collection when it is available.

In circumstances where an insurer is attempting to settle an accident benefits claim with an outstanding repayment owed, proceeding to the Licence Appeal Tribunal is often unnecessary. The insurer can instead use the outstanding repayment as a negotiating tool to bridge the gap towards settlement. Almost all insured persons would prefer to take a discount on money payable to them by an insurer, rather than making payment to the insurer while holding out for a larger settlement figure. Before formally issuing a repayment application and/or exploring enforcement options available, insurers should always explore the possibility of making repayment work for them in settlement.



*Geoff Keating is a partner with the firm of Kostyniuk & Greenside Lawyers, practicing in the area of insurance defence and specializing in the area of no-fault statutory accident benefits. He has proudly acted as lead Counsel in numerous accident benefits dispute hearings since his call to the bar in 2013. When not working, Geoff enjoys spending time with his wife, Lidia, and training in Muay Thai.*

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A photograph of a snowy outdoor scene. In the foreground, there is a large, smooth pile of snow. In the middle ground, a stone wall is partially visible, with some snow on top and some bare, thin branches or twigs protruding from the snow. In the background, there are more bare trees and a clear sky. The overall scene is bright and wintry.

# The New Notice Requirement for Falls on Ice

Some years ago, CCTV became widespread in stores. No longer did customers and retailers have to argue about what happened. There was footage. Sometimes the film helps the plaintiff; sometimes it helps the defendant; but in all cases it helps justice. Indeed, fair and accurate justice depends on both sides having access to reliable and comprehensive evidence. Reliable evidence depends on timely investigation. Timely investigation depends on early notice.

*By Veronica Gorrell,  
Agro Zaffiro LLP*



# The New Notice Requirement for Falls on Ice

Timely investigation of some accidents is guaranteed. A motorist who causes an accident knows immediately that there has been a crash. The big box store who has to call an ambulance for the broken leg customer in Aisle 6 knows immediately that a claim will likely result. The tavern who overserves patrons who then get into a bar fight knows immediately that the loser may launch a claim.

When potential defendants are “on notice” right away, timely investigation can be done. Evidence can be gathered. CCTV can be preserved. Photos can be taken. Witnesses can be interviewed while it’s still fresh in everyone’s mind.



That said, pity the poor occupier. Often, there is a winter-time accident on their property ... and they don't even know it happened ... until two years later when they get served with a Statement of Claim. By then, CCTV footage is recorded over, potential witnesses have no memories, and needless to say the physical terrain may now be different, to say nothing of long-gone weather and maintenance evidence.

Municipalities would have the same problem ... but their strong lobby succeeded long ago in requiring potential plaintiffs to give written notice of claim within 10 days.

Again, pity the poor occupier. Till now.

On December 8, 2020, Bill 118 (or, the *Occupiers Liability Amendment Act, 2020*) received Royal Assent, amending the OLA to create section 6.1. This new section came into effect on January 29, 2021, and bars claims against an occupier and/or independent contractor employed by the occupier for the recovery of damages for personal injury caused by snow or ice, unless written notice of the claim is served on the occupier within 60 days of the incident.

You may be thinking... 60 days?! That may simultaneously be both too short and too long.

- (a) It is too short in the sense that compliance may be difficult for legitimate plaintiffs who have a valid claim but who don't know about the 60 day notice requirement, and don't consult a lawyer within that time.
- (b) It is too long in the sense that notice on Day 59 is not much more useful than being served at 2 years. The weather is changed. The CCTV is recorded over. Witness memories may already be fuzzy.

Occupiers lobbied for the same 10-day notice requirement as municipalities, but presumably the choice of 60 days was a political compromise to get something through. As with most compromises, it will please no one.

It is important to note that the new notice requirement does not apply to all occupier's liability cases, but only to "injuries caused by snow or ice". However, that goes beyond slip-and-fall accidents, although that's the majority. It would also apply to chunks of snow or ice falling off a building.

In my submission, there will be two results of this legislation:

- (a) Contrary to the rhetoric of some plaintiff lawyers, the 60 day notice will NOT result in many (if any) valid claims being thrown out;
- (b) However, the 60-day notice will improve the quality of justice in winter-time occupier cases, by facilitating bilateral investigation opportunities.



## Why Valid Claims will Still Proceed

Under the new legislation, failure to give notice can be excused ... just as it can be with actions against municipalities, where it is routinely excused.

The exceptions are found in ss. 6.1(5) and (6). Failure to give notice can be excused:

- (a) if the person dies; or
- (b) if a judge finds there is reasonable excuse for the want or insufficiency of the notice and that the defendant is not prejudiced.

These are the same exceptions as those which apply to the ten-day notice period prescribed by the *Municipal Act, 2001*.

What qualifies as a reasonable excuse there? The case of *Patrick v. The Corporation of the Municipality of Southwest Middlesex* provides some guidance, with regards to the *Municipal Act*. In determining whether the plaintiff has established a "reasonable excuse":

- The question to be addressed is whether, having regard to all the circumstances of the case, it was reasonable for the plaintiff not to give notice until the time at which it actually was given;



- “Reasonable excuse” is to be determined broadly and liberally;
- While the impacts of physical and mental health of a plaintiff may be relevant and suffice to provide a “reasonable excuse”, the concept of reasonable excuse extends beyond such considerations;
- Lack of awareness of the notice requirement does not constitute a reasonable excuse on its own. However, ignorance of the notice requirement can add to another extenuating circumstance to create a reasonable excuse; and
- The length of delay is a relevant consideration when examining reasonable excuse.

In determining whether the delay in giving notice has prejudiced the defence:

- The onus is on the plaintiff to show there is no prejudice to the defendant as a result of the delay in giving notice; and
- However, where a plaintiff does not provide notice within the prescribed time, and inherent probability of prejudice arises from the bare fact of the accident and the lack of notice. <sup>1</sup>

If the judicial experience with this new statute turns out to be the same as the identical legislation in the Municipal Act 2001 ... *and why would it not be?* ... then very few cases will be barred by the failure to give timely notice.



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The other loophole for the slow-moving plaintiff is ss. 6.1(6). Any timely notice (to anyone) is effective against all persons, even if the action is to be brought against a person that did not originally receive the notice. While the caselaw is not yet established on what will be deemed a reasonable excuse with regards to the *Occupiers Liability Amendment Act*, the exceptions from the *Municipal Act* provide some guidance as to what may be considered by the courts.

**Facilitation of Proper Investigation**

On the plus side, more timely notice will allow for more timely investigation. That will improve the quality of evidence in such trials. As such, this amendment is a welcome change for occupiers and independent contractors, by moving toward a more level playing field.

This was overdue. The large volume of personal injury claims against snow removal companies has led to some insurers limiting the availability of liability coverage to these contractors.

In short, Bill 118 does not attempt to get rid of deserving claimants. Rather, it allows for potential defendants to investigate accidents sooner, ensuring fairer justice. Over time, we can expect to see a body of case law develop which deals with the adequacy of notice and the duty of an injured party (or their counsel) to identify the correct entity to send the required notice.

Get ready...the change is coming.

<sup>1</sup> *Patrick v The Corporation of the Municipality of Southwest Middlesex et al.*, 2017 ONSC 17



*Veronica L. Gorrell began working with Agro Zaffiro as a summer student in*

*2018 and returned to complete her articles with the firm in 2019. She joined the civil litigation group as an associate lawyer after her call to the bar in 2020. Her practice consists primarily of insurance defence litigation, property damage and subrogation claims.*

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# Get to know your Chapter

## OIAA Hamilton Chapter

In preparing for our spotlight this month I reviewed last year's blurb and had to chuckle. In the last WP spotlight, I wrote about adapting to change ... and then the Pandemic said, "Here, hold my beer!" In 2020 and 2021 we've had to adapt to change in an unparalleled manner. We were all personally and professionally challenged, and our chapters had to find new ways to deliver quality events and content to our memberships.

For the Hamilton Chapter, we adapted our 2020 holiday party to an on-line format of Rock 'N Roll Bingo. Many thanks to our generous sponsors of this event; Al-Care DKI (sponsor of the "Cocktail Hour"), Agro-Zaffiro LLP, Davis Martindale, AssessMed, Larrek Investigations, Arcon Forensic Engineers, RelectronicRemech Inc., Servicemaster Restore of Hamilton, Centric Investigation Services Inc., Claims Solutions International Ltd. (CSI) and Xpera Investigations. Because of the generosity of our sponsors and participants, we were able to provide a sizeable donation to St. Matthews House, Hamilton. Our own Armaine Smith (WSIB), coordinated our contributions to the "Adopt-A-Family" and "Adopt-A-Senior" Christmas programs.

Our very popular bowling tournament typically held in February had to be cancelled this year because of the Pandemic, but we hope to resume this event in 2022.

We're brainstorming how we will host our 2021 elections. As we say goodbye and a heartfelt thank you to Janice Brooks (Dumfries Mutual) for 15 years of service, we hope to entice some new recruits. We invite you to join the Board if you work or live in the Hamilton Chapter's region. If interested, please contact any of the Chapter's Directors. We also welcome Jennifer Hamu (Crawford & Company Ltd.) as our most recent addition to the Board.

We weren't able to host our annual golf tournament in 2020 due to the constraints of the Pandemic. We are on track to hold the tournament in August of 2021, with a few interesting changes (in strict accordance with Pandemic guidelines, of course) and spear-headed by Aidan McCardle (Crawford & Company Ltd.) and Bradley Remigis (Agro Zaffiro LLP). If you have any enquiries or are interested in sponsorship opportunities, please contact Aidan or Brad.

Our last event of 2021, the Holiday Party, is currently under construction. We are re-designing the event to better accommodate a sensitive post-pandemic world. Our unstoppable Laura O'Hearn (Maxwell Claims Services Inc.) is spear-heading this event and it won't be like any other holiday party we've hosted in the past - you won't want to miss it!

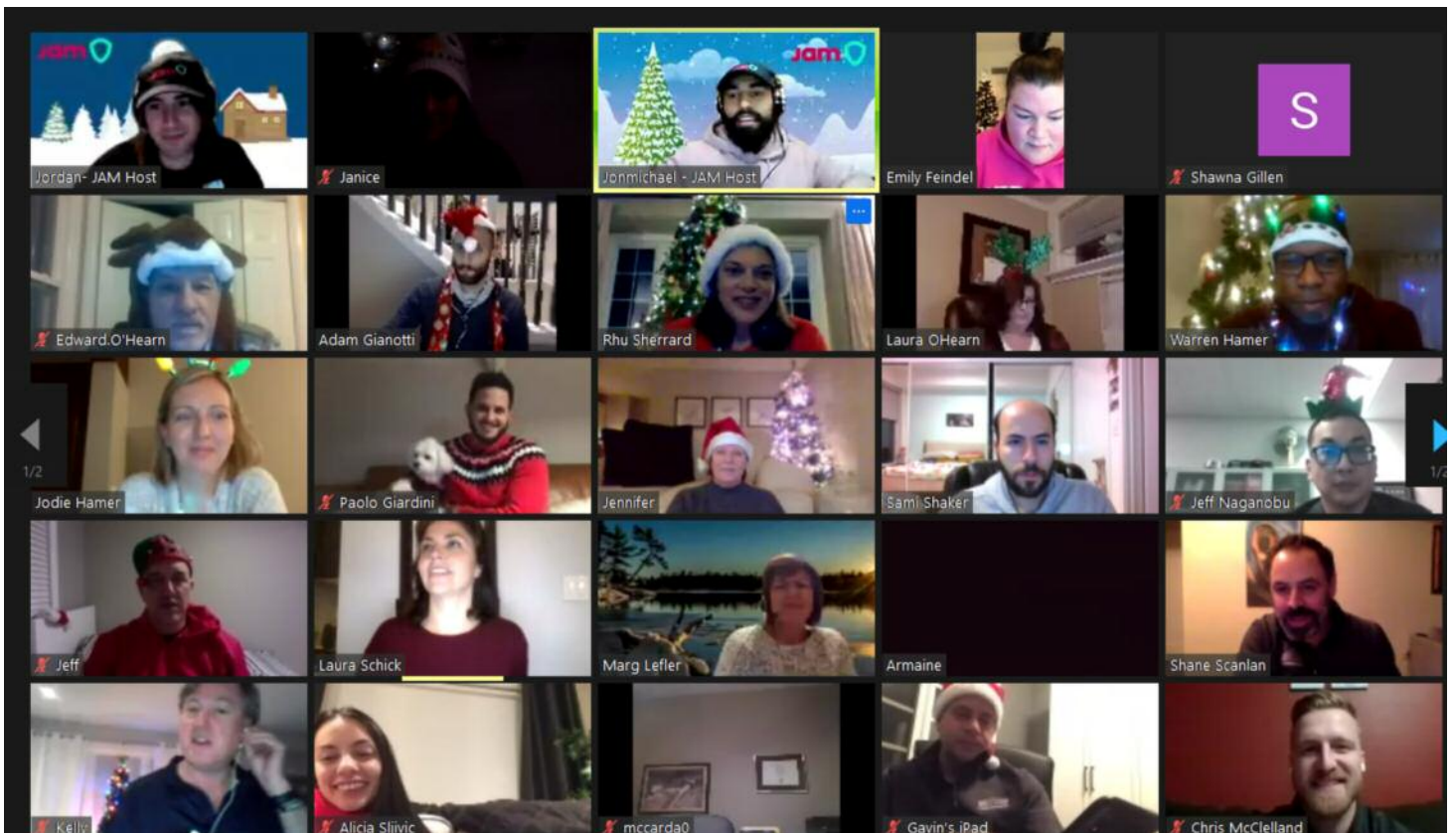
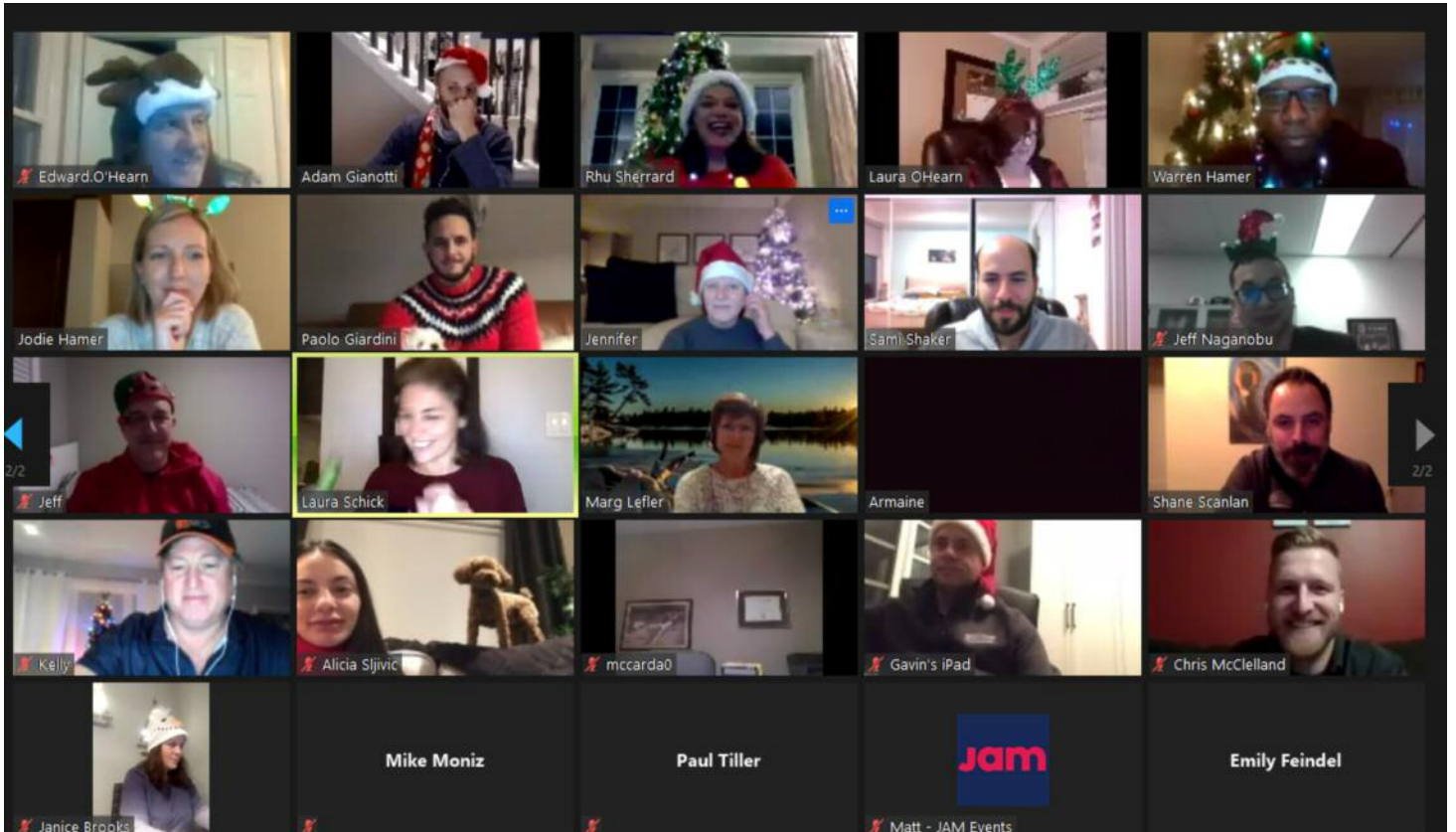
Stay safe and hope to see you all soon.

**Jennifer Allan, CIP**  
President, Hamilton Chapter



*Jennifer is an adjuster with Brant Mutual Insurance Company, handling all lines; specializing in Accident Benefits and Auto Claims. Jennifer served as the Accident Benefit Training Chairperson at OMIA for 2017 through 2019 and is the current President of the OIAA Hamilton Chapter.*

# Rock 'N Roll Bingo



# OIAA TORONTO DELEGATE Election 2021

We are looking for a dynamic team of forward thinking individuals that are based in the Toronto area.

We are seeking nominations for two Toronto Delegate positions each for a 2-year term, commencing August 1, 2021 – July 31, 2023.

As a Toronto Delegate you will be responsible to actively recruit, engage, and educate adjusters in the GTA as to the benefits our organization provides. You will be eligible to work on a variety of committees such as our monthly WP publication, Canada's largest Claims Conference, Christmas Party or Training and Education to name a few.

If you are an OIAA member or know of an OIAA member interested in running for this position, please contact **Leanne Hardman** at [lhardman@unifund.ca](mailto:lhardman@unifund.ca).

Elections will be held on **April 14, 2021**.  
Go to [oiaa.com](http://oiaa.com) for details.



## Your candidates for office are: Zohair Nassur (Incumbent), Bryan Levisauskas and David Montgomery



### **Zohair Nassur, BBA, AIII, CertCII, Cert CILA, GIE, Claims Representative II - Property, The Co-operators**

Simply put, adjusters are professionally qualified, whose remit is to make sure that a loss is covered under the confines of the insurance policy in place, that the sums insured are adequate, the amounts claimed are fair and reasonable, and that Insurers and the Insured are both fairly and equitably treated through the accurate interpretation and application of the contract of Insurance. Although we're very much in the expertise and validation business, we're also in the communication and trust business – we are at the sharp end of delivering the insurance promise!

Born and raised in Muscat, Oman to Indian parents and a father who by profession is also a Claims Adjuster. Whilst growing up in a very multicultural society, other than academics, my involvement in extra-curricular activities and sports was quite extensive in school and college. Whilst in school, I enrolled myself for the Duke of Edinburgh award scheme and achieved the Gold status. During my final year of College, I was elected as the President of the Sports Council and also the Captain of our College Cricket Team. While studying, I worked part time as a claims adjuster and later was involved with CAT claims following Hurricane GONU in 2007.

Soon after graduating, I moved to Doha, Qatar where I worked for a multinational Claims Adjusting firm for over 7 years. Whilst working, I was also involved with organizing the Qatar Tennis Open and Gulf Cup (Soccer Tournament). Furthermore, I was actively involved in Dragon Boat racing that comprised a team of multinational individuals and competitions on an international level. I was ultimately elected as the Vice President for the Qatar Dragon Boat Team. Other than Dragon Boat racing, I continued playing Cricket for a local team and participated in local events. I moved to Dubai, U.A.E in early 2016 where I worked for a while before returning back to Muscat, Oman again to work for another company. An opportunity in the Caribbean following Hurricane Irma and Maria arose which I accepted and ended up working there for over 6 months.

Since my move to Canada in early 2019, I worked for Crawford and Company (Canada) Inc. as a full time Claims Adjuster. During my tenure, I was also deployed on a CAT assignment in the Bahamas following Hurricane Dorian during late 2019 for three months.

Currently, I am working with The Co-operators in their claim department dealing with Property claims.

I am aware of the association's interest to secure and promote, the interests of the business of insurance and of members of the Corporation, cordial relations with government departments and officials, the governing bodies and members of other organizations, insurance associations and societies including but not limited to the general public, in matters connected with the business of insurance and insurance claims.

There's no doubt that we're in the people business. Beyond the technical aspect of the role as a claim's adjuster, there's an essential and very human element to the service that the adjuster provides and this is even more important within the business culture of Toronto and all of Ontario. The Adjuster is at a far more personal level with Insurers, Brokers, Policyholders, Claimants and the Vendor Service Group. How we can grow our membership, their professional strength and maintain an integral force for the Insured Consumer in Ontario is how I wish to contribute to this Association. Notwithstanding the fact that maintaining and promoting high standard of ethics in this business is key.

I thank you all for giving me this opportunity to stand for the position of the Toronto Delegate for the second term. With my experience of working as a claim's adjuster for over 13 years in different regions and countries, I also bring with me experience as a team leader, profound interest in Sports / events and last but not the least, a very social person.



### **Bryan Levisauskas, CIP, General Adjuster, Sedgwick Canada Inc, Major & Complex Loss Division**

My journey within the insurance industry began when I took Public and Private Investigations at Sheridan college. Prior to graduating with High Honors in 2007, we were educated on the paths that this certificate would allow us to pursue. I chose the route of Insurance and never looked back. I began working at Dollar Thrifty Automotive as a Damage Recovery Agent. I had completed my field placements there through Sheridan College and was fortunate enough to have a job offer after graduating. I spent five years there broadening my knowledge within automobile insurance and began taking classes to work towards my CIP designation.

I began working at Metro Ontario Inc. as a Claims specialist working on small property losses and liabilities such as slip and falls. Being in this position allowed me to be mentored when large losses occurred and gave me the drive to work towards one day becoming a large loss and property adjuster. After five years at Metro, I decided to apply to Cunningham Lindsey also known as Sedgwick Canada, as an independent adjuster to work towards my goal of working large loss and property files. I am currently working with Sedgwick in the Major Complex Loss Division, handling a large array claims from condominium, commercial/retail, personal line property from \$1,000.00 to \$1,000,000.00+. Sedgwick has given me the opportunity to apply my skills and knowledge from my years of experience in the field. Within my almost five years tenure with Sedgwick, I have completed my CIP designation, nearly completed my ACIP designation and plan on working towards my FCIP in the future. I have also completed the CRM certificate program through the Insurance institute.

I would like to pursue the opportunity to become a Toronto Delegate with the OIAA as an opportunity to network with people across the Industry, have an opportunity to learn from people who have been in the field, while offering a fresh perspective from my experience as a new IA. Having both seasoned and new IA's merging ideas and experiences together could allow for a new ideas and innovation within our constantly evolving industry.



### **David Montgomery, BSocSc, CIP, CLA, General Adjuster, Global Technical Services, Crawford & Company (Canada) Inc.**

I began my insurance career in 2011 with Crawford & Company (Canada). I commenced my career in Northern Ontario before joining the Global Technical Services team in Toronto, January 2018. I hold an all lines adjusting license in both Ontario and Alberta. I have been deployed on several international CATs and have emerged as a leader throughout these catastrophes. I currently handle large loss property claims.

I completed my Police Foundations Diploma in Ottawa at Algonquin College of Applied Arts and Technology before attending the University of Ottawa where I obtained my Bachelor's Degree in Criminology.

There are various reasons why I am interested in being on the Executive of the OIAA. I have built a good career in the insurance industry which is still developing. I want to be involved in the industry that I care about. I also feel a responsibility to give back to this industry that has given me so much. In addition, all the individuals that I have spoken to about their time on the OIAA executive speak to the great experience it was.

# Get to know your Chapter

## OIAA London Chapter

What a year 2020 has been for all Chapters in the OIAA. Despite COVID-19, and all the stay-at-home restrictions that were put in place, we were thankfully still able to have virtual meetings, and host several fun virtual events.

Our 2020/2021 executive board consists of: Kate Boyle (President); Heidi Bronnenhuber (Vice President); Linda Pereira (Treasurer); Kelly Peck-McDonnell (Secretary); Jordan Tremblay (Chapter Delegate); Angela Cowan (Director); Michele Field (Director); Mackenna Frank (Director); Pam Cecchin (Director). Our Social Directors are: Jodie Snyder, Sara Marziali and Jeff Timmermans. Our chapter Bookkeeper is Wendy Barbour.

The LCA is extremely pleased to support and give back to our community. We are proud to share that last year our chapter raised over \$8,300.00 as well as non-perishable food items for the Food Bank! As we all know, last year was difficult for many people, especially those who rely on the London Food Bank for meals and supplies, so it was more important than ever to the LCA to continue our support and help those in our community.

Since we had to cancel our annual Christmas party at the Lamplighter Inn, we decided to try something new. On December 5, 2020, we held the LCA Toy and Food Drive. We accepted toy and children's clothing items in support of the Salvation Army's annual Christmas Hamper Program. We also collected non-perishable food items for the Food Bank. We are pleased to share that our members and vendor partners donated two pick-up trucks full of toys and 574 pounds of food! We also received over \$1,000.00 in on-line donations. We are very thankful for our members and vendor partners for their generosity that is constantly exceeding our expectations. We are beyond grateful for the donations received!

Moving into 2021, the LCA looked for new ways to engage and connect with our members and vendor partners. In February we hosted a virtual Trivia Night, and although it wasn't the in-person event that we are all needing, it was a success night nonetheless. We all had so much fun and it was wonderful to see people's faces and connect virtually. Thanks to the popularity of our webinar series "Dealing with Toxic People" presented by Michael Lewis, we have invited him back to host our final webinar of the year. Please save the date for March 25, 2021. Stay tuned for more details. Our final virtual event will be held on April 22, 2021. Please be sure to save the date for our Murder Mystery night!! Details and registration are still to come, but you won't want to miss this fun and mysterious night so don't forget to register!

Despite the challenges we have all faced over the last year, we have managed almost a full year of events and seminars and thank each and every one of you for all your participation and support!! We would not have been able to get through this year without you all. We hope that you and your families are staying safe and healthy in this time, and hope we are able to see all your faces in the very near future!!

Please visit our website at [www.londonclaimsassociation.com](http://www.londonclaimsassociation.com) for a list of all our upcoming events.

**Kate Boyle, CIP**  
President, London Chapter







## 2021 Career Fair - Panel with Q&A

The OIAA Career Fair Panel discussion was held on Feb 4, 2021 via Zoom.

On behalf of myself and the OIAA. We would like to thank our panel participants for their contribution and wealth of information they provided to the students who participate in Insurance Program available at the following colleges (Conestoga, Fanshaw, Mohawk, Humber, Centennial and Seneca).

The panel consisted of Jocelyn Lau, Underwriter at Chubb Insurance, Kyle Case, Manager at Cooperators Insurance, Chat Winsdale, Manager Investigative Services at Xpera and Daria Aguis Risk Manager at LCBO. The panel provided valuable and informative insurance opportunities and was followed by a question-and-answer period which was beneficial to all attendees.

We continue and value the support of the various colleges for their ongoing commitment to the OIAA and their enhanced insurance programs.

Our goal at the OIAA is always improving on education and professional development within the insurance industry.



**Jocelyn Lau,**  
Senior Underwriter,  
Chubb Insurance



**Kyle Case,**  
Property Claims  
Supervisor,  
The Co-operators



**Chad Winslade,**  
Investigation (SIU),  
Xpera



**Daria Aguis,**  
Risk Manager,  
LCBO



**Rhu Sherrard, CIP**  
Chairperson, 2021 Career Fair  
First Vice-President, OIAA

## New Members

The following were approved as active new members in February 2021

NAME	COMPANY	CITY	CHAPTER
ARSHAD, Faiz	The Commonwell Mutual Insurance	Lindsey	Kawartha/Durham
CLARKE, Randy	The Commonwell Mutual Insurance	Lindsey	Kawartha/Durham
DAVIS, Glenn	The Commonwell Mutual Insurance	Lindsey	Kawartha/Durham
SCHELLENBERG, Caitlin	The Commonwell Mutual Insurance	Lindsey	Kawartha/Durham
SMITH, Stuart	The Commonwell Mutual Insurance	Lindsey	Kawartha/Durham



# Monthly Webinar Series May Edition

## Condo Claims 101 – A Panel Discussion

**Date:** May 20th at 10am

**Member Cost:** Free    **Non-Member Cost:** \$50.00

**The Panelists are:**

**Aidan McCardle**, B.Sc., CIP, Crawford & Company

**Brian Levisauskas**, CIP, Sedgwick Canada Inc.

**Lou Natale**, Sutherland Law

**Sarah Campbell**, Senior Director, MenRes Property Management Inc.



Aidan McCardle



Brian Levisauskas



Lou Natale



Sarah Campbell

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## Monsters are real

For those of you who live with type 1 diabetes (T1D) or have a loved one who does, you know that T1D can feel like a monster that impacts every aspect of your life.

The discovery of the insulin hormone 100 years ago helped to tame the monster, but it's always there; spoiling even the simplest moments in life. To mark insulin's centenary, JDRF has been working tirelessly on a bold and innovative plan to defeat the T1D monster, once and for all.

T1D affects every aspect of life. It comes with health implications, an economic burden to families and governments with expensive treatment costs and the psychosocial effects of living with a chronic illness that impacts every decision a person makes throughout their day.

2021 marks the 100th anniversary of the discovery of insulin and to mark this important milestone, JDRF Canada, the largest charitable funder of T1D research in Canada, is pleased to announce the launch of our **\$100M Campaign to Accelerate**. This bold and innovative fundraising initiative aims to accelerate T1D research to move beyond insulin, build upon a long legacy of outstanding Canadian diabetes research, and accelerate towards cures while also improving the lives of those living with T1D.

*"Lots of children are afraid of monsters, but only some have actually experienced one - like my son. He lives with type 1 diabetes, a relentless monster that is always there, ready to pounce - whether he is enjoying a snack or playing with friends. We must constantly be on high alert. The **Campaign to Accelerate** is putting a multi-faceted plan in place that can attack this monster from every angle, and we are inviting all Canadians to help us in accelerating the pace of type 1 diabetes research."*

- Ryan MacDonald, Campaign to Accelerate, Campaign Co-Chair.



The Campaign to Accelerate will focus on six key pillars that aim to help improve the quality of life for people living with T1D today and create a future without type 1 diabetes.

- The JDRF-CIHR Partnership to Defeat Diabetes – by accelerating the pace of Canadian T1D research breakthroughs
- High-Impact Global Research - collaborating with researchers across the globe on research trials and projects
- JDRF Centre of Excellence at the University of British Columbia - launching the first JDRF Centre of Excellence in Canada, focused on cure research
- The T1D Fund – promoting investment in commercial development of new T1D drugs and devices through venture philanthropy
- #AccessForAll – advocating with Canadians living with T1D to ensure more access to affordable and lifesaving technology
- Mental Health - expanding mental health supports for those living with T1D

*“The launch of our **\$100M Campaign to Accelerate** is monumental in the lives of Canadians living with type 1 diabetes. While the discovery of insulin in Canada 100 years ago saved millions of lives, it is still not a cure. It is fitting that now is the time to map out the next era of discovery in type 1 diabetes research. Through our **Campaign to Accelerate**, we will transform our approach to research, redesigning it for speed to give Canadians hope for freedom from type 1 diabetes.”*

- Dave Prowten, President and CEO, JDRF Canada.

The **Campaign to Accelerate** will rally volunteers from coast to coast to invest \$100 million over the next five years to bring life-changing therapies to patients and families faster and ensure that Canadians living with T1D have better access to lifesaving technology and mental health support.

*“As a parent of a 40-year-old daughter living with type 1 diabetes, there is nothing harder than watching your child struggle with this relentless monster that requires multiple, daily injections just to temporarily fend it off. One hundred years ago, we found a way to tame this monster with the discovery of insulin. Now it is time for us to defeat it for good and the **Campaign to Accelerate**, coupled with philanthropic support from Canadians, will get us there quicker.”*

- Peter Oliver, Campaign to Accelerate, Campaign Co-Chair

To learn more about the \$100M Campaign to Accelerate, visit [jdrf.ca/accelerate](http://jdrf.ca/accelerate).



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# Working from Home: The New Worldwide Trend







The topic on the forefront of most people's minds nowadays is probably the COVID-19 pandemic. We all went through the varying cycles of its fallout, and we are still trudging along waiting for the light at the end of the ever-expanding tunnel!

In my case, I went from a warm tropical vacation just a couple of weeks prior to the shutdown to a government-imposed lockdown due to the spread of the virus. We all have our own unique stories, but one of the major outcomes is the sudden widespread emergence of the 'work-from-home' trend.

*By Melissa Martin, CPA, CGA, FCCA, MBA, CFE,  
Supervisor,  
Matson, Driscoll and Damico Ltd.*

## **Working from Home – The New Worldwide Trend**

While this is certainly not a new concept, a significant number of people and industries were unable to tap into this level of flexibility in the past. There are proponents both for and against this movement and ultimately the preference is an individual one.

The world of forensic accounting has not been immune to the changes. Forensic accounting is the use of accounting, auditing and investigative techniques in the examination of financial records to assist in legal proceedings and the quantification of economic losses.



For the insurance industry, forensic accounting is utilized for the quantification of various losses to a policyholder, such as, but not limited to:

- Revenue losses (and in turn business income losses);
- Increase in cost of working and extra expenses;
- Product recalls;
- Construction delays; and,
- Stock/inventory losses.

With all the advances in technology over the decades, this field, like so many others, has long held the capability to enable effective, efficient and economical remote working. While there are both advantages and disadvantages to this current trend, this article will explore the positive impacts of remote working (because who needs more negativity at the moment, right?).

## Benefits of Remote Working

### Efficiency

- Safety – In these perilous times, the number one benefit is curbing the spread of the virus and keeping everyone, both clients and staff, safe. At our firm, this is of utmost importance and no sacrifice is too great to achieve this.
- Time – Less time spent on activities such as commuting for those persons that do not reside within close proximity of their office. It would be remiss of me to ignore the mental strain that occurs on some days due to unforeseen circumstances such as bad weather or transit delays!

### Effectiveness

- Networking – In our industry, networking is an important aspect of growing our business. Though we all miss that in-person interaction,

these times have shown us that perhaps physical proximity had limited our relationships in the past. Without the need to coordinate in-person meetings, we can now expand our horizons and reach out to our peers and colleagues virtually regardless of their location. Our current circumstances have now given us a chance to truly build meaningful relationships across the globe and eliminate some of those mental roadblocks, such as physical location, that periodically permeate

**Without the need to coordinate in-person meetings, we can now expand our horizons and reach out to our peers and colleagues virtually regardless of their location.**



our journeys. This is not a new concept and technology has facilitated this arrangement for quite some time now, but our current situation has provided a reminder of the positive outcomes of change.

- Productivity – One of the main detractors for remote working in the past was the question of productivity. Will staff truly produce the same quality work product if they are unable to collaborate in person? Recent research conducted by Mercer, a human resources and workplace benefits consulting



firm, found that 94% of 800 employers surveyed said that productivity was the same as or higher than it was before the pandemic, even with their employees working remotely <sup>1</sup>. Fortunately, within our firm, this has also been proven to be the case.

- Communication – Certainly, the key to making this new reality work is communication among team members, peers, clients, vendors, etc. At our firm, we have implemented practices such as weekly check-ins to keep abreast of recent relevant developments within our offices and related industries; social committee events to engender comradery and fun; virtual Friday socials to stay connected on a personal level; and virtual client meet-ups to establish, maintain and bolster client relationships.



Effective and timely communication also works to stem feelings of isolation that might creep in based on our circumstances and continues to foster an environment of teamwork.

**Economical**

- Workplace Expenses – This forced experiment has also compelled many organizations to ask the question: “Are physical workspaces necessary?”. In pricey real estate markets such as Vancouver

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and Toronto, this question is even more paramount. Can we have a foothold within a marketplace without having a physical meeting place? Depending on the size and nature of the organization, rent expense can be a significant portion of total expenditure in relation to revenue. The top executives of major organizations such as Twitter, Facebook and Canadian-based Shopify have all announced intentions to make remote working a permanent fixture<sup>2</sup>. Some organizations have even begun to eliminate physical offices all together! A U.S. insurance company, Nationwide, has announced that they will implement a hybrid work model and continue to operate their four main corporate offices, while the majority of their locations will continue working from home<sup>3</sup>. From the perspective of economics, when one considers the potential rent savings that could be re-invested within the business, the bottom line speaks for itself.

### Summary

Due to all the reasons, and more, outlined in this article, the world has discovered that modern-day business is no longer office centric. Each entity has to analyze the impact of remote working within their own organization and I suspect that this process has long since been underway. While we do not have the

answer to when the pandemic restrictions will be part of our past, one thing we do know is that the 'world of work' will no longer be the same!



*Melissa Martin, CPA, CGA, FCCA, MBA, CFE is a Supervisor in the Toronto office of Matson, Driscoll and Damico Ltd. Her practice focuses on the quantification of economic losses; she has quantified income replacement benefits and business interruptions for a wide variety of individuals and businesses.*

- <sup>1</sup> SHRM Better Workplaces Better World: <https://www.shrm.org/hr-today/news/hr-news/pages/study-productivity-shift-remote-work-covid-coronavirus.aspx>
- <sup>2</sup> Forbes Magazine - <https://www.forbes.com/sites/jackkelly/2020/05/24/the-work-from-home-revolution-is-quickly-gaining-momentum/?sh=68f249c81848>
- <sup>3</sup> CNBC - <https://www.cnbc.com/2020/05/01/major-companies-talking-about-permanent-work-from-home-positions.html>

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# Medical Malpractice and the New Normal: “Hit with COVID-19 during a



# hospital visit? We'll hit back."



These words and the image of a lawyer with boxing gloves were on a billboard in the USA. While this sign used strong language and most likely goes against many law societies' advertising policies, it does highlight a concern for many healthcare providers during COVID-19. That concern is the risk of facing a medical malpractice lawsuit.

*By Jennifer Lynch, MBA, CPA, CMA, CFE  
and Margot Mary Davis,  
Lynch & Associates, Forensic Accountants*

# Medical Malpractice and the New Normal

Medical malpractice lawsuits are an ever-present worry for healthcare providers and malpractice claims, in general, increase during difficult economic times.<sup>1</sup> Additionally, COVID-19 has probably impacted no profession as strongly as the healthcare profession. In this article, we will discuss why COVID-19 might lead to a greater number of medical malpractice claims, specifically, and how healthcare providers can reduce their risk of such claims.





## Stress and Mental Well-being

COVID-19 has been a challenging time for everyone and that is especially true for doctors. Many doctors, who were already stressed prior to the pandemic, have reported heightened levels of stress and anxiety.<sup>2</sup> Reasons for increased stress during COVID include concerns about contracting the virus, worries about PPE shortages, fears of future waves and financial pressures.<sup>3</sup>

Burnout has a negative impact on the quality of care provided; this creates an environment where errors and thus, medical malpractice claims are more likely.<sup>4</sup>

Regulatory bodies, and medical associations are aware of the increased stressors healthcare providers face during the pandemic and are providing assistance to members. The Canadian Medical Protective Association's website provides links to wellness resources.<sup>5</sup> CMA, the Canadian Medical Association, lists stress-reductions tips for doctors like avoiding excessive social media, keeping virtually in contact with friends, and noting what they can control.<sup>6</sup> Healthcare practitioners should consult these resources and incorporate the tips into their daily lives.

Such organizations are also providing material support to combat specific worries. For example, the CMPA says that it is "working to ensure physicians have access to PPE".<sup>7</sup>

Professional help is also available for healthcare providers who might need it. Some Canadian psychologists are providing free counselling to frontline healthcare providers who are stressed and burnt out.<sup>8</sup>



## Virtual Care

Since March 2020, virtual care has grown substantially. Approximately half of Canadians have used virtual healthcare since the start of the pandemic.<sup>9</sup> While virtual healthcare has some benefits, like decreased waiting times, it does present some concerns.

Virtual healthcare can contribute to an environment where errors, and thus malpractice claims, are more common. As early as 2016, some were worried about virtual care.<sup>10</sup> One study showed that healthcare providers providing virtual care misdiagnosed skin conditions, which were stock photos of conditions, and in less than twenty percent of cases informed the "patients", who were confederates, of the side effects of prescribed medications.<sup>11</sup> Seemingly minor health issues could actually be symptoms of more serious health conditions but virtual care would make it harder to catch. Miscommunication is more likely to occur over screens and telephones. Any correspondence over computer presents the possibility of cyberthreats.

However, one feels about virtual care, it is the current reality. To reduce the chance of medical malpractice claims, physicians can take proactive measures. Mark Demer, a Canadian doctor with experience in telemedicine, wrote the



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*Virtual Care Playbook* which provide practical advice for doctors administrating virtual care. It suggests using a desktop computer and not a laptop for conducting interviews; a desktop computer provides a larger screen for viewing the patient.<sup>12</sup> Additionally, it recommends using earphones to prevent miscommunication errors.<sup>13</sup> Physicians should consult this resource which is available free online. Healthcare providers should also purchase additional insurance that covers them for cyberthreats.

Physicians should also be aware of when in-person care is more appropriate. The College of Physicians and Surgeons of Ontario (CPSO) states that even if care could be provided virtually, in person care might be in the patient's "best interests" in certain scenarios.<sup>14</sup> The *Virtual Care Playbook* states that conditions like musculoskeletal injuries and congestive heart failure are "not amendable to virtual care"<sup>15</sup>. In contrast, treating sinus problems or reviewing lab reports is amendable to virtual care.



### Practicing Outside of One's Scope

Many physicians want to assist with the COVID-19 efforts but they practice in areas that are not related to COVID-19. Some medical regulators offer a solution to this dilemma; they let physicians temporarily practice outside of their area of practice during a pandemic. For example, the College of Physicians and Surgeons of BC now permits registrants working in a "health-care setting operated by a health authority" to practice outside of their scope of practice.<sup>16</sup>

While a physician might want to contribute, they must weigh their desire to help with concerns about the quality of care that they would provide. A physician would be more likely to err when practicing in a different area of medicine and thus be at an increased risk of malpractice. Additionally, physicians should take heed of their provincial regulatory bodies; certain regulatory bodies are quite strict on when someone can practice outside of their scope of practice. CPSO explicitly states that physicians should only practice outside of their scope if medical care is urgent, a more skilled physician is not available and not providing care would result in greater harm.<sup>17</sup>

If someone is practicing outside of their scope of practice, they should consider doing CPD programs related to their temporary area of practice. Also, they should inform CMPA about a change in the "Type of Work".<sup>18</sup> While it is not mandatory to inform CMPA of such a change, CMPA states that they would "strongly appreciate" hearing about a change in the "Type of Work".<sup>19</sup>

### Conclusion

COVID-19 has impacted many people's lives but probably none as strongly as physicians. Physicians are the frontlines in the fight against COVID-19. Unfortunately, COVID-19 creates a perfect environment for medical malpractice claims to occur. Above, we listed reasons why COVID-19 would lead to



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an increased risk of claims and proactive steps to avoid these claims. Such steps can help prevent “hitting back”.

- <sup>1</sup> Cara Byles, “Expect more Malpractice Claims after COVID-19 Fueled Slump”, *Law360* (April 10, 2020), online: <<https://www.law360.com/articles/1262545/expect-more-malpractice-claims-after-covid-fueled-slump>> [Byles].
- <sup>2</sup> Meghan Collie, “Canadian doctors’ mental health is hurting and its hurting patients too”, *Global News* (date modified 5 August 2019), online: <<https://globalnews.ca/news/5706694/physician-mental-health-burnout-suicide-canada/>> [Collie]; Louise Leger, “Mental health services for physicians ramp up across country for COVID-19” *Canadian Healthcare Network* (3 April 2020), online: <<https://www.canadianhealthcarenetwork.ca/mental-health-services-for-physicians-ramp-up-across-country-for-covid-19>> [Leger].
- <sup>3</sup> Leger, *ibid*.
- <sup>4</sup> Collie, *supra* note 2.
- <sup>5</sup> “Resources for staying well during COVID-19” (nd), online: *Canadian Medical Protective Association* <<https://www.cmpa-acpm.ca/en/covid19/physician-wellness-resources>> [Resources].
- <sup>6</sup> Caroline Gérin-Lajoie, “A clinician’s guide: managing COVID-19 stress and anxiety” (27 March 2020), online: *Canadian Medical Association* <<https://boldly.cma.ca/home/managing-covid-19-stress-and-anxiety>>. [Gérin-Lajoie].
- <sup>7</sup> Leger, *supra* note 2.
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- <sup>9</sup> Amina Zafar, “Many Canadians used virtual care during COVID-19, poll suggests”, *CBC* (8 June 2020), online: <<https://www.cbc.ca/news/health/virtual-care-cma-survey-1.5603713>> [Zafar].
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- <sup>11</sup> *Ibid*.
- <sup>12</sup> Mark Demer, *Virtual Care Playbook* (Canadian Medical Association, Royal College of Physicians and Surgeons of Canada, and The College of Family Physicians of Canada, 2020), online: <[https://www.cma.ca/sites/default/files/pdf/Virtual-Care-Playbook\\_mar2020\\_E.pdf](https://www.cma.ca/sites/default/files/pdf/Virtual-Care-Playbook_mar2020_E.pdf)> [*Virtual Care Playbook*]
- <sup>13</sup> *Ibid* at 5.
- <sup>14</sup> “COVID-19 Facts for Physicians” (date modified 15 January, 2021), online: College of Physicians and Surgeons of Ontario <<https://www.cpso.on.ca/Physicians/Your-Practice/Physician-Advisory-Services/COVID-19-FAQs-for-Physicians>>.
- <sup>15</sup> *Virtual Care Playbook*, *supra* note at 6.
- <sup>16</sup> College of Physicians and Surgeons of British Columbia, “COVID-19: Important update regarding scope of practice” (2020), online: <[https://www.doctorsofbc.ca/sites/default/files/important\\_update\\_regarding\\_scope\\_of\\_practice\\_-\\_college\\_of\\_physicians\\_and\\_surgeons\\_of\\_british\\_columbia.pdf](https://www.doctorsofbc.ca/sites/default/files/important_update_regarding_scope_of_practice_-_college_of_physicians_and_surgeons_of_british_columbia.pdf)> [“Scope of Practice”].



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<sup>17</sup> "Public Health Emergencies" (February 2018), online: *College of Physicians and Surgeons* < <https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Public-Health-Emergencies> > ["Public Health Emergencies"].

<sup>18</sup> "Medical-legal risks, scope of work and CMPA assistance" (nd), online: *Canadian Medical Protective Association* < <https://www.cmpa-acpm.ca/en/covid19/medical-legal-risks-scope-of-work-and-cmpa-assistance> > ["CMPA Assistance"].

<sup>19</sup> *Ibid.*



*Jennifer Lynch is an accomplished forensic accountant and business owner. Jennifer is a Chartered Professional Accountant, Certified Management Accountant and a Certified Fraud Examiner who has a reputation for expertise, quality service to clients and professionalism.*



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## *Final Report* .....

*Laura O'Hearn, M.Ed., CIP, Hamilton Delegate*

There are only three ways to change the trajectory of our lives for the better or worse: crisis, chance, and choice.

Well, we're in a crisis right now and it has led a lot of us to re-examine where we are in our life's timeline and whether it is where we really want to be.

This pandemic has presented us with an opportunity to reshape, reclaim and re-create the world in our own personal image. Some have been forced to see the world differently as they struggle to survive whether it be emotionally or financially. This may be the reset button for your life that you've been looking for. Change your career, change your routine, change your attitude. You must choose whether to see the glass half full or as half empty. If you make the effort to shovel away the dung of the world's disbelief you might just be able to uncover the shards of purpose, peace, and pleasure that bring you joy.

You may not realize it, but your life at this exact moment is a direct result of choices you made once upon a time. Thirty minutes or thirty years ago.

There have been wise choices, good choices, strong choices, courageous choices, happy choices or brilliant decisions. We just don't remember many of them. We tend to shrug off good things that arrive in our lives as if they were a fluke, a lucky break, a mis-delivery. Certainly we don't give ourselves credit.

It shouldn't be surprising if our primary reaction to any choice is to avoid it. Put it off as long as possible. Postpone the inevitable. The problem with that is by not choosing we allow others to decide for us. It doesn't matter how well-meaning or wonderful they are. It doesn't matter who they are. Just remember: if you didn't make the choice, you can't blame someone else if you're unhappy. I'll bet your life, like mine, is a direct result of choices you never even considered.

Taking accountability for one's own choices and decisions can often be a difficult pill to swallow. When you accept that you are responsible for your own existence, the freedom that comes with that knowledge is indescribable. It's obviously a very personal matter but well worth investigating.

As for chance? I'm going to put my N95 mask on, walk to the variety store and buy myself a lottery ticket!

**WP**

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Official Journal of the Ontario Insurance Adjusters Association

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