

# WIP

**Without Prejudice**

Official Journal of the Ontario Insurance Adjusters Association

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is in  
the air!*

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If you are an OIAA member or know of an OIAA member interested in running for this position, please contact **Simone Cybulski** at [Simone.Cybulski@sedgwick.com](mailto:Simone.Cybulski@sedgwick.com).

Elections will be held on **April 13, 2022**.  
Go to [oiaa.com](http://oiaa.com) for details.

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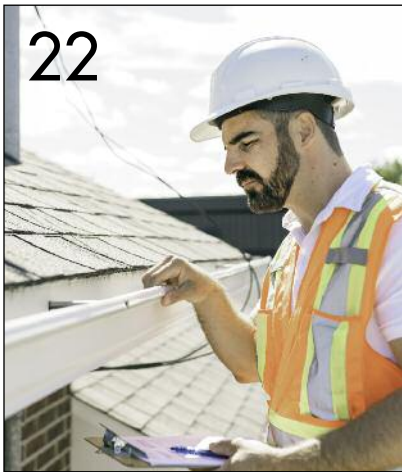


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**Rhu Sherrard, CIP**  
President, OIAA

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

***Spring is in the air – Officially on March 20, 2022.***

For gardeners like me, it's just a thrill for all our senses. I'm fairly certain many of us took on projects, learned new skills and rediscovered old hobbies during the past two years. I managed to get back into gardening. I was inspired by my dearest friend Leanne M. who knows all the latin names of her plants! I have always enjoyed being outside and am not afraid of getting down and a little dirty. I love flowers and believe I now have sufficient blooms to enjoy from spring to fall. I'm so addicted I even joined the local Horticultural Society. They are celebrating 61 years in the community and maintain some the local gardens around town and I have been very impressed by the various topics and discussion throughout the year. Hopefully, we can meet in person for the annual Heirloom Tomato and plant sale.

Our garden will grow again this year because I have been truly inspired by English gardens I follow on Instagram. Gardens are a constant evolution; some plants work some don't and when in doubt just move it. My husband Michael will tell you in a season he has moved the same plants 3x!

I tried dahlias for the first-time last year, and they are now one of my favourite blooms. Hopefully, my storage plans worked over the winter, and they will be on show again this summer. If not, I have more dahlias on order. I truly could go on and on and on. But I will spare you. Although, all gardeners out there are free to reach out to me anytime. Most gardeners do not take themselves too seriously.

I had also planned on learning to knit but that will have to wait, and I wanted to start playing the piano again but that will have to wait too. Since gardening can be done all year round; indoor plants currently at 20!

March 17th will be St. Patrick's Day, wear green, smile and enjoy a bevvly or two. (Enjoy responsibly).

The 2022 Beijing Paralympics will run from Friday March 4 to Sunday March 13. The Paralympics developed after Sir Ludwig Guttman organized a sports competition for British World War II veterans with spinal cord injuries in England in 1948. A follow-up competition took place in 1952, with athletes from the Netherlands joining the British competitors. In 2001 the International Olympic Committee and the International Paralympic Committee agreed on the practice of "one bid, one city," in which every city that bids to host the Olympics also bids to hold the related Paralympics. *Source - Britannica.ca*

### **Things to celebrate in March**

March 1 – Mardi Gras, Peanut Butter Lover's Day, National Pancake Day

March 4 – Employee Appreciation Day

March 8 – International Women's Day

March 14 – Pi Day

March 17 – St. Patrick's Day

March 20 – Persian New Year - Nowruz

March 23 – National Puppy Day

March 31 – International Transgender Day of Visibility

The OIAA is grateful for all the support of our members, insurance partners and the dedicated volunteers at our various chapters throughout the province.

*"A flower does not think of competing with the flower next to it. It just blooms."*

– Zen Shin

**Rhu Sherrard, CIP**

President, Ontario Insurance Adjusters Association

E-mail: [president@oiaa.com](mailto:president@oiaa.com)

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## Upcoming Monthly Webinars

Mark these dates down on your calendar

**DON'T MISS THEM!**

**March 24, 2022**

Presented by **Lisa Armstrong** and **Krista Groen**,  
Strigberger Brown Armstrong LLP

Topic - Family Law Act Damages: An Update

**April 21, 2022**

Presented by **Sandra Cramb**, SCM Insurance Services

Topic - Social Host Liability

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# WP

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Official Journal of the  
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*Mediation For Claims Professionals (Part 2) (page 8)*

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### **Daniel Han**

*Property Claims for Buildings – A Day in a Structural Engineer's Life (page 22)*

Daniel Han is a civil structural engineer with 5 years of experience and has been with CEP's Toronto office since 2021. He obtained his Bachelor of Applied Science in Civil Engineering from the University of Waterloo in 2017. Prior to joining CEP, Daniel worked as a structural engineer with a focus on light frame wood residential structures (houses, detached garages etc.), temporary structures, retaining walls, and failure cause determinations. Daniel also designed/analyzed restorations and modifications of these structures and institutional, commercial, industrial (ICI) structures.



### **Kelly (Smith) Newell**

*Why Insurance Adjusters Should Still Care About Asbestos (page 40)*

Kelly (Smith) Newell is a Practice Lead for the Environmental Health & Safety Group at Haag Canada in Toronto. Ms. Newell has over twenty-three years of experience consulting on matters pertaining to hazardous materials in public and private sector buildings. She has accumulated a diverse compliment of skills and knowledge enabling her to effectively investigate the potential impact of contaminants in built environments before determining and managing the most appropriate/required remediation process from a health and safety perspective.



### **Nino Calabrese**

*So, You Think We Only Do Surveillance...(page 44)*

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# Mediation For Claims Professionals (Part 2)







In part 1 this article, I shared some tips and insights on preparing for a mediation. In this final part, I would like to give a fresh perspective on making the most of your mediation. Hopefully, this will help you in any mediation in which you're involved.

*By Jonathan Cooper,  
Cooper Mediation Inc.*

# MAKING THE MOST OF YOUR MEDIATION

## **1. When The Mediation Day Arrives**

In my experience, there are a couple of important things in a mediation that are easy to do, but also easy to do poorly or forgotten entirely.

While it's important to be personable by inquiring about a person's life and showing an interest in their situation, in your opening remarks, it's best to avoid relating your life to that of the plaintiff. Each person's situation is different. If you do feel the need to talk about how you've dealt with pain or a previous car accident, please don't begin by saying, "it's not personal." To the plaintiff, it is personal. Opening statements in a plenary joint session are a great opportunity to start the mediation down a path that leads to compromise and positive negotiations. However, they can also be a major reason very little can or will be achieved throughout the mediation process.



Ultimately, think about what you are going to say, what outcome you are trying to achieve and how you can best get your point across. Don't forget that the opposing decision maker is almost always less knowledgeable about insurance claims than you are. Therefore, make the message digestible, understandable and relatable.

I have never seen/heard of a mediation settling because one party convinced the other that they were right, the other party was wrong, and that party then agreed to put the lawsuit to rest. Most often, mediations resolve because the numbers line up and the parties work together to come to a mutually acceptable settlement. Typically, the numbers get close enough where it might not make sense for one party, the other, or both to continue with the litigation. With this in mind, if you plan to make monetary offers at a mediation, using an hour of your already short half-day mediation to explain why the other party's case isn't worth any money is not the best use of time.

If you have provided a good roadmap to the plaintiff lawyer that allows them to understand how your company assesses claims and risk, you will not need to spend too much time on this component. However, you may need to dedicate some time to describing how your company might move through the remaining steps in the litigation cycle (from mediation through to a trial) to the plaintiff. This should allow them to understand the road ahead from both their own perspective and the perspective of the opposition. Be straightforward; tell it like it is and make it digestible. If you can provide this ahead of time to the plaintiff counsel, this may not become as involved at mediation.



*"If you're working from home today, do you mind if I go hang out at your office?"*



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Finally, starting with an apology can help put the plaintiff at ease or may disarm the plaintiff of all of the anger and frustration they might be feeling from the lead up to the mediation, whether liability is an issue or not.

## 2. Joint Sessions: Yay Or Nay?

I belong to a professional group of commercial mediators called the International Academy of Mediators (IAM). A common topic of discussion among members is the use of joint sessions in mediation. If you have yet to run into a joint session, this could be because mediators are using them much less often these days. Joint sessions occur when all parties are in one room to hear opening remarks and speak directly to the other parties. This is the only opportunity for a conversation to happen between the plaintiff lawyer/plaintiff to claims professional and from defense lawyer/claims professional to plaintiff. There is usually little benefit to be gained but much potential for loss right from the get go - especially if it becomes adversarial. On the occasions when it is used properly, it can greatly assist in early steps to build bridges between parties in conflict. You will have the opportunity to explain to the opposing decision maker how/why you have assessed the case the way that you have.

In Toronto, in Ontario generally, and in the employment litigation world, more mediators are choosing to dispense with joint sessions to get straight into the negotiation. There are many reasons for this shift. For example, there may be previous relationships between the parties in a wrongful dismissal case or a sexual harassment claim. In these examples, there is a high likelihood that an opening would do more harm than good. In the area of personal injury, rarely would the named defendant be in the room with the opposing party personally. It's almost always a representative from the company or an insurance provider who stands behind the insured/defendant.

***Most mediations involve monetary offers to settle the case. When is the right time to begin negotiations and start looking at offers?***



## 3. Offer Process

Most mediations involve monetary offers to settle the case. When is the right time to begin negotiations and start looking at offers? In my experience, 99% of the time, the plaintiff presents the opening offer. The challenge that I encounter and attempt to mitigate is the time it takes to get an initial offer from the plaintiff lawyer. Moreover, the initial offer can be - in the claims professional's opinion - so unrealistic that it makes them uptight, uncomfortable and/or scratch their head thinking, "it took them that long to come up with this"? The bread and butter of thoughtful negotiations throughout a mediation is going back and forth with offers.

I'm sometimes asked to "go work your magic" in either the plaintiff room or the defence room. Mediators aren't magicians that can pull a rabbit out of a hat. We work with what we're given. Of course, we do have one clear advantage. As a neutral person, who is not entrenched in a position, we can help the parties understand what might be some of the weaknesses in their

***The best putters look at a shot from several different directions and take note of the surrounding contours of the landscape.***

case and encourage them to consider resolution from a position of compromise. A mediation colleague once said, “I have mediated over 4,000 cases in my lifetime. I have settled none of them”. We, as mediators, don’t settle cases. We help the parties discuss options, try to build bridges, and find overlap where an agreement might make more sense than continuing with the litigation ending up with a trial.

During offer negotiations, ask yourself if it makes the most sense to run with a file all the way through to a verdict/decision. As long as you have considered the options and are aware of the decisions/litigation road moving forward, a decision to run a trial could be the appropriate move. What I do, as a neutral mediator, is help you look at the case more objectively.

Most of the time, if the parties looked at the case objectively (as though they weren’t involved in it), they would find they could come up with a range of damages (highs and lows) for each head of damage. Having an idea of the realistic value of your file on a good day in court versus a not so good day in court might help you resolve your claim at a mediation. If you’re an avid golfer or enthusiast like me, imagine this task as if you were on the putting green of a golf course. The best putters look at a putt from several different directions and take note of the surrounding contours of the landscape. The same approach applies to the valuation of the claim.

While in the trenches of a mediation, consider taking some advice from my Grade 7 math teacher and “show your work for part marks.” If you can explain to the mediator how you calculated the value of the claim or reached your numbers, the mediator will be in a better position to explain the math to the opposition. If you are very confident that the opposition is being unrealistic/unreasonable in their assessment, consider showing what you think your best day at trial would look like and what your worst day at trial would look like. Describe where the current offer at mediation fits (or doesn’t fit) and





why the opposition should consider making a substantial move in the direction of settlement.

At some point, it does end up being about dollars in versus dollars out. Moving to all-inclusive dollars can be helpful; but, do consider at some point in the negotiation process explaining to the plaintiff how you evaluate/assess the claim.

Sometimes it makes more sense to move to all-inclusive offers right from the start. Let's say you receive an offer from the plaintiff and see certain heads of damage you were going to make offers towards and others that you weren't. If the plaintiff lawyer mis-categorized or put values under the headings that don't jive with yours, you may not want to shine a bright light on the disagreement. Moving to an all-inclusive offer buries the disagreement on an item by item basis and moves the talk to the value of resolving a file on a dollar for dollar basis.

***Frustrated, upset and angry, if they think each move is a complete waste of time, they will just as frequently respond with a similarly unrealistic low ball offer.***

#### 4. Zones of Potential Agreement

Frequently, I hear from defence counsel and claims professionals that the first few offers they typically receive from a plaintiff are so far out of the realm of possibility that they question the point of entertaining them seriously. Frustrated, upset and angry, if they think each move is a complete waste of time, they will just as frequently respond with a similarly unrealistic low ball offer. This might be cathartic, but is it productive? Would you expect the plaintiff to respond any more favourably than you did?

I'm not suggesting to make your end-of-the-day, final offer as a first



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***Does it make more sense  
for me to settle the case  
today and have certainty and  
closure without the lawsuit  
hanging over my head?***

response to a silly opening demand. Consider responding with a realistic assessment of the low-end range of what you think might happen at a trial. To compare it to a microscope, make your first or second offer the coarse adjustment. Show the plaintiff the range you see in the case. From there, let the plaintiff know that moving forward, you can make fine adjustments to the offer but that you're done making coarse adjustments for the purpose of settlement that day. If the plaintiff plans to resolve the claim at mediation, this message should encourage them to take the opportunity to get within striking distance of the Zone of Potential Agreement before you leave without tabling your best/greatest/final offer – assuming you value the case similarly.

The plaintiff frequently is trying to figure out the most amount of money the defence can put forward on the date of the mediation in order to see how it stacks up against what a good day versus a bad day at trial could look like for them. Depending on the decision makers' appetite and tolerance for risk, the plaintiff would ask these questions: Does it make more sense for me to settle the case today and have certainty and closure without the lawsuit hanging over my head? Does it make more sense for me to push forward with the case because the defense isn't seeing the case and connecting the dots in a way most judges/members of a jury would? Consider looking at the plaintiff lawyers' track record. Do they typically pick winning cases? Are they known for their trial experience? Who can they bring in to help them that would significantly tip the scales? Having a solid understanding of your opponent and their team, as well as building relationships within the industry, is paramount to getting a strong "gut reaction" for how to proceed. No one knows what the outcome of a trial is until the judgement is released. Cases have been won that everyone thought would be lost. Cases have been lost that everyone thought would be won.

In terms of quantum, I cannot say that there is a right or wrong approach or formula to resolving at mediation. However, there are some inputs you may consider to adjust your offer range. What was the percentage change in the

plaintiff offer? What was the gross dollar change? Do you want to move in some sort of proportionality to the plaintiff's movement? Have new strengths or weaknesses you've learned about through the mediation changed your calculations?

Whether you opt to bring the mediator into the inner circle or not, I believe at some point in the mediation, it's worthwhile to project to the mediator (and the opposition) where you are going. It will help the mediator manage expectations in the other room and tailor the messages relayed from defence to the plaintiff to ensure there are no surprises when you get to that last/best/greatest/final offer.

Unless you are superstitious, have



your lawyer prepare the necessary closing documents and have them ready in hand or available in draft at the mediation. These closing documents can be printed by the mediation venue and save the plaintiff an extra trip to their lawyer's office. On the occasion where a structured settlement is likely to be considered, ensure that defence counsel is aware of your company's structured settlement protocols. For example, is the structure to be owned by the casualty insurer or is it to be assigned? Who will bear the cost of the assignment?

## OTHER CONSIDERATIONS

### 5. Disbursements

Please appreciate that you are trying to negotiate a settlement with the opposing decision maker (the plaintiff). Disbursements are frequently contentious. While you may have valid criticisms regarding some of the disbursements, the practicality is that the list the plaintiff lawyer provides at the mediation is likely going to be the amount of money reduced from the offer you just made with a view toward determining the net dollar amount in the plaintiff's pocket.

Defence may tell me they don't pay for X, Y or Z. I completely understand companies have policies in place to deal with certain disbursements. Please consider what a court would do? Offers which comply with Rule 49 are typically in the format of claims/damages plus costs (disbursements) to be agreed upon or assessed. What would a judge or assessment officer do with the list of disbursements?

***Offers which comply with Rule 49 are typically in the format of claims/damages plus costs (disbursements) to be agreed upon or assessed.***



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# Monthly Webinar Series March Edition

## Family Law Act Damages: An Update

**Presented by: Lisa Armstrong and Krista Groen,  
Strigberger Brown Armstrong LLP**

**Date: March 24, 2022 – 10am**

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

This program captures recent developments in the case law concerning damages under the Ontario Family Law Act in bodily injury cases, including a discussion of the Court of Appeal decision concerning a fatality case in *Moore v. 7595611 Canada Corp.* This webinar will offer a roadmap of case law relevant to damages for loss of care, guidance and companionship, and some insights as to how subsequent decisions are expected to follow in the footsteps of the most recent case law. Join us for an engaging and interactive discussion on how to most effectively predict and consider the impact of the case law in response to these types of highly factually-based claims.



### **Lisa Armstrong**

Skilled litigator, problem solver, superhero – these are just a few words to describe Lisa. She can solve any client issue thrown her way with gusto, giving it the

dedication and attention it needs. Not only does she lead her team with tenacity and confidence, she gets everyone up to speed on the latest in the industry and ensures that they keep up the pace. Can you keep up with Lisa? We hope so.



### **Krista Groen**

Krista grew up in a small rural village north of Toronto, which naturally meant that she watched a lot of movies growing up.

The daughter of a Dutch farmer, Krista knows her way around the vast fields of insurance law. She is always up for a movie trivia challenge (and not just for movies about farming).

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## 6. Courtesy/Civility

I attended a seminar where Justice Archibald and Justice Dow spoke about current trends in trials. They both spoke about the difference between doing a job by representing a party and making it personal. If the parties conduct themselves appropriately, there is no reason why counsel shouldn't wish each other the best after a long day of arguing in court. In other words, what happens in the courtroom stays in the courtroom.

The same should apply in/at a mediation. Let's look at something like surprise surveillance used to try to get the edge over the other party. Is it really worth using surprise surveillance on one file/case in return for demonstrating that the opposing lawyer ought not to trust you ever again? You take the risk of embarrassing them at mediation. Don't make this a personal attack on the lawyer; rather, make it about the claim itself.

Please don't look at your phone when someone else is speaking. I understand that most people type their notes. I believe there is a big difference between looking at a computer and looking at your cell phone (even if you are making notes on your cell phone). Try to look at the other speaker periodically when they are making their opening statements. For a plaintiff, they might feel as though mediation is the one opportunity (short of going to trial) where they get to explain their side of the story. Usually, they would have been thinking, and feeling about what they were going to say from the date of the accident and certainly from the date of the examination for discovery. Whether you believe it or not, act like you're interested. My guess is the plaintiff will be far more likely to listen to you and your lawyer in return when it's your turn to speak.

You will have an easier time at mediation, and in life generally, if you can have civil, cordial and authentic relationships with the opposition. This applies to your relationship with this individual plaintiff, their lawyer, your own lawyer and the mediator. You will likely work with one or more of them again. You have only one opportunity to make a first impression. Try to make it a good impression as bad impressions are very hard to rebuild.

## CONCLUSIONS

Mediation is part of the litigation landscape in this province. There is a serious log jam for civil lawsuits in most judicial jurisdictions in Ontario. If the parties are able to communicate clearly and authentically throughout the mediation process (before/during/after), there is still great benefits for both claims professionals and plaintiffs.

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*Jonathan T. Cooper is the taller, younger and non-bow-tied mediator with Cooper Mediation Inc. He mediates primarily, but not exclusively, in the area of personal injury and insurance. Jon was recently inducted as a Fellow of the International Academy of Mediators. The IAM is an invitation-only organization consisting of the most successful commercial mediators in the world who must adhere to the highest practice and ethical qualifications. Jon can be reached at [jon@coopermediation.ca](mailto:jon@coopermediation.ca) or at (647) 260-1236.*

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# Property Claims for Buildings – A Day in a Structural Engineer's Life





## Challenges with Structural Damage in Property Claims

A property claims adjuster frequently deals with a variety of buildings – residential and retail buildings, or farm structures such as barns just to name a few. An incident related to a building often leads to discussion about damage to the structure and safety concerns, and the cost to remediate structural damage can be expensive.

To ensure the right decision is made on matters such as coverage or subrogation, the adjuster must clearly understand what occurred what needs to be done to repair the damage. This is where a structural engineer can help!

*By Daniel Han, P.Eng., Forensic Engineer, CEP Forensic*



## Challenges with Structural Damage in Property Claims

A forensic engineering investigation helps to answer a variety of questions: Is the house structurally damaged by the recent wind event? Is this crack related to the reported loss, or was it pre-existing? What needs to be done to return this building to a safe state? To answer these questions, further investigation is required, as well as an understanding of structural behaviours.



## Structural Forensic Engineer and Property Claims

In the publication 'Forensic Engineering Investigation' by Randall K. Noon, the term 'forensic engineering' is defined as "the application of engineering principles and methodologies to answer questions of fact". Simply put, the goal of a forensic engineer is to find out what happened.

Among various disciplines within forensics, structural engineering is a study of structures in a building or other infrastructure. By combining forensic engineering knowledge with structural knowledge, a structural forensic engineer can examine a building and draw conclusions that will answer questions like the ones mentioned.

Working with a forensic engineer allows the adjuster to rely on another set of eyes on the claim and can help the adjuster come to a decision when reviewing and interpreting an insurance policy. Understanding the engineering process is essential for a clear communication between the adjuster and the engineer. This article outlines a brief overall procedure of a property claim from the structural forensic engineer's point of view. What the engineer is looking for in each stage, and how it is relevant to the adjuster, are also briefly explained.

### Know the Question

The first task of a forensic engineer upon receiving a new file is to identify the questions to be answered. Generally, concerns about safety are always the first to be addressed, and then how, what, when and why of the failure or damage can be considered. While every claim is different and all kinds of questions can be asked, some common types of questions, or combinations thereof, are

often as follows:

- Is the structure still safe to occupy?
- What is the cause of the damage?
- When did this damage occur?
- Does this damage affect the structural integrity?
- What is the extent of damage related to the incident?
- Is any portion of this building salvageable, or does the entire building need replacement?
- What are the required steps to return the damaged structure to its pre-loss state?

### Pre-Investigation – Prepare the Game Plan

Once the questions to be answered are established, the next step is to gather relevant information prior to beginning the examination. This includes obtaining a description about the reported loss, pertinent

***Working with a forensic engineer allows the adjuster to rely on another set of eyes on the claim and can help the adjuster come to a decision when reviewing and interpreting an insurance policy.***



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photographs, any preliminary reports, or existing drawings. Having this information before the examination allows the engineer to be more effective and efficient.

Often, a contractor is also involved in the process. The engineer may contact the contractor before an examination to collect or provide information, or schedule to meet the contractor on site if needed. Throughout the process of a claim, the adjuster, contractor, and engineer often work together to plan and execute their work.

### **Site Examination – Collect Pieces of the Puzzle**

Most structural losses entail a site examination by the forensic engineer. On site, the engineer collects information using various means such as visual observations, measuring, sampling, or interviewing the occupant, insured or anyone familiar with the property and loss.

Examples of observations commonly made during a structural investigation are plumbness of

walls (are they vertical or are they leaning?), levelness of floors, cracks, chipping, char, soot, stains, mould, and displaced or missing structural elements. Each of these observations is documented further on its details such as the colour, shape, orientation, presence of debris, size, and location especially with respect to the origin of damage (if known).

Various tools and techniques can be used during a forensic investigation. For a structural investigation, for example, a stud finder might be used against the ceiling to non-destructively determine floor joist direction and approximate spacing. A borescope (a.k.a. a 'snake camera') allows for a visual inspection of an area with limited accessibility through a small opening. Loose, delaminated concrete of a slab or wall can be located by intermittently tapping the surface with a hammer and comparing the sounds, known as tapping test.

A forensic engineer will conduct a non-destructive assessment of the building when possible, especially if the building is occupied. However, concealed structural elements may need to be exposed. This will necessitate removal of finishes such as drywall, or the excavation of a foundation, if no access or other means of review are available. These removals are often facilitated by the contractor assigned to the file. In all cases, the engineer will seek the adjuster's approval before using any destructive means.

In addition to observations, measurements are often taken on site as necessary, such as the height of a wall, roof pitch, or the width and length of a room or building. In some cases, the entire area in question can be sketched out. This is because, depending on the findings,



a structural repair drawing set may be required down the road. Sizes and dimensions are documented during the site visit to ensure all required measurements are available to prepare the repair drawings. More details about repair drawings are explained below.

### Analysis – Complete the Puzzle

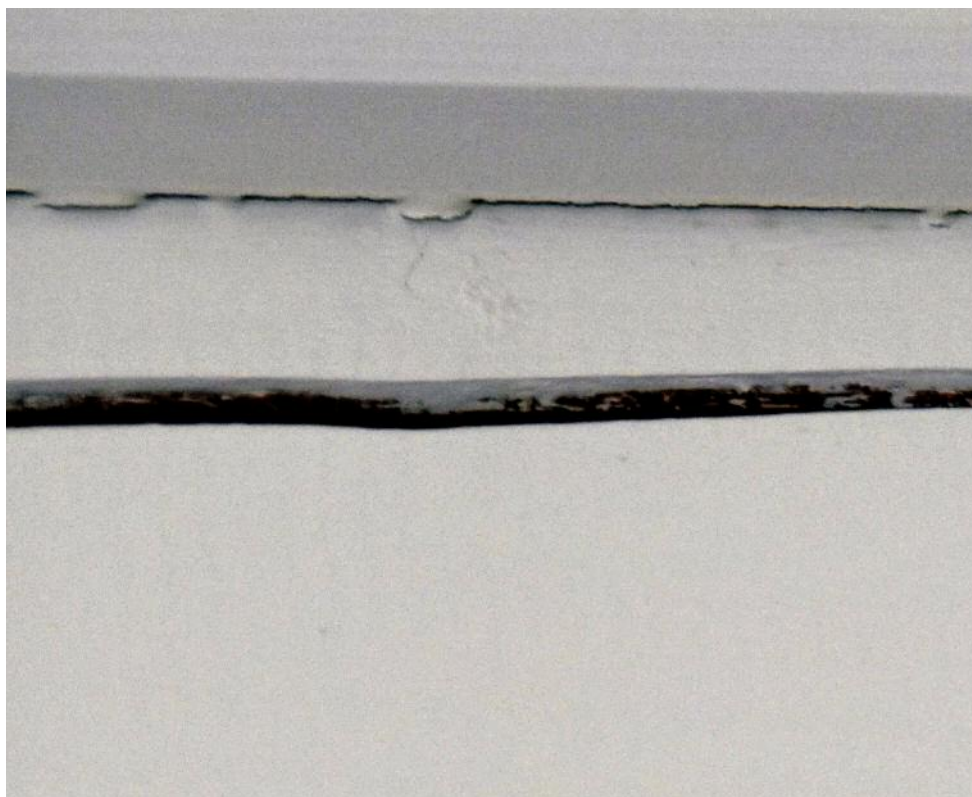
Following the examination, the structural engineer reviews and analyzes the collected information and pieces them together to find the answer to the adjuster's questions. For example, whether a crack was formed recently can be determined using indicators such as any presence of debris or paint within the crack (Figure 1). The location and orientation of a crack in a basement wall provides clues as to whether the crack is due to the soil pressing horizontally against the wall, or the bottom of the wall has sunken into the ground, known as settlement. The repair scope of a truss is determined based on the extent of truss members are that damaged.

As mentioned earlier, every claim is different, and so are the findings that come after every investigation. However, for structural investigations, the most common question to answer is whether there is structural damage. The answer, yes or no, will affect how the claim proceeds.

### No Structural Damage Related to Reported Loss

Upon investigation and analysis, it may be concluded that a building sustained no structural damage related to a reported loss.

As implied in the name, structural damage is a damage to the structure. The structure of a building is the system that collectively supports



*Figure 1 – Crack on the side of a beam with dried paint within. Any debris or paint within the crack, along with other indicators, can provide clues on its timeframe relative to the loss.*

the building against all physical forces acting on it. Examples of a component within a structure are floor joists, suspended slabs, beams, loadbearing walls, foundations, roof trusses, posts, and all connections in between them. Any compromise to these elements is considered structural damage.

It is important to understand the difference between structural damage and non-structural damage. A building without any structural damage may still require repair. Some examples of non-structural damage are blown-off roof shingles (Figure 2), dented downspouts or cracked drywall finishes. While the repair of non-structural damage can often be conducted without the involvement of a structural engineer, this may require the services of a building envelope consultant or other foren-

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*Figure 2 – Shingles are not structural elements. The repair does not involve a structural engineer, but the cause of roofing damage may be assessed by a building envelope investigation.*

sis expert to determine the cause and/or repair recommendation. Also, damage to some non-structural elements, such as brick veneer or chimneys, may require further assistance from a structural forensic engineer to obtain repair drawings and building permit.

In cases where damage is non-structural, the engineer will often confirm to the adjuster and ask how they wish to proceed. Sometimes, a written report is prepared, and others a verbal report about the findings is enough. Recommendations of other experts, such as a building envelope expert, might also be provided.

### **Structural Damage Related to Reported Loss**

If structural damage related to a reported loss is confirmed, there are a variety of other issues to consider. When the damage is deemed to have created an unsafe condition, it may be advised to temporarily support the building, known as shoring. In extreme cases, portions of the building may be deemed unsafe for occupancy, and they

must be evacuated until properly restored. The likely cause of the damage, if initially unknown, can be identified. The engineer can also draw the line between structural and non-structural damage, pre-existing damage and damage related to the loss, or salvageable and non-salvageable portions of the building. If repair is necessary, the engineer can also propose repair recommendations. Depending on what's required, the engineer can provide a written report, drawings or other materials as needed.

When repair – or reconstruction in the case of a total loss – is necessary, it will likely warrant obtaining a building permit from the municipality. Most municipalities have their building permit requirements available on their websites (Figure 3), and the structural engineer can review these municipal requirements to determine whether a permit will be required.

While the requirements can vary slightly from one municipality to the next, a building permit is generally required in the following circumstances in Ontario:

- Constructing any new building over 10 m<sup>2</sup> (108 sq. ft) in area or placing another structure, such as a mobile home, on a property
- Demolishing or removing all or portion of a building
- Building a deck more than 10 m<sup>2</sup> (108 sq. ft) in area or more than 0.6 m (2 ft) above grade
- Excavating, or constructing a foundation
- Installing or reconstructing a chimney, wood burning stove or fireplace
- Structurally or mechanically repairing fire-damage

For a building permit to be issued, the municipality requires that a set

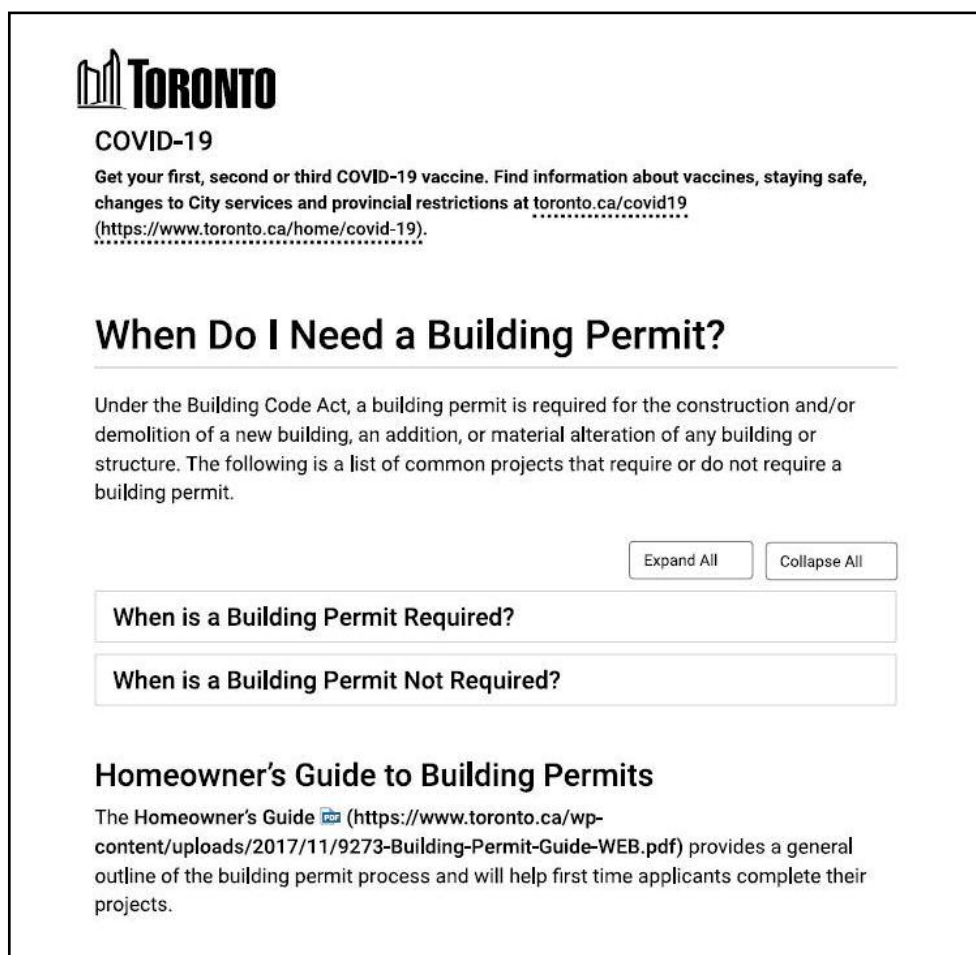


of documents be provided for their review. When the scope involves repairing a structure or certain non-structural elements (veneer, chimney, etc.), structural drawings must be submitted as one of these documents. The structural engineer assigned to the claim will design the repair and prepare the structural drawings required for permit, which can then be submitted to the municipality for review.

In Ontario, after the permit is issued and the repair work begins, the municipality must be notified to schedule an inspection. The owner or contractor is generally responsible for these notifications. It is important that they notify at the right stage(s) of the repair so that all the elements to be inspected are exposed for review. Some municipalities outline the milestones requiring inspection (Figure 4).

In Ontario, unless otherwise requested by the municipality, the repair work is monitored by the building inspector from the municipality. The municipality however may require that the engineer on record review and certify the work. In this case, the structural engineer completes a form committing to the review, known as a 'Commitment to General Review' form, and reviews aspects of the work to confirm it was completed as the design intended. This is typically followed by the engineer providing a certification letter which is submitted to the municipality.

Apart from the permit process, having repair drawings ensures that the work is in accordance with the applicable codes and standards. Also, the contractor may seek the engineer's assistance in how to repair the damaged structure, in which case a set of drawings can provide clear directions.



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## When Do I Need a Building Permit?

Under the Building Code Act, a building permit is required for the construction and/or demolition of a new building, an addition, or material alteration of any building or structure. The following is a list of common projects that require or do not require a building permit.

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**When is a Building Permit Required?**

**When is a Building Permit Not Required?**

### Homeowner's Guide to Building Permits

The Homeowner's Guide <https://www.toronto.ca/wp-content/uploads/2017/11/9273-Building-Permit-Guide-WEB.pdf> provides a general outline of the building permit process and will help first time applicants complete their projects.

Figure 3 – Requirements on Building Permit Outlined on City of Toronto's website (City of Toronto, 2022)

Required Building Inspections	
Type of Inspection	When to Call for Inspection
Footings	at completion of formwork, before pouring concrete
Foundations*	at completion
Structural framing*	at completion including rough-in of plumbing and HVAC
Fire separations	at completion of wall, floor and shaft separations and fire stopping, before installing interior finishes
Insulation and vapour barrier	at completion of insulation & vapour barrier and before installing interior services
Fireplaces, gas appliances, and chimneys	at commencement of installation
Occupancy	consult your inspector
Life safety systems	at completion of standpipe, sprinkler, fire alarm and emergency lighting systems
Final interior inspection	at completion of interior construction
Final exterior inspection	at completion exterior construction

\*Construction may be done in phases. Such projects may require additional inspections.

Figure 4 – Requirements on when to call for inspection for 'Small Buildings', outlined on City of Toronto's website (City of Toronto, 2022)



## Other Forensic Experts in Property Claims for Buildings

Though this article focuses on the structural engineering aspect, there are other types of forensic experts who play important roles in property claims for buildings. For example, when a building fails to separate the indoor from the outdoor environment (i.e., the building envelope is compromised), a building envelope specialist can find the culprit (such as water intrusion, heat loss, air leakage, and moisture related damage). Or a fire investigator can put a finger on the origin and cause to help with subrogation questions in the case of a fire damaged building. For some claims, multiple experts in different disciplines can be engaged to collectively provide answers to a wider range of questions.

## TLDR; Takeaway for the Adjuster

In a property loss claim for a building and its damage, a structural forensic engineer uses structural engineering principles and forensic methodologies to provide answers to an adjuster's questions. In this process, appropriate steps are taken in collaboration with the adjuster and contractor to find the necessary answer effectively and efficiently, all while conforming to municipal requirements. By knowing the engineer's side of the process and where their conclusions may come from, the adjuster can better interpret the information they are given. This ultimately leads to the adjuster making a more informed and confident decision about a claim.



*Daniel Han is a civil structural engineer with 5 years of experience and has been with CEP's Toronto office since 2021. He obtained his Bachelor of Applied Science in Civil Engineering from the University of Waterloo in 2017. Prior to joining CEP, Daniel worked as a structural engineer with a focus on light frame wood residential structures (houses, detached garages etc.), temporary structures, retaining walls, and failure cause determinations. Daniel also designed/analyzed restorations and modifications of these structures and institutional, commercial, industrial (ICI) structures.*

*As a forensic engineer in the Structural & Civil team with CEP, Daniel performs on-site investigations and prepares technical reports to determine the cause and extent of damage to structures. He performs detailed analyses of structural systems and provides opinions on the damages (cause and/or extent), safety and integrity, code compliance, and mitigation. While Daniel has a specialization in structural engineering, he also works in cooperation with other experts within the CEP civil team on a broad range of civil engineering issues to render a consistent level of service to all of our clients.*

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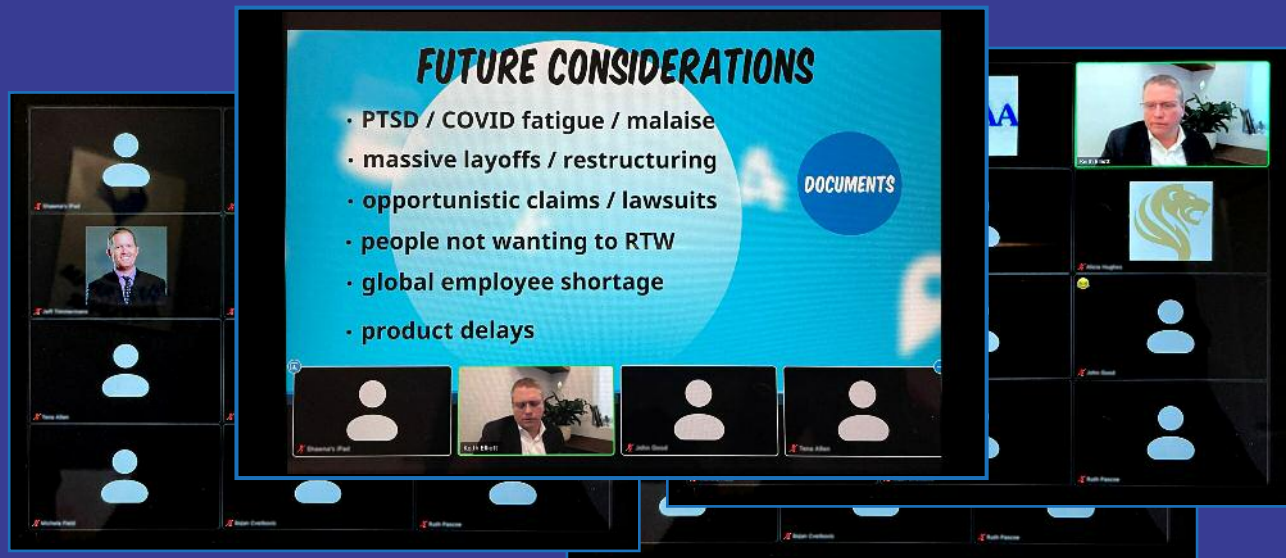
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Presented by Keith Elliott, Reed Research



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**Keith Elliott** is the CEO of Reed Research Investigations Limited, a Professional Investigation firm based out of Toronto, Ontario, Canada.

He holds an Honours Degree in Law & Security Administration, and additional diplo-

mas in Private Investigations, Advanced Interview Techniques, Close Protective Services and is designated as a Certified International Investigator (CII), as well as being Certified by the Council of Professional Investigators Ontario as a Master Investigator. Keith's entertaining, humorous and energetic speaking style has made him a sought-out speaker at many events. He has over 80 public speaking engagements, across Canada and Internationally, including having been a Keynote presenter, various times, to audiences of over 1500 people.

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# Get to know your Chapter

## OIAA London Chapter

Despite the ongoing restrictions due to COVID-19, there is still a strong sense of commitment to the industry in our region. Although we cannot gather in person, our events continue to draw attendees from across South Western Ontario. We can't thank our members and vendor partners enough for their continued support.

We hosted our first of three educational webinars in November 2021. We were pleased to have Sonia Fabiani and Jacob Damstra of Lerner LLP that presented on tort limitations periods, CERB Deductibility, and Definition of "Accident".

On December 4, 2021, we held our second annual Toy and Food Drive in support of the Salvation Army Christmas Hamper Program and The London Food Bank. The support again this year was overwhelming. Together, we raised 345lbs of non-perishable food items, \$2,300.00 in cash donations and filled two pick-up trucks with toys. We are extremely proud to give back to our community.

On January 27, 2022, we welcomed back a popular speaker, Michael Lewis who provided his insight and tips on managing workplace stress and best wellness practices to preventing burnout and having a healthier approach to life.

Looking ahead, we are pleased to host numerous social events, including a trivia night in March, our third and final education webinar in April, a trunk trade show/drive-in family movie night in June and the golf tournament in August.

This is an election year for the London Chapter. We have three Social Member positions available. Please stay tuned for more information on how to run and vote for these positions. As always, we are looking for new adjuster members to join our Chapter for the 2022/2023 term. Please contact anyone on the LCA executive if you are interested in joining our team.

**Kate Boyle**

OIAA London Chapter President











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# THE WP RADIO

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As 2022 gets underway, we would like to thank every supporter of the OIAA and listener of WP Radio over the last year. With the 2021 season commencing with a ton of great content from Arcon Forensic Engineers and the SCM Group of Companies, we can't thank them enough for their continued support of the OIAA and WP Radio's programming. Without companies like them, the content produced over the last year wouldn't be possible and the people behind these brands are all critical to WP Radio's success.

We are excited to announce that WP Radio has an exciting new roster of podcasts coming to your ears in 2022. We've been working behind the scenes with a variety of brands on putting together some really great plans in place, to make sure the content and interviews will continue to captivate and educate listeners.

Leading the network into a new season of podcasts, WP Radio will be focused on featuring brands that you may not have heard of, but who are essential to the Ontario insurance industry. These may come in the form of interviews from founders of companies, or company spotlights on emerging brands that all play important roles in their spaces.

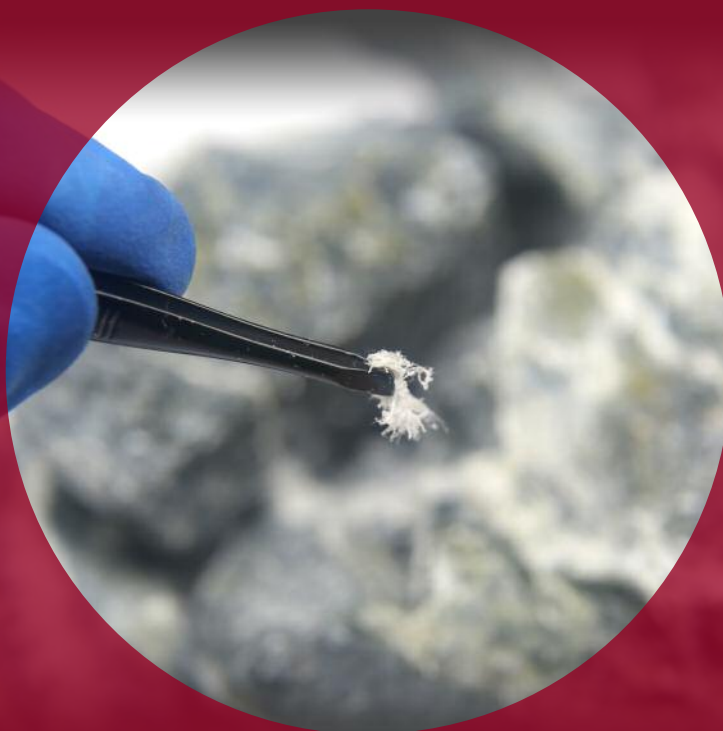
WP Radio also still has options for brands to sponsor podcasts for the upcoming season. If you would like your company to be featured on the network, please reach out at your earliest convenience to speak about show opportunities.

We can't thank everyone enough for their continued support of WP Radio and look forward to seeing you all in 2022. Stay tuned for the latest updates by subscribing to WP Radio wherever you listen to podcasts.

For more information on sponsoring a show, please contact Terry at [terry.doherty@aviva.com](mailto:terry.doherty@aviva.com)

# Why Insurance Adjusters Should Still Care About Asbestos





Through much of the 20th century, asbestos – a natural fibrous mineral available in great abundance in Canada - has been widely used in building materials all over the world, both in friable applications (materials which can be crumbled, pulverized or powdered by hand pressure when dry) such as pipe and tank insulation, sprayed-on fireproofing and acoustic texture material and in non-friable manufactured products such as floor tile, gaskets, cement board and more.

*By Kelly (Smith) Newell, B.Sc.,  
Practice Lead, Environmental Health & Safety,  
Haag Canada Forensic Engineering &  
Construction Consulting*



# Why Insurance Adjusters Should Still Care About Asbestos

Although the use of asbestos in friable applications was largely curtailed in most western countries, including Canada, in the mid-1970s as the health and safety hazards associated with breathing asbestos fibres became better known, most buildings constructed prior to the late 1970s still contain some form of friable construction material with asbestos content.

While the use of asbestos in many non-friable materials continued well into the 1980s and beyond, the Canadian government issued a full ban on asbestos in 2018, making it illegal to import, manufacture, sell, trade or use virtually any product that contained asbestos. There are several exemptions under the ban, but the allowable uses are still heavily restricted.

## Why it still matters to insurers

Because property loss claims often lead to the demolition, rebuilding or modification of affected buildings, insurance companies and claims professionals often find themselves faced with the task of initiating and managing contractor restoration and reconstruction activities, including the remediation of asbestos and other designated substances and hazardous materials.

In taking on this oversight role, there are a number of federal and provincial regulatory compliance requirements and responsibilities that insurance and claims professionals must be aware of in order to mitigate or avoid unnecessary risks, lia-

bilities, and penalties.

For instance, the Ontario *Occupational Health and Safety Act* (OHSa) sets out the duties of employers and others to protect workers from health and safety hazards on the job, including dealing with the presence of designated substances on construction projects. Responsibilities include informing all potential contractors and sub-contractors during the project bidding process about the known presence of any hazardous materials.

Of the 11 substances classified as designated in Ontario, asbestos, lead, silica and mercury are most likely to pose a potential exposure concern during any building renovation, modification or demolition. A variety of other regulatory require-

ments call for the control of exposure to mould, PCBs, and ozone-depleting substances (ODS).

## Compliance is key

A key aspect to complying with the OHSa requirements is the commissioning of a detailed designated substances survey for any building that will be undergoing any construction work. It's important to bear in mind that there is **no exclusion** date with respect to regulations that apply to designated substances, such as asbestos in building materials. Even more, newly constructed buildings are subject to the requirements.

While the presence of asbestos-containing material in newer construction is unlikely, lead may still be present in paint, and other materials, and silica - another known carcinogen - is commonly found in construction materials such as brick, concrete, concrete block, cement, mortar, rock and stone, sand, fill dirt, topsoil and asphalt containing rock or stone.



## Retain the experts

Of course, any assessment seeking the presence of these materials is a critical task that requires a thorough understanding of all relevant regulatory requirements, guidelines and industry best practices. In addition to identifying and assessing designated substances and hazardous materials at a building site, a detailed approach should include recommended management of any identified materials, specified abatement practices, as well as site inspections, post-remedial testing, and close-out documentation.

Even with a strong survey report in hand, having a qualified project team with the knowledge and skill required to successfully complete the remediation work is paramount - especially when the goal is to complete the work in a reliable,

cost-effective and timely manner.

Adopting formalized procedures to enhance compliance with applicable regulatory requirements and ensuring that all reasonable steps are taken to minimize potential exposures to airborne asbestos fibres, other designated substances and hazardous materials is not only a legal requirement and prudent corporate social responsibility step, but also good business practice.



*Kelly (Smith) Newell is a Practice Lead for the Environmental Health & Safety Group at Haag Canada in Toronto.*

*Ms. Newell has over twenty-three years of experience consulting on matters pertaining to hazardous materials in public and*

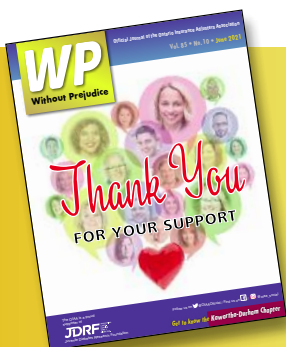
*private sector buildings. She has accumulated a diverse compliment of skills and knowledge enabling her to effectively investigate the potential impact of contaminants in built environments before determining and managing the most appropriate / required remediation process from a health and safety perspective. Newell often collaborates with Haag Canada's multi-disciplinary root cause analysis and remediation experts to ensure an optimal remediation to mitigate future risks while complying with health and safety regulations, standards and guidelines to ultimately protect constructors and the public.*

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# So, You Think We Only Do Surveillance...







Over the last 38 years, I have enjoyed working in the most rewarding industry as a licensed private investigator. For me, and likely several of my counterparts, I considered entering either the law enforcement field or private investigations. When I learned that the private investigation business allows one to get right into challenging and complex investigations, the choice was clear for me, with no regrets along the way.

*By Nino Calabrese,  
Director of Investigations,  
Xpera Risk Mitigation & Investigation.*

## So, You Think We Only Do Surveillance...

Most know that private investigators conduct surveillance. In fact, surveillance is widely used in the personal injury world. Some may not know what else a full-service investigation firm has to offer. Private investigators are retained every day to investigate corporate fraud or theft, criminal defence matters, intellectual property, financial due diligence, in-depth background checks, and of course, insurance claims beyond the scope of surveillance. This article will focus on the insurance industry.



Adjusters who handle bodily injury claims have likely used a private investigator to conduct surveillance on a claimant at some point. Surveillance is a great tool to help confirm the claimant's daily living activities and physical restrictions. Investigators are also asked to conduct online cyber investigations. Properly trained Open-Source Intelligence (OSINT) investigators have the tools to search out social media and other online sources to locate and document a claimant's pre and post-accident activities. It is important to utilize a firm that has the proper software to download information from social media in a way that is acceptable to the courts. There is no value in paying for a service that can be challenged in court and ultimately not accepted due to how the information was obtained. It is also important that no rules are broken in the process. A represented claimant is still a represented claimant on social media. No attempt should be made to "friend" or engage in any dialogue with a claimant who has retained counsel. If their profile is open to the public, then, of course, the information can be documented and used to help adjust the claim. Their posts and images of them engaged in activities such as cross country or downhill skiing, hiking, and other sporting activities are all fair game and especially useful if the claimant suggests in their post that the activities took place post-accident.

Investigators are also called upon to obtain statements. Interviews are conducted with employers, neighbours, associates, and other sources to obtain or confirm details provided in the claims process. The statements can either be recorded, handwritten, or typed and then signed. Memories can fade, which makes it that much more important to document facts on paper or tape to lock in details early in the process.

***There is no value in paying for a service that can be challenged in court and ultimately not accepted due to how the information was obtained.***







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Full-service firms also conduct financial investigations. This is particularly useful in subrogation matters in which an insurer has a need to identify assets for the purposes of recovery. It is crucial that you retain a firm with the ability to dig deep and with access to resources that can help locate assets beyond a simple vehicle and property search.

We are also often asked to locate individuals. Whether it is a witness to an accident or even attempting to find your own insured for an upcoming trial, investigation firms are there to help. The various resources and technology available to us have helped locate people who have taken extreme measures to avoid being found. Success depends on several factors, including financial restrictions. When considering a budget for a locate, keep in mind that there will be charges beyond the investigator's time. Search disbursements often take a huge chunk out of the budget. Often there is a small charge for the intake and opening of a file. Time is also needed to report the findings. Some locates are very simple and can be done within a couple of hours. Some take much longer. It is wise to have a conversation with your investigator to determine a realistic budget while keeping in mind your exposure on the claim.

In some circumstances, we may be asked to serve legal documents. This is particularly true in cases where the person being served is believed to want to evade service. Again, using the resources we have access to, investigators can do their preliminary investigation to help confirm the location of the individual, know what vehicles they have access to, identify family members and in some cases, find an image online of the person they are serving to make identification much easier. The straightforward services are usually reserved for document servers as their rates are generally much lower. However, law firms often turn to private investigators when they fail or if the individual is anticipated to be dif-



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difficult to serve. Some investigation firms even have an internal commissioner of oaths who can witness and have the affidavit of service sworn.

In-depth background checks are another useful service offered by investigation firms. Often this includes a claims history beyond what may be available on an Autoplus report. These investigations regularly include OSINT, database searches, human intelligence, court searches, and good old-fashioned digging. Again, who you partner with for your investigations is important. Make sure you use a firm with access to the required sources and a proven ability to leave no stone unturned.

Address verification is another valued service. People are known to provide an alternate address for the purpose of obtaining a lower rate on their auto insurance policy. This is considered a material change in risk, and claims could be denied on these grounds. Red flags can include the location of the accident compared to the listed residential address, the location of treating facilities that are a significant distance away from their home, and/or their place of employment is located outside of their "home" area. For example, you may want to take a closer look if the claimant alleges that they reside in cottage country, yet the accident occurred in the city while on their way to work while also attending a Toronto-based treatment centre. It is not uncommon to find that some will use their cottage or a relative's home address as their primary place of residence, where insurance premiums are generally lower than in major urban centres. Investigation firms are used to confirm where a person is residing with background investigations, drive-bys, short periods of surveillance, and neighbourhood inquiries.

Investigators are also used to confirm attendant care claims, employment details, and even staged accidents.

This article covers some of what we, as private investigators, can



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offer the insurance community besides surveillance. Many firms offer a range of services outside of this community. We are involved in undercover work in warehouses, where we pose as an employee to crack theft and drug rings. We aid in criminal defence matters, where our findings are led to the exoneration of people who were wrongly accused of a crime they did not commit. We also assist in the intellectual property rights where we

investigate counterfeit goods, trademarks, copyright, and patent infringements, as discussed during a recent WP Radio Podcast. Investigators also handle mysterious disappearances, life and health claims, and due diligence investigations relating to mergers and acquisitions of major corporations. Investigation firms are also able to assist in video enhancement, for example, brightened footage. This technology also allows for a different viewing perspective of a video that may help identify a license plate that may have been unreadable to the human eye. Pixilation is also very useful as it allows third parties, including minors, who were inadvertently captured on video to become unidentifiable by blurring their faces. Investigators also handle workplace investigations that include general harassment, "power" harassment, and sexual harassment. The list goes on and perhaps can be expanded upon in a future article.

As you can see, private investigators do more than just surveillance.



*Nino Calabrese is Director of Investigations at Xpera Risk Mitigation & Investigation. He holds a board position with the Council of Professional Investigators of Ontario (CPIO) as Director, Strategic Planning. He has over thirty-eight years of experience in both corporate and insurance claims investigations as well as extensive intellectual property investigation experience. He is also recognized for his exceptional litigation support to the legal community. Nino can be contacted at: nino.calabrese@xpera.ca, or by phone at 877-695-6575, x2032.*

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