

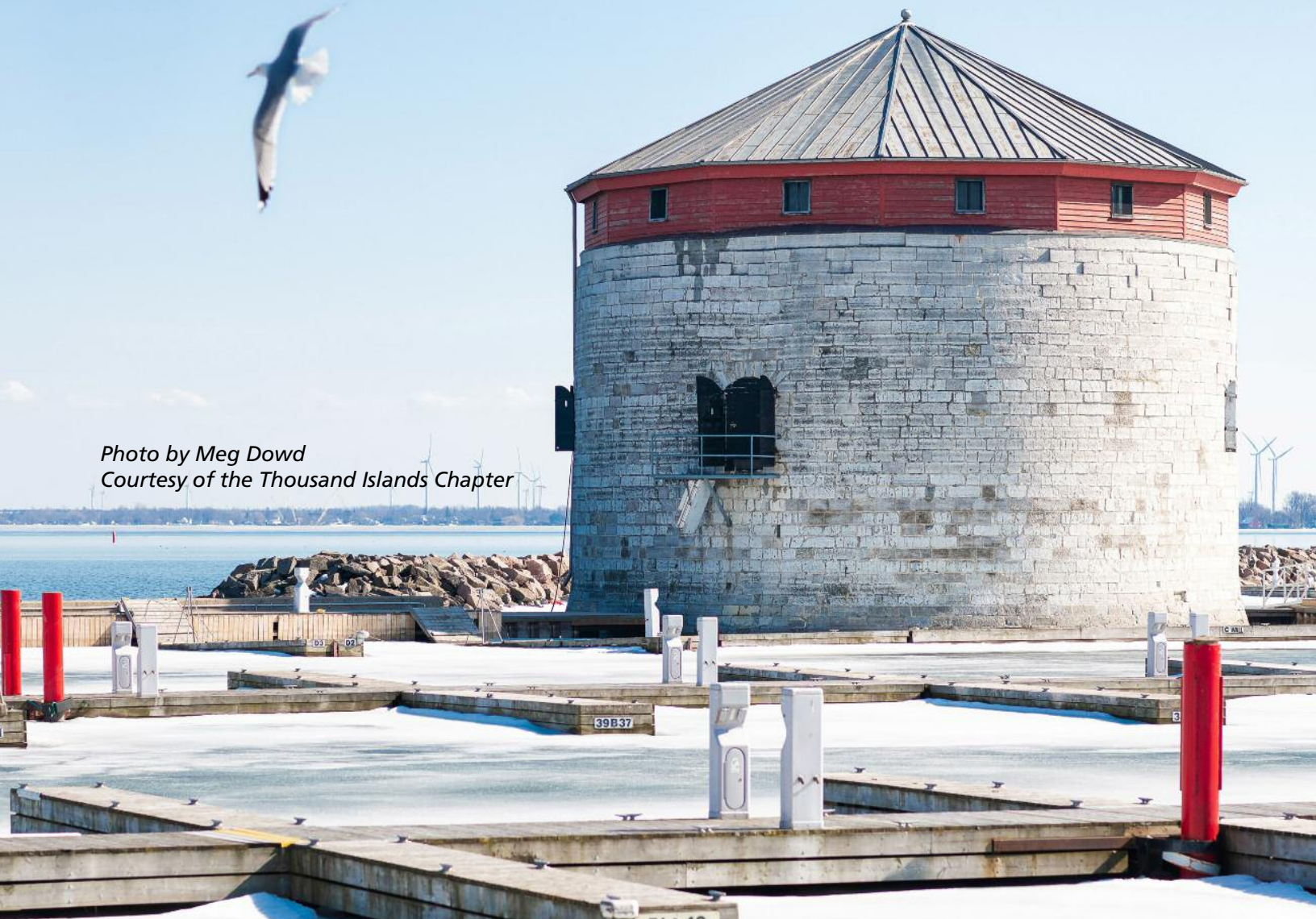
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Without Prejudice

Official Journal of the Ontario Insurance Adjusters Association

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Rhu Sherrard, CIP
President, OIAA

President's Message

Beltane falls about halfway between the spring equinox (Ostara) and the coming summer solstice (Litha). The holiday celebrates spring at its peak, and the coming summer. Beltane also sometimes goes by the name May Day. Nowadays I believe we can find a celebration for every day of the year. Which after the past 2 years may not be a bad idea, only if you are up to the challenge.

The highlights of May for me are Cinco de Mayo (Spanish: "Fifth of May") also called Anniversary of the Battle of Puebla (a holiday celebrated in parts of Mexico) and the United States in honour of a military victory in 1862 over the French forces of Napoleon III there.

Mother's Day is celebrated in many countries around the world, but not on the same day (although most countries celebrate Mother's Day in May). It is a day meant to honour mothers and appreciate their role in society and in families. We all have mothers to remember and celebrate. A time to celebrate mothers who support and encourage us to be the best we can be.

Most everyone's favourite long weekend unofficially welcomes the summer season in most of Canada. Unofficially also known as "May 24" weekend, Victoria Day is Canada's oldest non-religious holiday. The holiday is subject to the calendar, even though it is still referred to as the May 24th holiday. While it was originally implemented to celebrate the life of Queen Victoria, the holiday is also dedicated to celebrating the birthday of Britain's reigning monarch, Queen Elizabeth II.

It's a great long weekend for most to go camping, glamping, open up cottages, better yet visit friends with cottages, or chill on the back deck or balcony. Enjoy a nice BBQ, a patio and fireworks. Gardeners can safely start the season without any risks from frost, pending where you are in our great country and province. It's a great time to get outside, take a hike, walk along the beach, enjoy the sunshine, read a book, and share time with family and friends.

We hope to see all you at our June 3rd Nine and Dine Golf Tournament to be held at Cardinal Golf and Country Club. Please visit www.oiaa.com for registration and sponsorship opportunities. A prelude to the next Presidential year of events. Hybrid years are challenging but all the various chapters around the province are working diligently to bring the association members and our insurance partners both educational, informative, and responsible social gatherings.

Some other notable dates in May

- May 4th – May the fourth be with you!
Obviously, Star Wars Day - My inner geek is shining through
- May 9th – Nurses week for all those making a difference - Respect
- May 15th –International Day of Families and Chocolate Chip Day – Sweet deal
- May 16th – International Day of Living in Peace – Hearts to Ukraine and all the areas of the world not living in peace
- May 19th National Caesar Day
- May 20th Bike to Work Day and Bee Day
- May 22nd International Day of Biological Diversity – For my daughter who is a Biology Major
- May 25th National Wine Day –Need I say more
- May 28th National Hamburger Day

It seems to me that the natural world is the greatest source of excitement, the greatest source of visual beauty, the greatest source of intellectual interest. It is the greatest source of so much in life that makes life worth living. – Sir David Attenborough

You are the sum total of everything you've ever seen, heard, eaten, smelled, been told, forgot - it's all there. Everything influences each of us, and because of that I try to make sure that my experiences are positive. – Maya Angelou

Rhu Sherrard, CIP

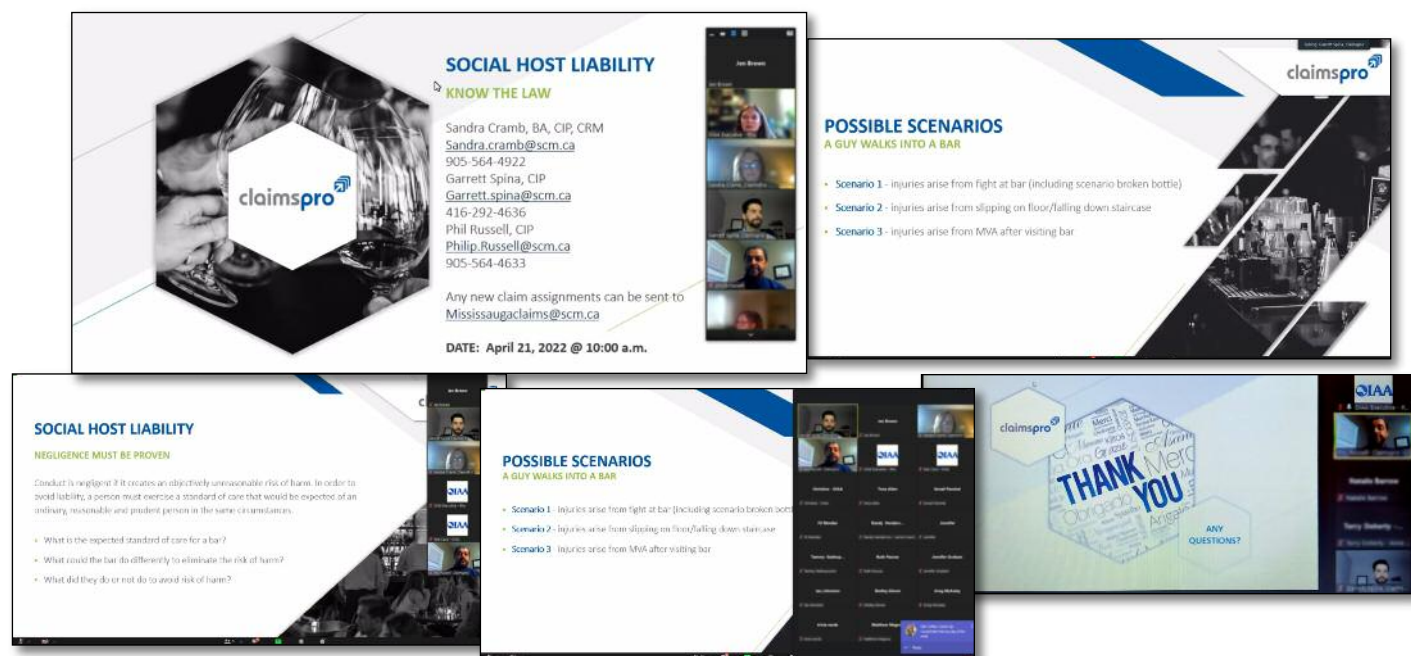
President, Ontario Insurance Adjusters Association

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OIAA April Webinar

Social Host Liability

Presented by Sandra Cramb, Garrett Spina and Philip Russell, ClaimsPro



The OIAA would like to thank Sandra Cramb, Garrett Spina and Philip Russell for their webinar presentation: *Social Host Liability*



Sandra Cramb, BA, CIP, CRM

Sandra Cramb is Vice President for ClaimsPro's GTA branches. Based in the Mississauga office, she oversees the Toronto, Markham, Mississauga, Newmarket and Whitby branches, which includes a team of 66 employees. She is responsible for Adjuster coaching, mentoring, technical direction, and feedback through Quality Assurance file reviews. She is also responsible for all aspects of the GTA operations including financial management, staffing and client management and interaction.



Garrett Spina, CIP

Garrett Spina is General Adjuster with ClaimsPro's Specialty Risk Division. Based in the Mississauga office, Garrett has been with ClaimsPro since 2012 and has over 20 years' industry experience. Prior to adjusting, he was employed at a brokerage for seven years working in both personal and commercial lines. Garrett specializes in Bodily Injury, Commercial, Municipal, Bodily Injury, Occupiers' Liability, and Legal Proceedings.



Philip Russell, CIP

Philip Russell is an Adjuster based in ClaimsPro's Mississauga office. With over 30 years' experience, Philip joined ClaimsPro in 2007 and prior to that he held claims related positions at two independent adjusting firms as well as at a national insurer. Philip specializes in handling Bodily Injury and Liability losses within both commercial and personal lines.

Congratulations to Mike Laberge of Context Claims for winning the OIAA Webinar \$50 Gift Card Draw sponsored by Larrek Investigations.

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Stuck in a Claims Tug of War? Invoke the Appraisal Process (page 8)

John Valeriote is an Executive General Loss Adjuster based out of the Toronto Crawford & Company office, with claims extending throughout Canada. He is a graduate of McMaster University, and successfully received a diploma in Marketing Management from Humber College. Prior to commencing his career with Crawford & Company, he gained corporate, commercial and specialty claims experience for more than 10 years as a manager/owner with Upper Canada.



George Kanellakos

The Long and Winding Road Between the SABS and the WSIA (page 16)

George Kanellakos attended Osgoode Hall Law School, in Toronto, graduating with his Bachelor of Laws degree in May 2001. George was called to the Bar of Ontario in October of 2002. Since his call to the Bar of Ontario George's legal practice has exclusively focused on insurance defence litigation. George handles both "tort" and first party SABS claims. He also has extensive experience with loss transfer claims, priority disputes between insurers, and WSIAT hearings. George is a founding partner of Kanellakos Ballard LLP.



Laurie Walker

CIAA Incoming President Jeff Edge – Insights of Claims Handling (page 28)

Laurie Walker is the President of Walker Consulting & Auditing. She is both a Past President of the OIAA and former Editor of WP Magazine. She has been an adjuster for more than 35 years and now moved into a Compliance Auditor and Claims Specialty trainer. She works with more than 25 Insurers and Brokers to develop and review operational matters, claims matters and procedural oversight.



Randy Henderson

Insurance Investigations: Getting the Most Value for Your Investment (page 38)

Randy Henderson is a member of the Client Relations team at Larrek Investigations. Randy has over 30 years of progressive business-to-business marketing experience in Fortune 500 corporations and entrepreneurial ventures. Prior to joining Larrek, he was focused on helping a forensic engineering services provider re-brand, re-focus and re-engage the property and casualty insurance market.



Dara Banga

The Importance of Empathy: Making the Policy Holder Feel Heard (page 48)

As the President and Chief Adjusting Officer of DSB Claims, Dara Banga is the leader who planted the service stake in the ground when he established the company in 2012. Dara had 14 years of experience in the insurance industry so he recognized the need for a premier service model.

WP

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Adjusters Association

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A person wearing a white long-sleeved shirt and dark pinstriped trousers is holding a thick, white, braided rope. The person's hands are visible, gripping the rope firmly. The background is a solid, light gray.

Stuck in a Claims Tug of War?

Invoke the Appraisal Process

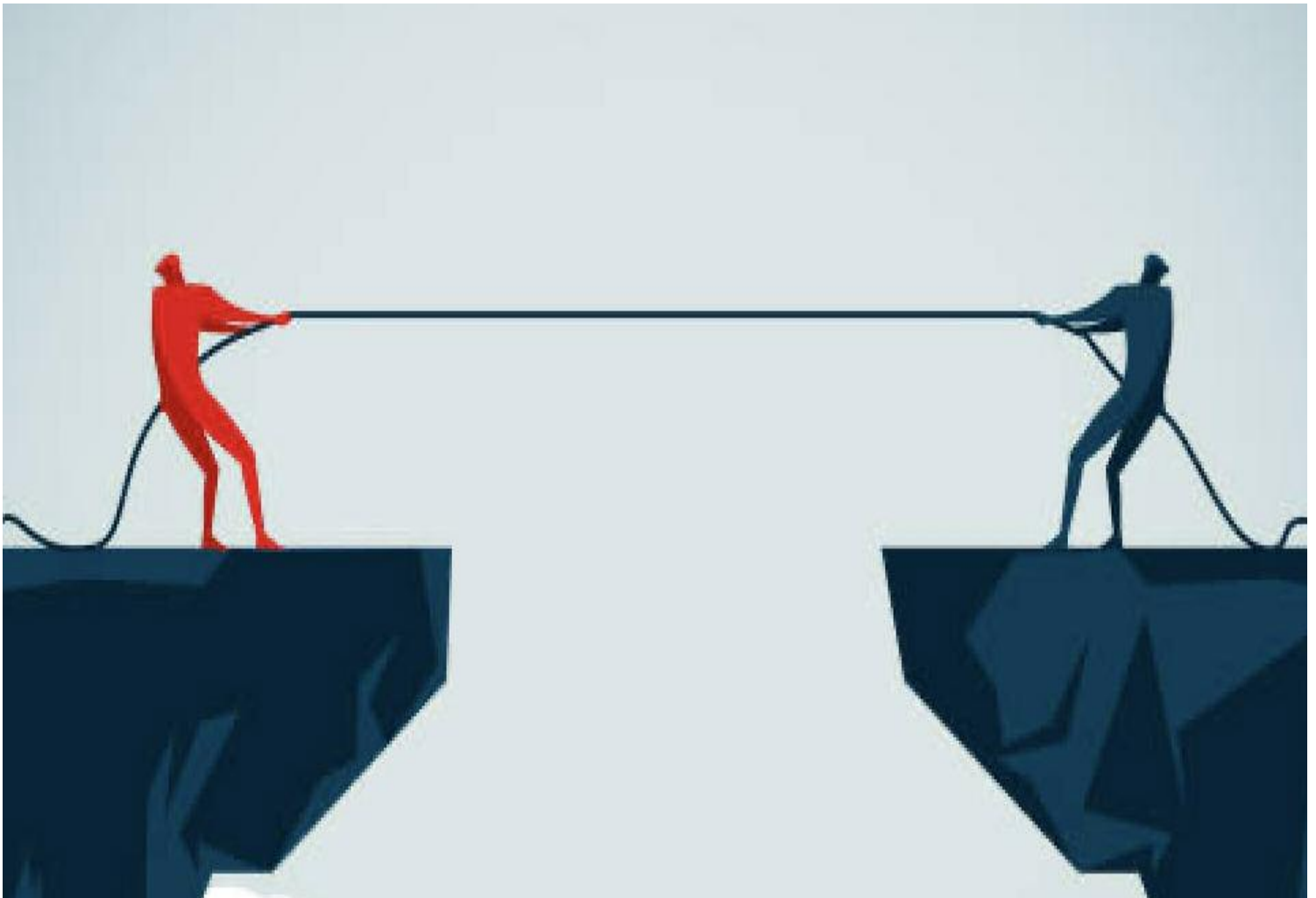


*By John Valeriote, Executive General Adjuster &
Director, Appraisal and Claim Services,
Crawford & Company*

Stuck in a Claims Tug of War?

It is said that a good compromise is when all parties involved in a dispute are dissatisfied with the result. This is often the case when involved with an insurance claim. The ultimate goal of all parties involved in an insurance claim, including an insured, the insurer and their adjusters, is a fair and efficient quantification of lost or damaged insured property.

In a preferred claims scenario, the insured suffers a loss, reports it to their insurer and coverage is promptly determined, and the insurer issues payment for a fair and reasonable sum for the value of repair or replacement. The insured is indemnified, enabling him/her to return to a financial state comparable to what he/she was in prior to the loss.



However, not every claim follows an ideal path and there are a few that do not progress far at all and stall shortly after the loss is reported. In such instances, the insured and the insurer reach a roadblock in agreeing upon either the scope of damages and/or the costs associated with the necessary repairs or replacement of damaged property.

When this happens, there are often numerous exchanges of communications, many meetings, escalations, unwanted media attention and even litigation can result. This is why it is crucial that any dispute resolution process runs as smoothly as possible.

When the claims process break downs both parties are left at a disadvantage. The insurer has an unhappy client and, in turn, devotes their time and effort trying to satisfy them, while the insured continues to suffer from the loss and feels frustrated and disillusioned with the service provided.

What should be done if this occurs? There are a few options that can be explored in such instances; however, more often than not the dispute ends in litigation. One of the lesser known – and arguably under-utilized – options is to invoke the appraisal process provision, which is the dispute resolution mechanism contained within all property insurance policies.

What is Appraisal?

Appraisal is a method to determine the fair price, valuation and estimation or worth for lost or damaged insured property, when there is a disagreement between the insurer and the insured on the value of insured property, salvaged insured property and the amount of an insured loss. If it is properly invoked and completed the amount of loss is binding on



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Although appraisals are less formal than other types of arbitration, they are still conducted according to a prescribed flow.

both the insured and the insurer.

The Statutory Condition contained within every policy wording in Ontario is as follows:

*"11. In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under **The Insurance Act** before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no rights to an appraisal until a specific demand therefore is made in writing and until after proof of loss has been delivered."*

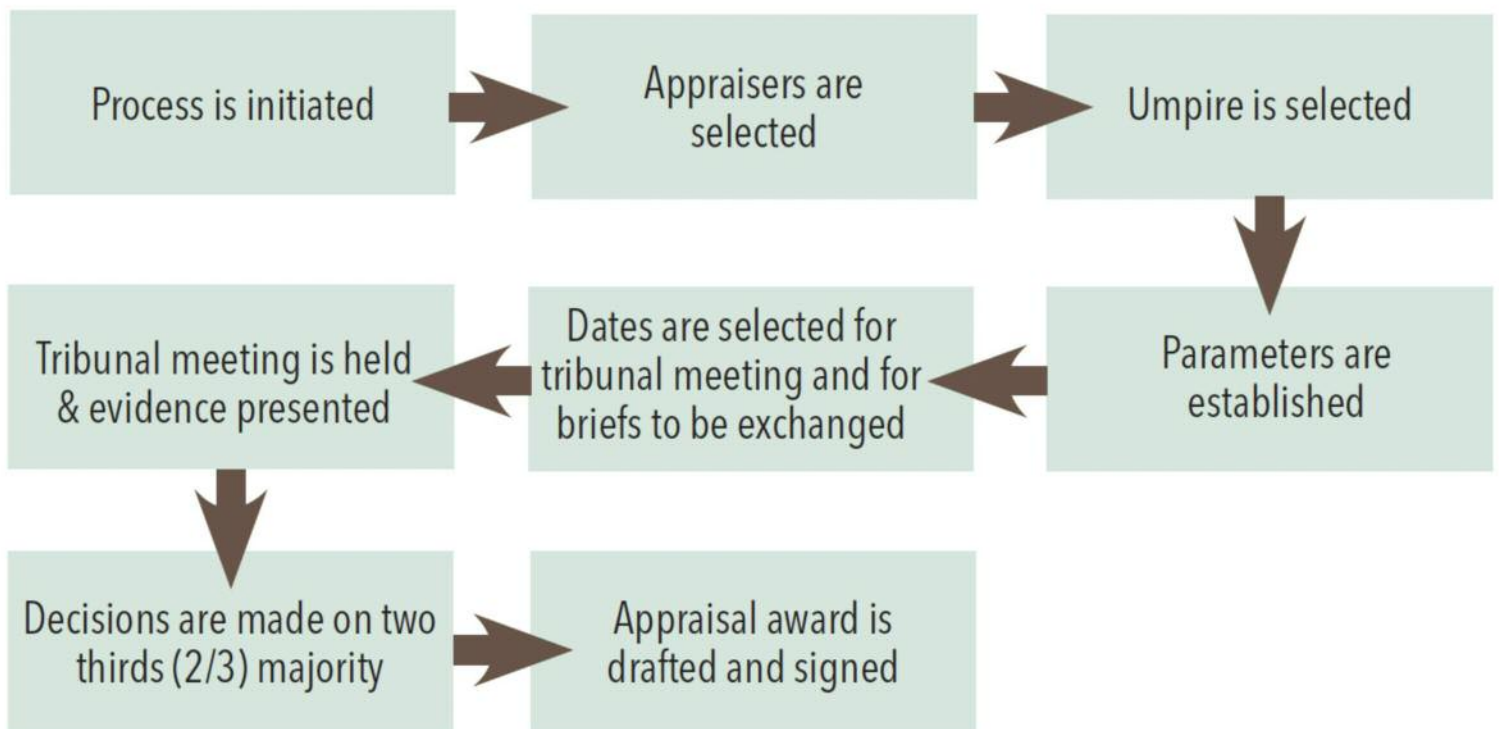
How does Appraisal work?

Although appraisals are less formal than other types of arbitration, they are still conducted according to a prescribed flow.

In summary, appraisal is a varied type of dispute resolution in which each party (insured and insurer) appoints an appraiser to act on their behalf. The appraisers can be anyone from lawyers, insurance adjusters, experts, to the policyholder themselves.

The appraisers then appoint an umpire who is a neutral third party and acts similarly to an arbitrator in facilitating the process and establishing the parameters for the appraisal. Both sides then present evidence and the reasons supporting their position. One way where appraisal differs from litigation is once any two of the three individuals agree upon a quantum and sign the Appraisal Award, the matter is resolved.

Usually, when two parties agree there is minimal to no need for further negotiation. As long as one appraiser can get another member of the tribunal to agree with them (usually the umpire) they will be successful. Interestingly,



the Umpire is not bound by either position and can suggest an alternate figure for amounts claimed and if one of the parties agrees the matter is decided with no further discussion, which considerably differs from traditional legal processes.

What is the Actual Appraisal process?

To begin the process, a Proof of Loss must be filed. Essentially, a letter (notice) by either the policyholder or the insurer is all that is required to start the appraisal process. In this letter the party making the demand formally identifies who will be acting as the appraiser in this process. The other party then has seven business days to appoint its chosen appraiser. Once both appraisers are elected, they move forward with full authority of the respective principals to agree on the amount of loss in accordance with the terms of insurance regulator of that province.

If their efforts do not yield a full agreement, an umpire is appointed to settle their differences. It is often required by provincial insurance regulators that within 15 days both sides must agree on an umpire. Alternatively, a judge can appoint an appraiser if a party fails to participate. In situations where an insurer triggers this mechanism and the policyholder refuses to participate in the process, the insurer can petition the court to appoint an appraiser. An itemized decision agreed by two of these three will set the amount of loss. An Appraisal Award is binding, and each party pays its own appraiser and bears the other expenses of the appraisal and umpire equally.

The purpose of the appraisal process is to come to a resolution on scope and quantum disputes. It is worth repeating that the tribunal's determinations are final and binding. The only time the Tribunal's decision would be overturned is if there is suspicion or evidence of fraud, collusion or bias. Any review of a decision by the court would not address the underlying amounts determined by the Tribunal.

The Key Players

The primary players in the appraisal process are the appraisers, one appointed by the insured and the other by the insurer. The appointed appraiser serves as an advocate for the party they represent and the Umpire works to ensure a relatively smooth process and mutually beneficial outcome.

Unlike arbitration, the use of an Umpire is not necessary and is only called upon for when the two appointed appraisers cannot come to an agreement. The Umpire acts to reconcile the differences between the two appraisals and ultimately determines the property's value.

The Umpire does not have to establish the property's value to a specific burden of proof and neither party is obligated to "*tip the scales*." The umpire simply takes all available information and assesses a value that is usually consistent with the original appraisals.

As there is no burden of proof in the appraisal process, there are no evidentiary rules. Essentially both parties agree on the matter by which informa-



The purpose of the appraisal process is to come to a resolution on scope and quantum disputes.



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tion regarding the loss is compiled and bring forward validating information or expert testimony. Specialists or experts, including engineers, architects, artists, etc., can play a role in the Appraisal process.

Conclusion

Within the last decade, the appraisal process has stepped out of the shadow cast by other forms of alternative dispute resolution methods and legal processes and taken on a life of its own. In the context of insurance, it has become the methodology of choice for resolving disputes over value of property and the amount of an insured loss.

Appraisal has become a significant form of dispute resolution and the past and recent case law should be a useful reminder to insurers and policyholders of the necessity to remain alive to the options available to them when faced with a claim where the value of the property loss is in dispute. Through the use of this provision of the Insurance Act the valuation process is both streamlined and expedited. Litigation and its associated costs are avoided.

The appraisal process is one of the best kept secrets within the insurance industry, and its utility in addressing and resolving claim disputes concerning quantum is unequivocal. Adjusters, lawyers and claims personnel should consider appraisal the next time they find themselves in a battle over the quantum of damages.



John Valeriote is an Executive General Loss Adjuster based out of the Toronto Crawford & Company office, with claims extending throughout Canada. He is a graduate of McMaster University, and successfully received a diploma in Marketing Management from Humber College.

Prior to commencing his career with Crawford & Company, he gained corporate, commercial and specialty claims experience for more than 10 years as a manager/owner with Upper Canada. Currently, John is handling a wide portfolio of industrial and specialty claims, including Professional Liability claims and Large Commercial losses.

John is National Director of the Mediation & Appraisal Services for Crawford and represents Insurers across Canada as their designated representative to quantify damages. John is an expert in the Appraisal process and speaks regularly to groups on the process and how to best participate in Appraisal/Mediation.

With over 28 years' of industry experience John is also licenced in every province for property and liability claims. He has extensive and comprehensive experience handling complex and large property and liability losses including CGL, Products Liability, Errors & Omissions, Builder's Risk and Wrap-up Liability. Many of the claims he's handled were large loss, in excess of \$1 million.

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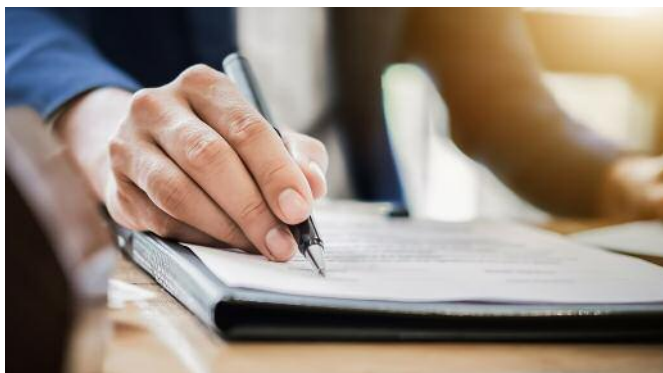


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The Long and Winding Road Between the SABS and the WSIA



Insurers can be faced with claims for statutory accident benefits with potential worker compensation benefits complications. A common example occurs with accidents involving transport truck drivers. Such claims may involve claimants who could be entitled to receive workers' compensation benefits under the *Workplace Safety and Insurance Act, 1997 (WSIA)*. In these claims, the Insurer needs to determine whether the claimant is precluded from receiving statutory accident benefits based on entitlement to workers' compensation benefits.



*By George Kanellakos,
Partner, Kanellakos Ballard LLP*

The Long and Winding Road Between the SABS and the WSIA

Section 61(1) of the *Statutory Accident Benefits Schedule* (the “SABS”) states that an Insurer is **not** required to pay accident benefits where the insured, as a result of an accident, is entitled to receive workers compensation benefits. There are two main issues to be considered. The first is whether the claimant was a “**worker**” at the time of the accident. The second issue is whether the claimant was in the “**course of employment**” at the time of the accident.

Unfortunately, these types of claims are never clear cut, and can be further complicated if the claimant **elects** to commence a Court action.



Section 31(1) of the *Workplace Safety and Insurance Act* (the “WSIA”) provides that an Insurer from whom SABS benefits are claimed under section 268 of the *Insurance Act* may apply to the Appeals Tribunal for certain determinations.

In short, this Application is brought pursuant to subsection 31(1) of the *WSIA* for adjudication and determination of the following question:

(a) Is the claimant entitled to claim benefits under the insurance plan pursuant to the *WSIA* in respect of the motor vehicle accident?

Pursuant to section 31(1) of the *WSIA*, the *WSIAT* has exclusive jurisdiction to determine the following issues:

- i) Whether, pursuant to the *WSIA*, a person’s right to commence an action is taken away.
- ii) Whether the amount that a person may be liable to pay in an action is limited by the *WSIA*; or
- iii) Whether a person is entitled to claim benefits under the *Workplace Safety and Insurance Plan*.

Section 13(1) of the *WSIA* provides that a “**worker**” who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.

In the Course of Employment:

Firstly, when looking at the claim, it is important to consider the circumstances in which the claimant was injured. If the claimant was employed and was injured in the course of employment, there may be entitlement to benefits under the Ontario worker’s compensation scheme.

Document 15-02-02 of the Board’s Operational Policy Manual, “**Accident in the Course of Employment**”, states, in part:

A personal injury by accident occurs in the course of employment if the surrounding circumstances relating to place, time, and activity indicate that the accident was work-related.

Time

If a worker has fixed working hours, a personal injury by accident generally will have occurred in the course of employment if it occurred during those hours or during a reasonable period before starting or after finishing work.

If a worker does not have fixed working hours or if the accident occurred outside the worker’s fixed working hours, the criteria

If the claimant was employed and was injured in the course of employment, there may be entitlement to benefits under the Ontario worker’s compensation scheme.

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In most cases, the decision-maker focuses primarily on the activity of the worker at the time the personal injury by accident occurred to determine whether it occurred in the course of employment.

of place and activity are applied to determine whether the personal injury by accident occurred in the course of employment.

Activity

If a personal injury by accident occurred while the worker was engaged in the performance of a work-related duty or in an activity reasonably incidental to (related to) the employment, the personal injury by accident generally will have occurred in the course of employment.

Application of Criteria

The importance of the three criteria varies depending on the circumstances of each case. In most cases, the decision-maker focuses primarily on the activity of the worker at the time the personal injury by accident occurred to

determine whether it occurred in the course of employment.

...

In all other circumstances, the time and place of the accident are less important. In these cases, the decision-maker focuses on the activity of the worker and examines all the surrounding circumstances to decide if the worker was in the course of employment at the time that the personal injury by accident occurred.

Worker or Independent Operator:

If the overall evidence establishes that the claimant was a “**worker**” (as opposed to an “independent operator”) at the time of the accident and injured in the course of his / her employment as a truck driver, then the provisions of subsection 61(1) of the SABS should apply to the claim.¹



As a result, the Insurer should be found **not** liable to pay SABS benefits – provided that the claimant does **not** commence a “*bona fide*” Court action.² That is, the claimant must be able to satisfy a Tribunal that his / her election [to sue] was made on a “*good faith*” basis.

This tertiary issue arises because section 61 of the SABS also states that an insured is entitled to “*elect*” out of workers’ compensation benefits and commence a court action (and collect SABS benefits), so long as the election is not made primarily for the purpose of claiming benefits under the SABS. Of significance, under subsection 61(2), an Insurer is required to pay full benefits to the insured if a “dispute” can be established as to whether workers’ compensation benefits apply.

“**Worker**” is defined in section 2(1) of the WSIA, as “a person who is entered into or is employed under a contract of service or apprenticeship...”.

Worker or Independent Contractor?

The *WSIA* will consider several factors to determine if an individual is a “**worker**” or an “**independent contractor**”, including:

1. The degree of control the alleged employer has over the individual.
2. The opportunity the person has to make a profit or suffer a loss.
3. Any other features of the job that help define the work relationship (i.e., Independent Contractor Agreement).
4. A uniform and/or logo on the vehicle.
5. The responsibility for route selection.
6. The ownership of equipment and tools.
7. Market mobility (the individual’s ability to work for other entities

besides the alleged employer – in theory and reality i.e., how often in the last 6 months);

8. Disciplinary protocol.
9. Source deductions and dealings with CRA.
10. Treatment by the alleged employer of other individuals in a similar position.
11. Ability to refuse work or to send non-pre-authorized substitutes.

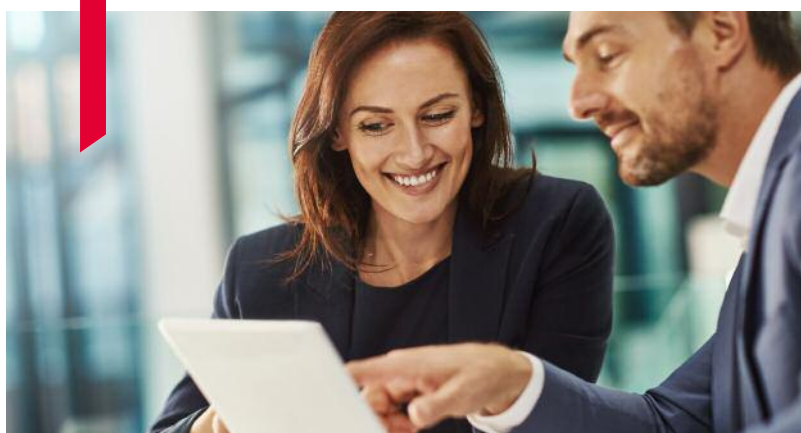
WSIB Policy Documents:

Document No. 12-02-01 distinguishes between a “**contract of service**” and a “**contract for service**”. A “**contract of service**”, or an employer-employee relationship, is one where the worker has agreed to work for an employer, either on a full or part-time basis, for wages or a salary. In a “**contract of service**”, the employer has the right to control

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what work is to be performed, where and when it will be performed, as well as how it is to be performed.

A “**contract for service**”, or a business relationship, is one in which a person agrees to perform specified work in return for remuneration. The employer does not necessarily control how the work is performed, nor do they control where and when that work is to be performed.

According to **Document No. 12-02-01**, if a payer has a continued need for the type of service that the person requires, it is more indicative of a worker as opposed to an independent operator. A payer has a continuing need for service if all persons who perform such services, collectively, spend more than 40 hours a month on average doing the work, or if the work continues full-time for more than four months.

Document No. 12-02-01 of the Board’s Operational Policy Manual establishes the “**organizational test**” as the appropriate test to be used to determine if an individual is employed under a “contract of service.”

The “**organizational test**” involves a consideration of the following factors:

- a) The features and degree of control.
- b) Ownership of the tools and/or equipment necessary for the work.
- c) The opportunity to make a profit or suffer a loss in doing the work; and
- d) Whether the person is part of the employer's organization or operating their own separate business.

Per the Operational Policy, the issue of whether tractor-trailer driv-



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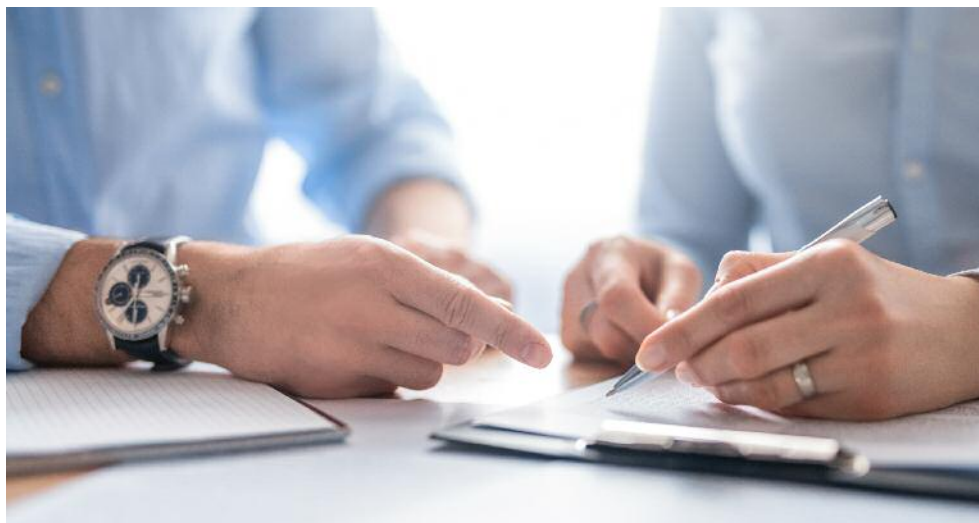


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ers are workers or independent contractors has attracted the creation of a WSIB industry questionnaire directly on point – *Determining Worker/Independent Operator Status Questionnaire – Trucking Industry*.

The questionnaire is consistent with the Act and establishes a standard approach in addressing work-

er/independent operator questions.

The questionnaire focuses on vehicle ownership and reflects the concern that the cost of and the risks associated with ownership are very important factors when determining whether someone is a worker in the trucking industry.

Part 2 of the Questionnaire addresses when owner-operators (tractor-trailer operators that own their own tractors) will be treated as independent operators for workplace safety and insurance purposes. The questionnaire notes that a work relationship indicative of an independent operator contains the following features [(d) and (e) omitted]:

a) The owner-operator pays for the truck and the majority of the equipment or other related property (such as payments for gas, maintenance of the truck, **license** and **storage**) ...



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- b) The owner-operator has the right to exercise a choice in selecting and operating the vehicle and has market mobility in that he/she has discretion to enter into contracts of any duration to transport goods and maximize profits; and
- c) The principal does not have a right to exercise a choice where or from whom products/services are purchased by the owner-operator. Also, the principal does not have the right to exercise control over the owner-operator's operations...

The Insurer will have to investigate the claim and consider all of the above-noted criteria, before it decides to proceed with an Application pursuant to Subsection 31(1) of the *WSIA*.

In the interim, the SABS benefits are payable by the automobile Insurer **pending** resolution of any dispute pertaining to the applicability of the *WSIA* exclusion, if **there is an approved assignment of Workplace Safety and Insurance Board ("WSIB") benefits on file**. In addition, once this form is on file, the Insurer will have an opportunity to be reimbursed from the WSIB, if it is determined that the insured is entitled to receive benefits under the workers' compensation scheme. Unfortunately, the quest for reimbursement from the WSIB can be a slow and cumbersome process. However, this is a topic for a different day.

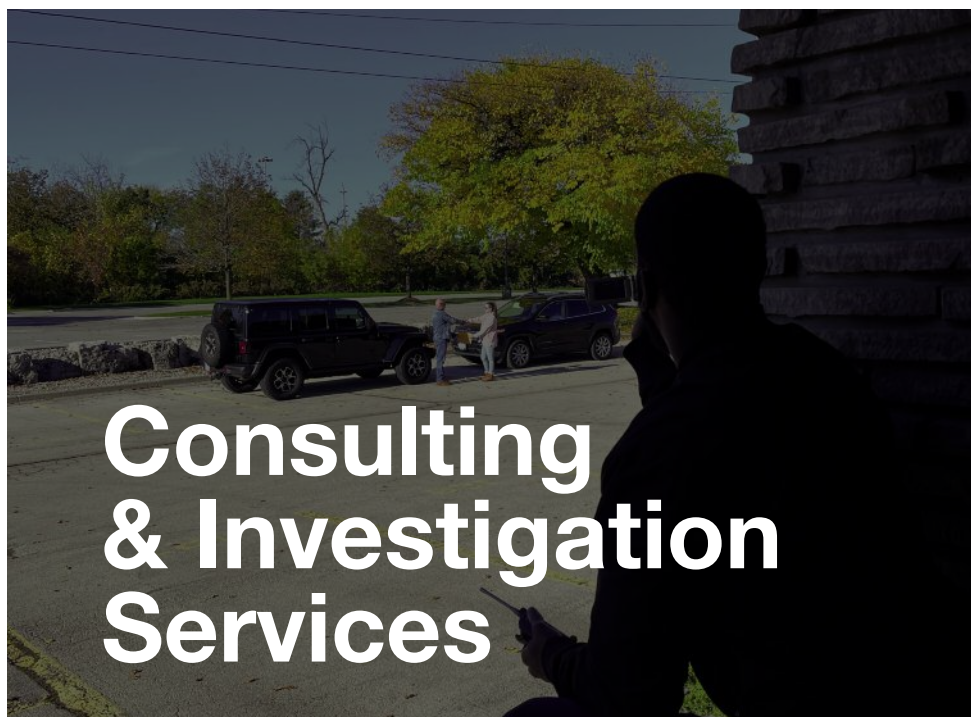
An important early step when investigating the entitlement to the SABS benefits versus workers' compensation benefits is obtaining statements from the claimant and the claimant's employer. However, if the Insurer plans to proceed with a *WSIAT* Application the Insurer should retain a lawyer to conduct an

examination under oath. Many *WSIAT* hearings proceed without *viva voce* evidence and a transcript from the *examination under oath* of the claimant is a key piece of evidence that the *WSIAT* will rely upon to make its decision.

SUMMARY:

In summary, it is imperative that the Insurer obtain an executed

Assignment, approved by the WSIB, prior to paying SABS benefits, in circumstances where the claimant may have entitlement to benefits under the *WSIA*. If it appears that the claimant was a "**worker**" in the "**course of employment**" at the time of the accident, the Insurer can seek those determinations at the *WSIAT*. If the claimant is found to be



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entitled to benefits under the *WSIA* and has not made a bona fide election to sue a tortfeasor for the subject accident, the Insurer can claim substantial reimbursement from the WSIB for the SABS benefits the Insurer was obligated to pay pending the determination.



George Kanellakos attended Osgoode Hall Law School, in Toronto, graduating with his Bachelor of Laws degree in May 2001. George was called to the Bar of Ontario in October of 2002. Since his call to the Bar of Ontario George's legal practice has exclusively focused on insurance defence litigation. George handles both "tort" and first party SABS claims. He also has extensive experience with loss transfer claims, priority disputes between insurers, and WSIAT hearings. Of note, George appeared before the Supreme Court of Canada on April 17, 2015 for a priority dispute matter. George is a founding partner of Kanellakos Ballard LLP


- ¹ The fact that the claimant and the "employer" may classify the driver as an "independent operator" is not determinative.
- ² Of note, the Divisional Court decision of *S.H. Northbridge Personal Insurance Corp.* [2018] O.J. No. 1421 held that the adjudicator at first instance did not err in law. The adjudicator held that "the focus of the legislative scheme is the **good faith** of the election at the time it was made, not at some future date": see paragraph 18.


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CIAA Incoming President Jeff Edge – Insights of Claims Handling

WP took the opportunity to ask former OIAA Niagara Chapter Delegate, now President of The Canadian Independent Adjuster Association (National), about his career in claims adjusting past, present and future. He shares his insights and why the claims adjuster will always be needed but will need to evolve over time in the future.

*By Laurie Walker, CIP, CRM
President of Walker Consulting & Auditing,
Past President of the OIAA and
former Editor of WP Magazine*

Jeff Edge, President of Leading Edge Claims Services Inc., started his career with Adjusters Canada in 1990. Having just finished college and while picking up a friend who was working at Adjusters Canada, Peter Karges invited him to spend a day in the life of an adjuster. He was hooked. He joined the firm and married the “friend” and as they say, the rest is history.

In 2011, having established a loyal and growing following, Edge was asked by key customers to open his own firm. He and his wife opened Leading Edge Claims Services, so they could focus on delivering superior claim services for dedicated clients, and which has now grown to a staff of 10 and covering the Southwestern Ontario Region.

When asked about his most memorable claim, Jeff recalls a total loss fire for an older couple who had just retired to their “dream” lake house. He recalls the lengthy process and the day-to-day discussions and, in the end, at the last delivery of final payment, the couple hugged him with tears a 3 page letter of thanks. It is that kind of claim that makes you understand your true role and what you do as an adjuster that cannot be delivered by a system, automated process or from a cubicle. Losses of this nature require the adjuster to develop an ongoing rapport to satisfy the needs of the policy/insurer and the needs of the policyholder. These losses are devastating and the way in which we manage these claims results in insured retention and excellent reputation.

Yes, there are complex and questionable claims, which he and his

colleagues tend to specialize in. But he still has a fondness for these memorable claims as it validates the role of the adjuster. He recalls a quote from Glenn Gibson, "We help people". This is the epitome of who we are.

When asked about his thoughts about what is the most challenging thing facing the claims industry right now, Edge replied: TALENT. RECRUITMENT. RETENTION. ADAPTATION. Getting good people to enter the claims industry and then to have sufficient access to mentoring so that they learn and grow in the industry and with the employer is a big challenge. Technology advances in claims adjudication is inevitable, and even a good thing to a degree. However, there will always be a need for the human component, there will always be claims which are specialized, complex, sensitive, geographically remote, etc. and they require boots on the ground people who can apply a specialized knowledge of the insurance policy, with an ability to not only investigate but also effectively communicate with people in a vulnerable state in order to quarter back the entire claim for both parties to the contract. A good adjuster is used to adapting.

He concedes that the overall picture of expense vs. service may be a factor in the decision-making process for outsourcing claims handling, but client retention and satisfaction cannot be measured by the numbers. People with serious claims still want to have some sort of face to face contact for explanation and process delivery. "Brokers tell me routinely that the one size fits all - non-personal adjudication does not serve their clients well and is a constant source of frustration for them in terms of keeping them as customers".

Edge was asked if he could tell his younger self anything or give any advice; he responded by saying that you need to learn and adapt every day and be open-minded to change. He believes that the evolution of the adjuster is reliant on our ability to continuously learn from both substantive changes and concepts and through technology and how this can help (or hinder) the claims investigation process.

When asked about the difference in claim handling 25 years ago compared to claims handling in 2022, notably was the increased percentage of unreasonable people and expectations. The immediacy of response and the threat of accusatory approach is completely different. Years ago, people would receive information, review it, consider it and would then discuss or negotiate in a much more reasonable and courteous manner. If there continued to be a barrier, there would be a move toward alternative resolution mechanisms or legal counsel would be sought. Today, the demand for immediate response and unreasonable expectations or outcomes are at the onset more often than before. Frustrations and aggressive natures are much more outward. As such, adjusters need to adapt to ensure that they are responsive and prepared for challenging expectations and ensure they can execute their roles professionally in order to bring resolution.

This is one of the ways in which mentoring can sculpt young professionals by building on what was learned in the text book and then bringing real world experience into their day to day dealings.

Claims handling will continue to evolve over time. The industry faces continuous challenges with climate change and the ferocity of events.

As CIAA President, Edge notes that the CIAA continues to lobby the provincial governments to allow a seamless process for adjusters to provide loss adjustment services across the Provincial borders without the need for issuance of individual provincial licenses following CAT events. In the past, there has been a failure to fully utilize available and qualified Canadian adjusters in CAT responses. It is hoped that by aligning seamless licensing with greater awareness of their availability with the insurer markets, we can entirely facilitate Canadians assisting Canadians when the need arises.

Jeff has been volunteering his time and effort to the overall improvement of the loss adjuster industry in Ontario and now Canada. Congratulations Jeff, best of luck in all of your endeavours!



Laurie Walker is the President of Walker Consulting & Auditing. She is both a Past President of the OIAA and former Editor of WP Magazine. She has been an adjuster for more than 35 years and now moved into a Compliance Auditor and Claims Specialty trainer. She works with more than 25 Insurers and Brokers to develop and review operational matters, claims matters and procedural oversight.



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Get to know your Chapter

OIAA Thousand Islands Chapter

The Thousand Islands Chapter is very fortunate to have the support of both professionals inside our area as well as professionals who attend from the Ottawa and Toronto area. My presidency which started in 2019 has been unlike those before due to the pandemic and our inability to meet in person for meetings, luncheons and our yearly events. Even though we have not been able to meet in person our current Executive, which includes Ben Baldwin (Vice President), Sarah Graves (Treasurer), Erin Sheard (Secretary), Alex Robinson (Director) and Duncan Southall (Delegate), met by Zoom and remained dedicated. Our Social Directors, Lynn Forestell, Brent Pincombe, Conor Paxton, Glenn Hendry, Nathan Peters and Nick Shunock, complete our team with support and ideas which better our Chapter.

Unfortunately, due to the pandemic we have had to cancel our events. At Christmas time, our Chapter would typically donate money and food to local food banks in both Kingston and Belleville. Sadly, a member of our local adjuster community at HTM Insurance Company, Brandon Watt, passed away this year. He will be dearly missed by many who had the pleasure to work with him. This year our Chapter decided to donate to his family.

Our golf tournament which was scheduled for Sept. 22/21 at The Colonnade Golf Club almost took place; however, weather did not cooperate with torrential rains on the day of the tournament. A small group were able to socialize and get caught-up.

We are optimistic that 2022 will be different and we are looking forward to the year ahead. As long as things don't change, we look forward to planning and attending in-person events and social gatherings as well as our annual golf tournament in September and Christmas event.

After elections in April, we are excited for a "Post Pandemic" get together to welcome everyone back. New members are always welcome to join our association and/or join our Executive team. If you are interested, please reach out to any member of the Executive or check out our website at wearetiaa.com.

On behalf of the TIAA Chapter we look forward to seeing you all at upcoming events including the "Come Back To Town" Claims Conference.

Shari Hamilton

President, Thousand Islands Chapter



Photo courtesy of Meg Dowd

Insurance Investigations: Getting the Most Value for Your Investment





As with all services that insurers rely upon when resolving claims, the goal is to get as much value as possible for your investment when conducting an investigation. Not only that, but when it comes to using private investigation services as a tool to mitigate a claim, time is quite literally money! To make sure that the investment in an investigation is worth your while, there are some key tips and tricks to employ throughout the process. By managing expectations, being mindful of the scope and timeline of the investigation, providing and maximizing appropriate budgets, keeping open lines of communication and remaining flexible throughout the process, you can feel confident that your money is well spent!

*By Randy Henderson, Manager,
Client Relations, Larrek Investigations*

Insurance Investigations – Getting the Most Value for Your Investment

Expectations

Contrary to popular belief, an investigation may not necessarily provide a defining moment or a “silver bullet” that dramatically impacts the outcome of a claim. Most often, and just as impactful, the results of an investigation will corroborate other sources of information gathered during the claims adjusting process. Having said that, sometimes you get lucky!



Ultimately, in any claim there are two paths: one leading toward denying the claim and one headed toward some form of settlement.

Investigative services are meant to provide clarity at various decision points along either chosen path, documenting the substantive evidence to justify those decisions. In some situations, the output of an investigation may even provide the impetus to cause a seminal change in the direction of the claims process – it's best to keep an open mind!

Along with clients having appropriate expectations for the outcome of the investigation, it is also important to document expectations at the onset of the assignment for the service provider. This includes important pieces such as investigation scope, timeline, budget, and the level of communication required throughout the assignment.

Documenting your expectations and the parameters of the investigation for the service provider need not be overly exhaustive. By being concise and clear with your expectations upon referral, you will have peace of mind that the claims resolution process will stay on track and on budget. This will ensure the least likelihood of major surprises or delays along the way. With experience, referring assignments will become second nature and you will feel comfortable varying your expectations depending on the specific nature of the claim being investigated.

Documenting your expectations and the parameters of the investigation for the service provider need not be overly exhaustive.

Scope & Timeline

The scope of the investigation is inextricably intertwined with the timeline and provided budget. Thus, setting the scope, timeline and budget should always incorporate some level of dialogue with the service provider. Some key points to keep in mind:

- If you are in a time crunch, keep the scope tight and recognize that you may revisit the assignment for additional investigation later.
- If the scope is unnecessarily broad, expect that more time may be required, and the budget required may be higher than expected.
- If the scope is unique and/or requires a high level of specific coordination or expertise, be prepared for an extended timeframe and to provide a larger budget.

There is usually a trade off on at least one of the three primary parameters (exhaustive results, speed, and cost). To have a comprehensive investigation done in an extremely short period of time on a shoestring budget is neither realistic nor fair to you or your service provider.

Certain investigations can begin in short order and be completed and reported on in a rather straightfor-



Generally, the first attempt at surveillance is what will set the foundation for subsequent investigation.

ward manner. These usually involve database searches as well as some social media/open-source intelligence (OSINT) investigations.

If the investigation involves surveillance, there will always be an amount of lead time while background information is verified, social media is reviewed (where possible) and a plan for surveillance is developed.

Unfortunately, it is not like in the movies where an investigator gets a lead, grabs their coat and keys, and races out the door to catch the subject! Keeping this in mind, timelines need to incorporate the three phases of an investigation:

- Preparation
- Performance
- Reporting

The relative time required for each phase will change from one claim scenario to another. In many cases, the evidence needed to provide a suitable volume of evidentiary material to satisfy a court may require multiple investigation attempts. Generally, the first attempt at surveillance is what will set the foundation for subsequent investigation.

This is where proper initial assignment planning helps bear fruit in terms of having the best opportunity (location, time of day, frequency and type of activity) for obtaining admissible evidence to be able to base a decision on.

Being realistic when specifying the scope and timelines required when referring your assignment to a service provider can avoid disappointment and disagreements later in the process.

Budgeting

For most services (legal, accounting, engineering, adjusting), including investigations, a sequential approach will likely yield the best value for your investment and create decision points which provide an element of control for the client and collaboration with the service provider. Most investigation services are billed on an hourly basis, with even those that are quoted on a per-incident basis having an underlying hourly rate when setting the fee. Let's use this purely hypothetical scenario to illustrate how a sequential approach can be beneficial when commissioning an investigation:

- The assignment is to conduct surveillance on a claimant who has indicated the injuries sustained in an auto collision has left them with the inability to engage in any amount of physical activity.
- The claimant lives with their par-

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ents in an urban environment. This is confirmed with various searches prior to commencing surveillance.


- A budget is authorized for surveillance of the parents' residence over a period of 3 days.
- After a period of surveillance, there is no indication that the claimant is at the residence. The claimant's parents have come and gone numerous times and although it is a warm summer day, there has been no sighting of the claimant outside of the residence.
- An update is provided to the client and surveillance efforts are temporarily suspended. The budget and scope are revised to conduct an in-depth social media/open-source intelligence (OSINT) search on the claimant, further delving into the claimant's presence and connections online.
- This search uncovers recent photos of the claimant at an outdoor licensed venue in a nearby town. Other recent photos show the claimant at a cottage with other individuals, with comments indicating that they are currently vacationing there. Additional searches confirm the location of the property, and the owners of the cottage were noted to be Facebook friends with the claimant.
- With this information, an update is provided to the client and the scope and budget are reallocated once again to proceed with surveillance of the cottage property over the course of 3 days (Friday, Saturday & Sunday).
- The claimant is documented living at the cottage during the period of surveillance and participating in various outdoor activities, such as walking a dog, attending shops in a nearby town, and playing outdoor sports with friends.

This scenario shows how timely communication between the client and investigator, and a sequential mindset, can enable a beneficial collaborative approach during critical decision points of the investigation. This allows for a focused but flexible scope, timeline and budget, which ultimately benefits the claim. At each step of the process, the focus should be on addressing the need (scope) within the most realistic timeframe (speed) and with an appropriate budget (cost).

Communication

Communication during the investigation process must be timely and ongoing. Often, an investigation requires input from the client in almost real time as the investigation unfolds. A 24- or 48-hour lag in responding might reduce the efficacy

Other recent photos show the claimant at a cottage with other individuals, with comments indicating that they are currently vacationing there.

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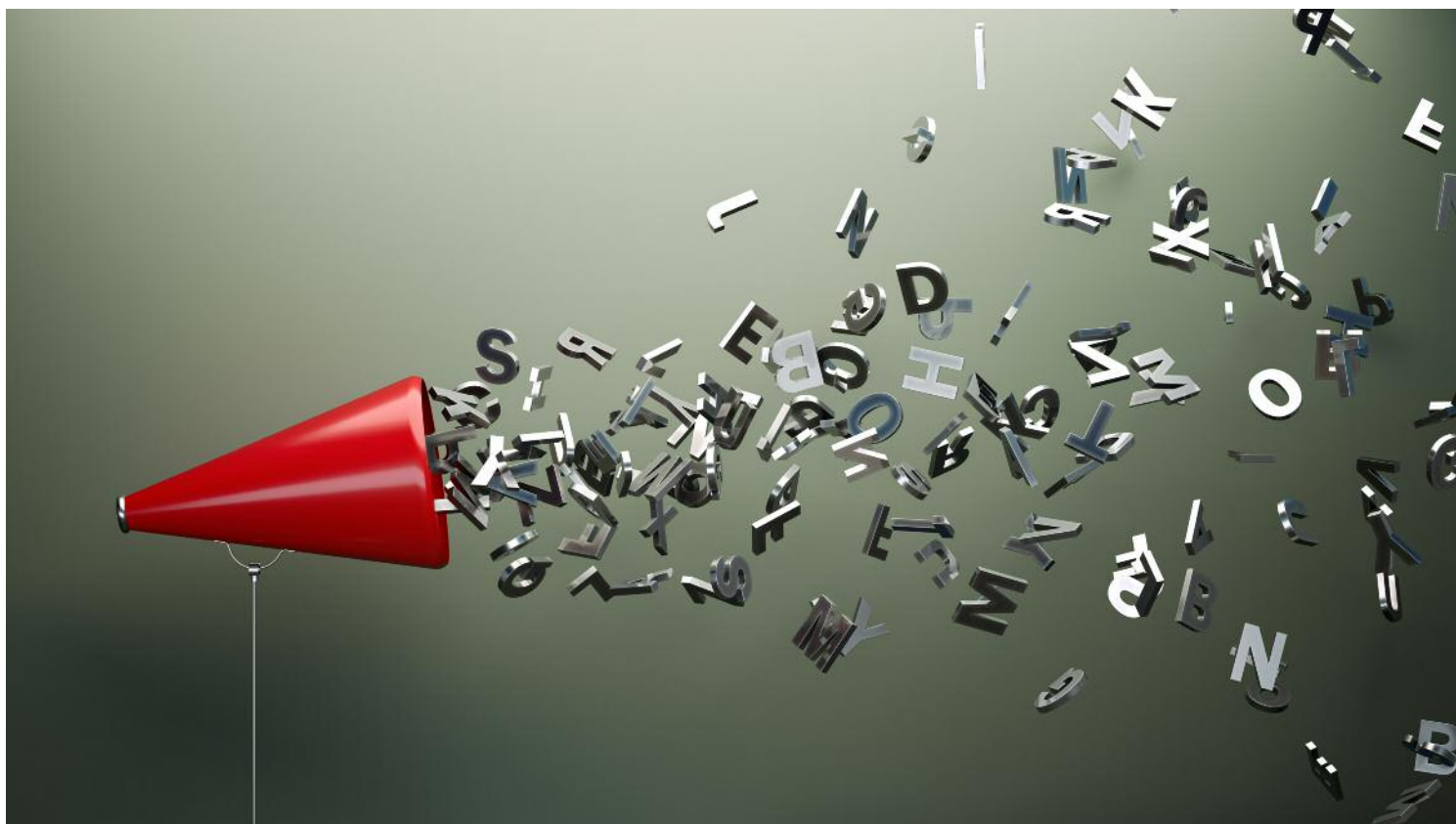
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of the work and derail the expectations that were set initially. This in turn could affect the budget and require more direction from the client down the line!

On the other hand, if there are too many layers of communication between the investigator handling the assignment and the client, this can cause confusion or delays that impact the success and thus value of the investigation. In situations where there may be multiple people involved in a complex investigation, it may be preferable to have a central point of contact on the part of the service provider. This will help to ensure protocols are in place and defined with the purpose of ensuring the assignment stays on track. Think of it as a project manager overseeing all of the moving parts of the investigation.

For a successful investigation on the communication front, set clear expectations at the start of the assignment and ensure that both sides respect those. As always, be ready to adjust those expectations as the assignment evolves!

Flexibility

Tips and tricks aside, there is no one-size-fits-all approach to investigations. Flexibility is the name of the game! Prepare to adjust the scope, timelines, and budget of the investigation as it unfolds. This goes both ways – it can mean reducing or increasing any of those parameters alone or together. A client's ability to make these adjustments will develop with experience, but they are also only as good as the timeliness and quality of the input from the service provider.

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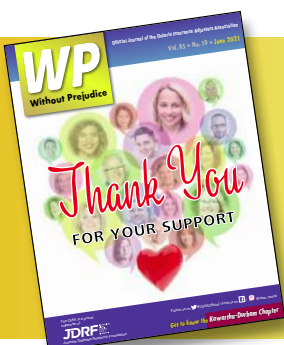
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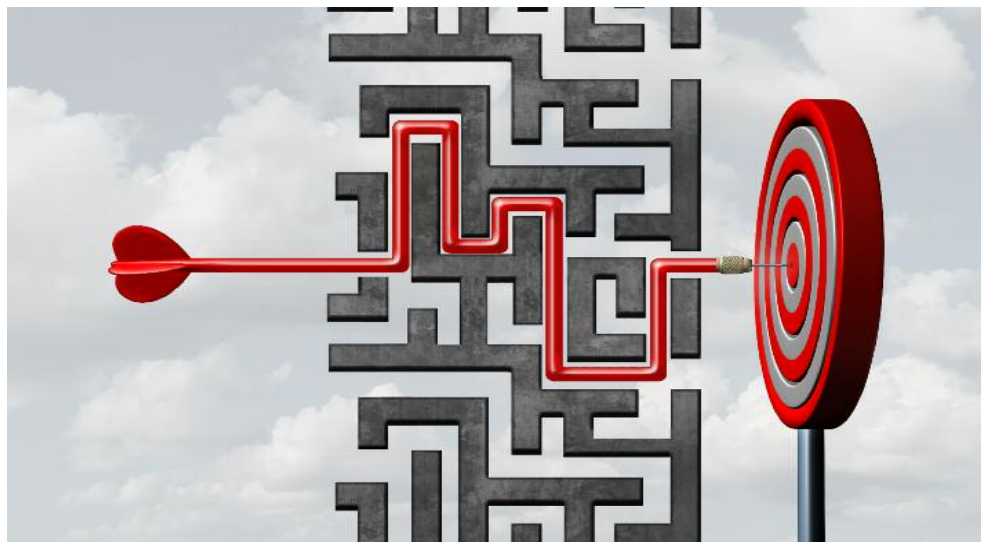
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Flexibility might mean expanding resources for surveillance, providing additional information, changing the scope of the investigation, or simply knowing when to end the assignment. Remember, being flexible does not result in a loss of control! This comes back to that sequential approach to the assignment discussed earlier; having decision points enables the client to be part of the investigation process. Together, the client and the service provider can work together to make the best decision for moving forward down one path or the other, or even changing paths based on new evidence.

Summary

Getting the most value for your investment with investigation services requires diligence and collaboration. It could also require a paradigm shift in how companies work together. A level of trust needs to develop over time, based on ongoing dialogue between parties regarding the scope, timeline, and budget of the assignment. This ongoing dialogue will help to ensure that each party clearly understands the expectations for the assignment and the overall service being provided. With this in place, your investigation service provider can strive to deliver high quality work within scope, on time and within budget!



Randy Henderson is a member of the Client Relations team at Larrek Investigations. Randy has over 30 years of progressive business-to-business marketing experience in Fortune 500 corporations and entrepreneurial ventures. Prior to joining Larrek, he was focused on helping a forensic engineering services provider re-brand, re-focus and re-engage the property and casualty insurance market. Randy has specialized expertise in developing client-focused, strategic and operational partnerships with the goal of a positive experience for everyone involved. His professional mantra for the business services industry is "on-time, in-scope, on-budget". Larrek is a full-service investigations firm serving property & casualty and life & health insurers as well as a range of law firms and corporate clients across Canada.

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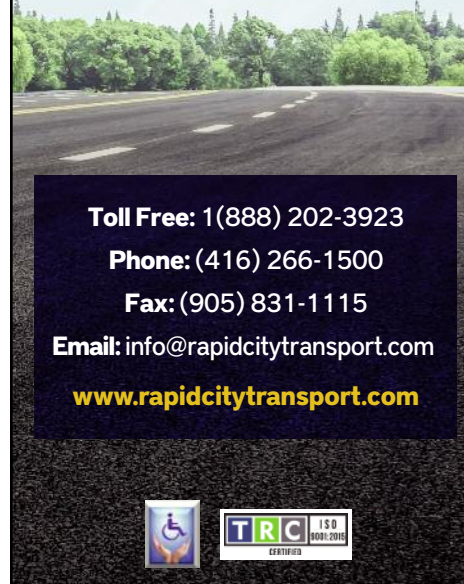
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The Importance of Empathy: Making the Policy Holder Feel Heard





When it comes to communicating with a policy holder, listening is very important. By listening, you can proactively diffuse a stressful situation, make the policy holder feel more comfortable, and facilitate the claims process for everyone involved.

However, in order to make policy holders feel like they have truly been “heard,” you must do so from a place of authenticity – and in order to be genuine, you must be empathetic.

By Dara Banga, President, DSB Claims

The Importance of Empathy: Making the Policy Holder Feel Heard

When a person makes a claim, it's important to remember that you don't know what is happening in their personal life – how much stress the claim is causing them – or how much it will impact their family + their day-to-day quality of living.

Different claims have different impacts – so in order to connect with the policy holder, it's important to listen carefully to his/her story as an individual.

When you hear their story with an empathetic ear, it becomes possible to discover what is important to them – and when you can acknowledge what is important to them, you can give them the reassurance

they need: "I will help you with the issues surrounding this claim that are most significant to you, and your situation."

A good example of this is when we responded to a claim made by a policy holder who reported a flooded basement. When we arrived, the policy holder was mostly upset about a wedding dress that had been ruined. Because we were truly empathetic to her concerns, we were able to acknowledge the dress above all else, come up with a plan, assess the damage to the dress – and get it cleaned + returned before her wedding day.

A wedding dress may not be top

priority for other policy holders – and so its importance may have been overlooked by a claims administrator who was not truly listening. However, by understanding and acknowledging what was important to this particular policy holder, we were able to give her the empathy, comfort, and solutions she needed... which made her feel heard.

Another example of the importance of listening with an empathetic ear occurred in 2005, when there was significant flooding throughout Toronto. At the time, we received a call from a broker partner who let us know that his clients had a flooded basement. These clients were an eld-



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erly couple, who were terrified. They didn't know if they were covered for the flooding, and they thought they would have to mortgage their house to get repairs. They were unsure of what to do, unsure of the next steps, and unsure what to expect.

Because we were able to listen to them with an acute sense of empathy, we were able to hear their concerns and assure them that they had been paying their premiums, that they would be covered, and that we would help them every step of the way. In this case, step one was giving them the comfort they desperately needed – and then we went on to manage the claim for them + bring a contractor in to make repairs.

For us, the end of a claim is bitter-sweet. Whether we have relationships with policy holders for months,

or hours, we get to know them. We meet their families, and we get involved. We truly care about them, and the impact that we will make on their lives.

Over the years, people have come to expect this level of service from DSB Claims; and the depth of this service is made possible by the fact that to us, this is much more than a "job." Each individual person truly matters – and we feel that we are only as good as the last empathetic claim experience we delivered, by making the policy holder feel heard.



As the President and Chief Adjusting Officer of DSB Claims, Dara Banga is the leader

who planted the service stake in the ground when he established the company in 2012. Dara had 14 years of experience in the insurance industry so he recognized the need for a premier service model. "Most adjusting firms focus on volume and speed. We focus on people and the facts. When a policyholder's claim is well-managed, the likelihood of renewal is high. We want to be the firm that inspires business retention." In the fast-paced, dollar-driven industry of insurance claims adjusting, Dara and his team at DSB Claims are defined by their unwavering focus on service and quality.

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Final Report

Duncan Southall, Thousand Islands Chapter Delegate

After relatively low claim volumes in 2021, the Southeastern Ontario winter weather reminded us of its many forms. One day brought extreme cold warnings and burst pipes. The next we awoke to structures collapsing under the weight of snow. Mix in a windstorm and volatile freeze-thaw conditions – the result was a busy winter for adjusters. These are the perils that adjusters are accustomed to managing.

The pandemic is not.

Having lived through two years of a pandemic, everyone is becoming familiar with unpredictability in their lives. As property adjusters, we are also used to a certain level of professional instability. By nature, our day-to-day lives are chaotic, but the pandemic added a separate layer of complexity to claims. We have seen first-hand that the pandemic has added turmoil to an already stressful claims process.

For a claimant, a flood or fire at their home or business is a hardship itself. But how does a business owner cope with a claim if their business has already been in-and-out of lockdowns? And how can a parent deal with a fire claim while trying to manage online learning for their children? There may not be a solution for these scenarios within an insurance policy. These challenges cause added stress for the claimant and require more care and attention from the adjuster.

The spring and summer won't bring relief from the typical perils. For adjusters in Southeastern Ontario, the warmer weather brings different challenges – and yes – more claims. But with restrictions and mandates being lifted, we are hopeful that our day-to-day lives will become more stable. A claimant is better prepared to cope with the stress of a flood or fire when there is a certain level of normalcy in the rest of their lives. While our job may be to manage a claim, the pandemic is a peril that has felt out of our control.

There will always be pressure and anxiety that comes with a property damage claim. As we move further from the pandemic, let's hope the perils are the ones that adjusters know how to manage, and not the ones we don't.

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We would love to hear from you!

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THE WP RADIO

PODCAST NETWORK

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

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