

W/P

Without Prejudice

Official Journal of the Ontario Insurance Adjusters Association

Vol. 87 • No. 2 • **October 2022**



"Come Back To Town"

**2022 Provincial Claims Conference
October 4th and 5th, 2022**

**At the Metro Toronto Convention Centre
and InterContinental Toronto Centre**



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OIAA TORONTO DELEGATE By-Election 2022

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

We are seeking nominations for the following Toronto Delegate positions. One 2-year term ending July 31, 2024. One 1-year term ending July 31, 2023.

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

If you are an OIAA member or know of an OIAA member interested in running for this position, please contact **Rhu Sherrard** at rhu.sherrard@scm.ca.

The candidates are: **Natalie Barrow** and **Madhuri Ghosalkar**



Natalie Barrow, CIP. Senior Risk Management Specialist at Metro Ontario Inc. A professional with passion for the insurance industry. I earned my CIP Designation in June 2021 and never looked back! Intensely working files from start through to mediation or pre-trial. I handle an extensive array of injury claims under Commercial General Liability. It would be an honor to be part of the family with the OIAA to contribute and network with the rest of the claims industry. I truly enjoy connecting with the professionals in our industry who can offer some great inspirational perspectives. We all work together towards the same goals.



Madhuri Ghosalkar, B. Pharm, has 6 years of experience in insurance claims. She has dealt with Life, health, auto and property claims in that duration. Currently, she works as a claims adjuster in Claimspro. She started working in Life Insurance claims investigation/SIU in India in 2017 and moved to Canada in 2019. She started her insurance journey in Canada with Business - Property & Casualty from Conestoga and has 9 CIPs. She believes that "insurance helps people".

Elections will be held on October 6, 2022. Go to oiaa.com for details.

CONTENTS



8 *Eyewitness Reliability: Survey Responses of Distance and Speed Estimates in Real-World Crash Tests*

30 *Dealing with a Self-Represented Litigants? Handle with Care*

36 *The Magic of Mentoring: A Partnership That Makes a Real Difference!*

44 *COVID-19 Subsidy Programs and the Impact on Business Interruption Losses – Saved Expenses*



Regular Features

President's Message	4
OIAA Executive Council	6
OIAA Chapter Executive	54
Advertisers' Index	55

What's Happening

2022 Toronto Delegate By-Election Announcement	2
OIAA 2022 Holiday Party Announcement	5
2022 Student Bursary Announcement	20
2022 Claims Conference Announcement	22
Claims Conference Sponsorships Announcement	26

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Kyle Case, FCIP, CRM
President, OIAA

President's Message

Summer has seemingly come and gone and with each day it feels that we are returning to a bit more of a normal state. Kids are back in school, people are back in offices, and at long last, our OIAA family is soon to be together again in person at the Come Back to Town Claims Conference. If you have not yet registered, don't delay, there is still limited capacity to the Kick-Off on October 4th and Dinner on October 5th. As always, the Tradeshow and Seminars are free to attend for all Insurance Professional and paid OIAA Regular or Social Members. We are so excited to welcome you all back to town!

I am also happy to share that the OIAA is continuing our long-standing tradition of offering bursaries to students that are children or grandchildren of Regular and paid OIAA Members. Three bursaries are available. We know how busy student life can be, and it is without a doubt many students are trying to navigate the return to in person post secondary learning. With this in mind, we have made the decision to extend the deadline for the bursary application to November 2nd 2022 at 5pm. If you know an eligible student, please encourage them to apply today!

September 2022 is certainly going to be remembered as a historic month in Canadian History as we experienced the loss to our long serving head of State, Queen Elizabeth II. Regardless of your views of The Monarchy, I have reflected on what her reign has shown me and have come to one conclusion, the importance of service to others. And in the spirit of Thanksgiving, I extend my thanks to her for her dedication to service.

Giving back to a community can be a rewarding experience, and something that I have and will continue to do in the years to come. The OIAA has been a great way for me to serve the insurance community, but we are always looking for new ideas to help us continue our mission of being a respected provider of continued education and networking opportunities in the insurance claims industry. If you are an adjuster in Ontario who is interested in getting involved, please check out our website at www.oiaa.com.

As we look towards the months remaining in 2022, I am excited to share that the OIAA Annual Holiday Party is returning in person. The event is taking place at the Sheraton Centre Toronto on November 30th 2022 with tickets going on sale October 7th 2022 at 10am. I look forward to seeing you there!

Kyle Case, FCIP, CRM
President, Ontario Insurance Adjusters Association
E-mail: president@oiaa.com

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SAVE THE DATE!

OIAA 2022 Holiday Party

Wednesday,
November 30, 2022
Sheraton Centre
Toronto

Cocktails at 6:00pm
Seated dinner at 7:30pm
Music and Dancing
to Follow

*Online Registration - Tickets go on sale on October 7th, at 10 a.m.
Please visit www.oiaa.com for more info.*

*Sponsorship opportunities are available, please contact Emily Feindel at
emily.feindel@aig.com*

Rooms are available at the Sheraton Centre Toronto. To book your reservation at our preferred rate please visit
<https://www.marriott.com/event-reservations/reservation-link.mi?id=1654265708848&key=GRP&app=resvlink>

Rooms are limited and sell out quickly at the preferred rate.

The cut off date for this special offer is October 31st, 2022.

OIAA - Executive Council 2022 – 2023



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Come Back To Town - 2022 Claims Conference
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September Kick Off@Come Back To Town
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Sami Shaker

Eyewitness Reliability: Survey Responses of Distance and Speed Estimates in Real-World Crash Tests (page 8)

Sami Shaker graduated with a Bachelor of Science degree (Honours Physics co-op) from McMaster University and has versatile industrial experience in nuclear energy, radiation health and safety, and has recently been conducting medical research in the field of rheumatology. Mr. Shaker has been able to use these past experiences and apply much of what he has learned to his current work.



David Thompson

Dealing with a Self-Represented Litigants? Handle with Care (page 30)

David Thompson joined CHC in 2009 after practicing insurance litigation in Toronto, Ontario. He entered the partnership in 2018. David handles complex litigation files such as multi-party construction litigation, personal injury, shareholder disputes and real estate litigation. He has appeared at all levels of court in Ontario. David's common-sense approach to advocacy has earned him the respect of colleagues and opponents and produced favourable results for his clients.



Michael Lewis

The Magic of Mentoring: A Partnership That Makes a Real Difference! (page 36)

Michael Lewis is founder and managing director of Michael Lewis Training, Motivation and Development, a London, Ontario training and development firm founded in 1994 with a training passion on leadership and workplace solutions.



Mark Boshnakis

COVID-19 Subsidy Programs and the Impact on Business Interruption Losses – Saved Expenses (page 44)

Mark Boshnakis is a Manager at MDD Forensic Accountants' Toronto office. Mark's practice specializes in quantifying economic damages related to business interruption, accident benefits, personal injury, fidelity, franchise rescission, and liability. He has recently worked on entertainment insurance claims primarily related to COVID-19 performance cancellations and suspensions.

"WP" is published monthly except July and August. Every reasonable effort is made to ensure accuracy of articles and advertisements but the Association expressly limits its liability to printing of retraction or correction. The opinions expressed in all articles unless otherwise specified represent the views of the authors and are not necessarily endorsed by the Association, the editorial staff or the Executive Council.

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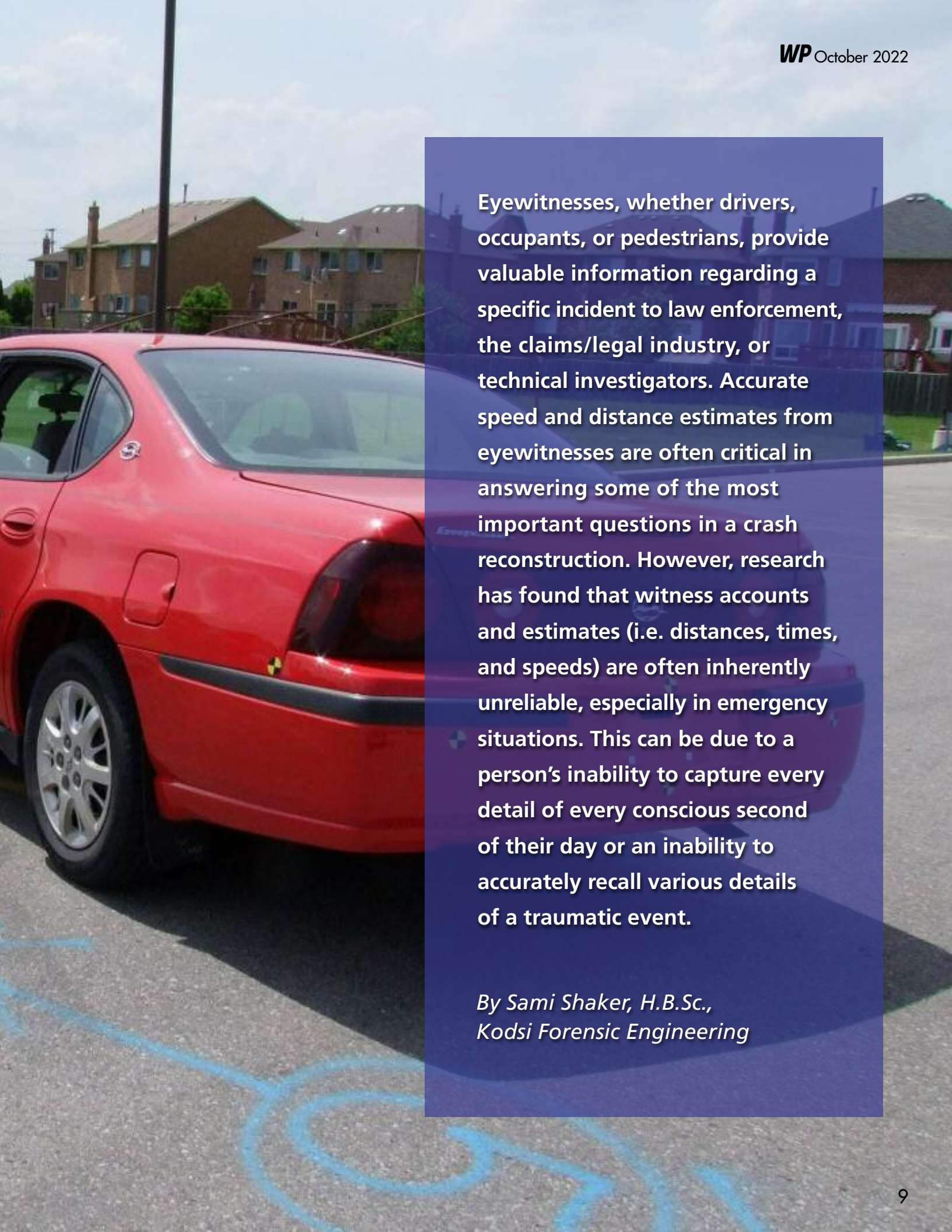
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Eyewitness Reliability: Survey Responses of Distance and Speed Estimates in Real-World Crash Tests



Eyewitnesses, whether drivers, occupants, or pedestrians, provide valuable information regarding a specific incident to law enforcement, the claims/legal industry, or technical investigators. Accurate speed and distance estimates from eyewitnesses are often critical in answering some of the most important questions in a crash reconstruction. However, research has found that witness accounts and estimates (i.e. distances, times, and speeds) are often inherently unreliable, especially in emergency situations. This can be due to a person's inability to capture every detail of every conscious second of their day or an inability to accurately recall various details of a traumatic event.

*By Sami Shaker, H.B.Sc.,
Kodsi Forensic Engineering*

Eyewitness Reliability: Survey Responses of Distance and Speed Estimates in Real-World Crash Tests

On May 31, 2013 Kodsí Engineering held a crash test conference in Mississauga, Ontario, Canada in order to study specific vehicle collisions with respect to impact speeds, vehicle damage, driver biomechanics, and eyewitness reliability of speed and distance. Several vehicle-to-vehicle crash tests were conducted to observe the dynamics of these vehicle collisions. Surveys by attendees were completed regarding vehicle impact speeds and post-impact travel distances. There was a total of seven crash tests that were completed; two of which were used for the purpose of this study.

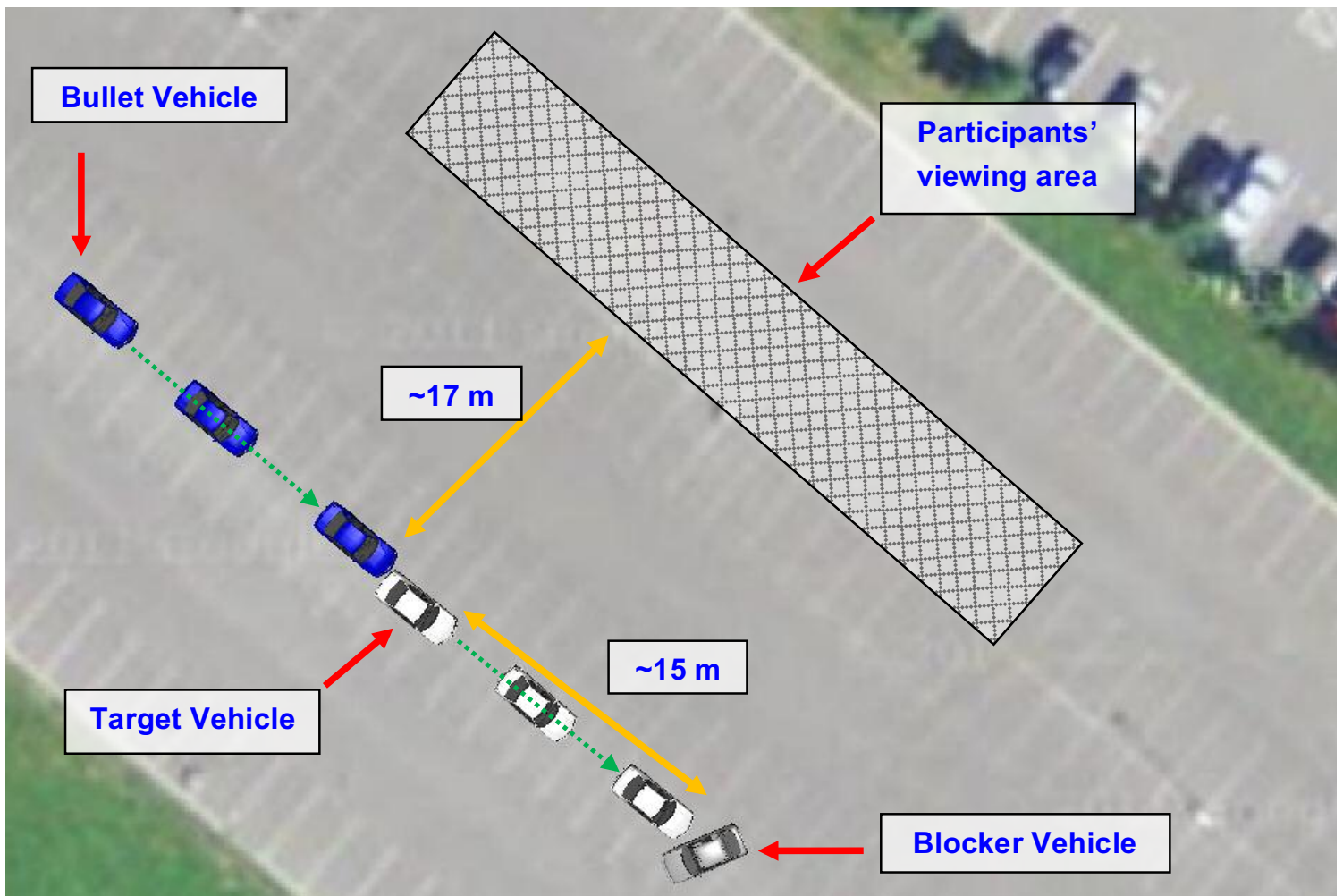


Figure 1: Illustration of crash test #1 as the bullet vehicle (blue Chevrolet Malibu) collides with the stopped target vehicle (white Chevrolet Malibu).

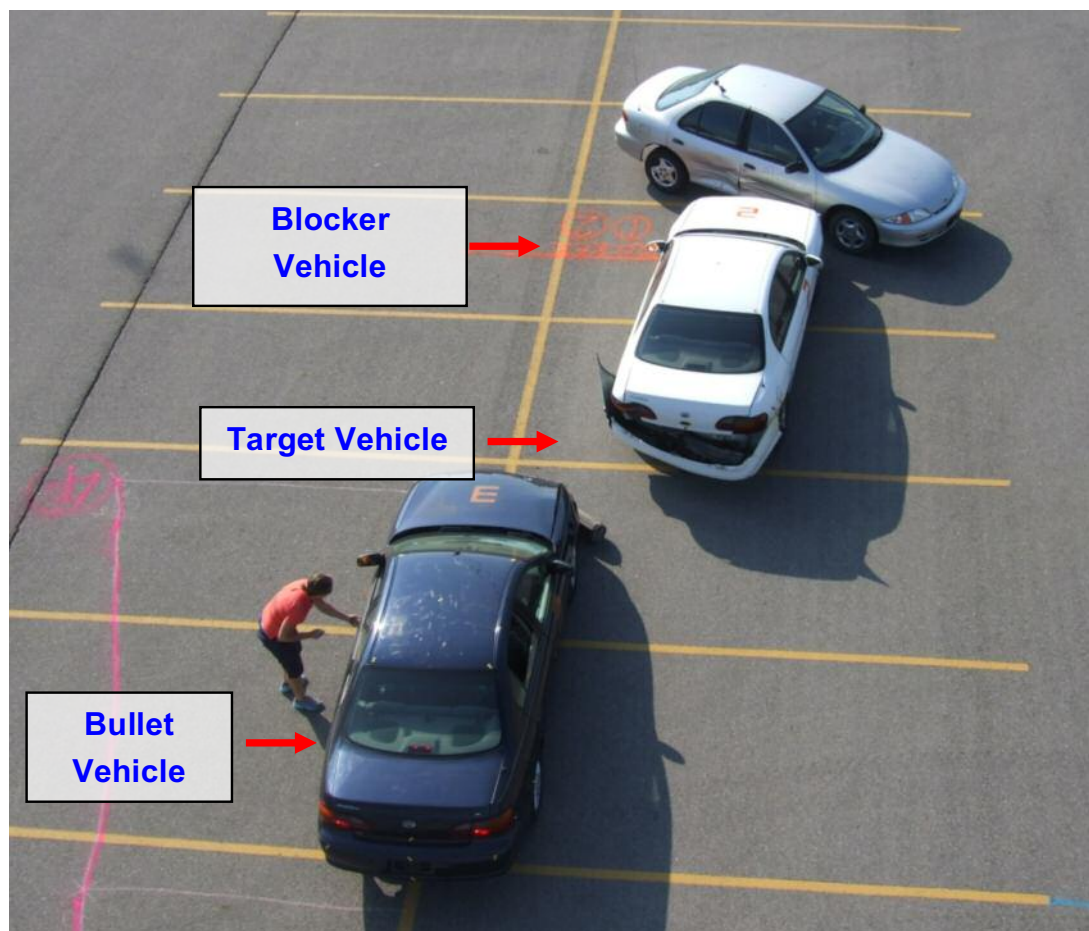
The attendees were informed about the surveys after the crash test events and most elected to participate in the surveys. During the crash tests, attendees were positioned approximately 17 to 28 meters away from the area of impact. After witnessing each crash, participants were allowed to walk up to the vehicles and view the damage and final rest positions of the vehicles up close. After approximately 15 minutes of viewing, participants returned to their original location and the vehicles were moved to set up for the next crash test. Surveys were then handed out to the participants after the first and fifth crash tests, about 45 minutes after each crash had occurred, and a few minutes after the vehicles were towed away.

The participants' estimated values were compared with the actual measured values using instrumentation as summarized in the section below. The actual values of distances were obtained using surveying equipment and the actual values of the speeds were obtained using vehicle instrumentation (high speed GPS), coupled with video analysis and black box data.

During the crash tests, attendees were positioned approximately 17 to 28 meters away from the area of impact.

Crash test #1: Bumper-to-Bumper, Rear End Collision

This crash test was a bumper-to-bumper, offset rear end collision, wherein the front of a blue 2001 Chevrolet Malibu (i.e. bullet vehicle) struck the rear of a white 1998 Chevrolet Malibu (i.e. target vehicle) with its transmission in neutral. A blocker car was positioned 15 metres in front of the white Malibu in order to halt the unoccupied vehicle after the impact. Figure 1 illustrates this crash test and where the vantage point of the participants was.



Photograph 1: Final position after crash test #1, bumper-to-bumper, rear end collision.

In the survey, attendees were asked to estimate:

- (1) The speed of the blue Malibu (i.e. bullet vehicle) at impact,
- (2) The distance that the white Malibu (i.e. target vehicle) travelled after it was struck,
- (3) How far apart the bullet and target vehicles were after they came to rest.

The participants' answers are summarized in the table below and are compared with the actual measured value (note: there were some estimates which were significantly different from the actual data. Statistical outliers were removed).

	Speed of bullet vehicle (km/h)	Distance target vehicle travelled (meters)	Distance between vehicles at rest (meters)
Number of Participants	108	100	99
Range of answers	15 to 55	0.9 to 25.9	0 to 2.4
Average of answers	33	10.3	0.9
Median	33	10	0.9
Standard Deviation	8.6	5.7	0.6
Actual speed/distance measured	31	15	~ 1

Table 1: Summary of the results of the first survey for crash test #1 (bumper-to-bumper rear end collision).

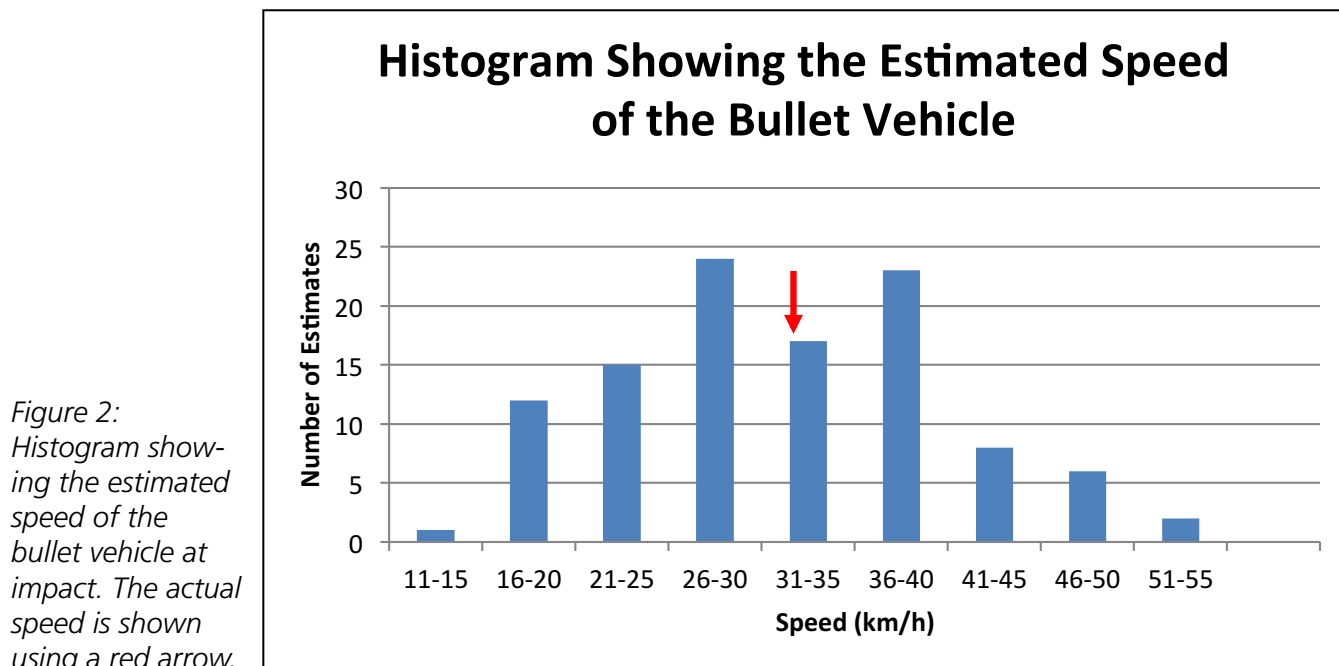


Figure 2, 3 and 4 show the results of the of participants' estimates for the three questions for crash test #1.

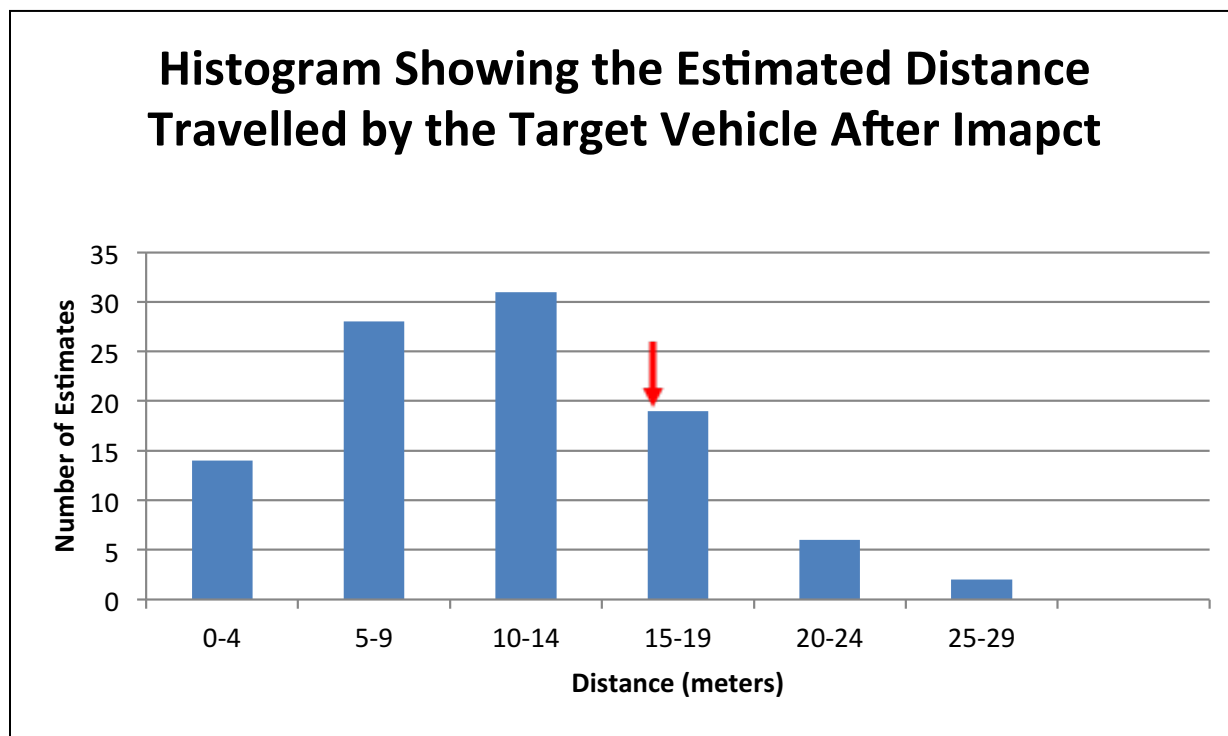


Figure 3: Histogram showing the estimated distance travelled by the target vehicle after impact. The actual distance is shown using a red arrow.

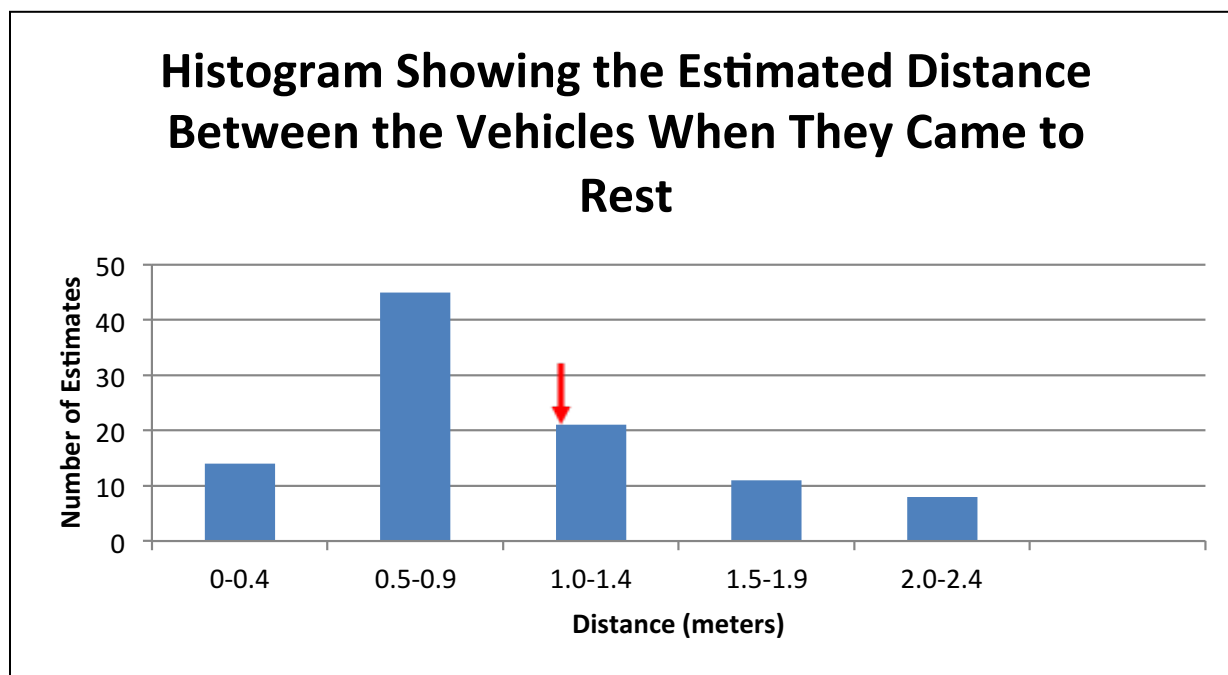


Figure 4: Histogram showing the estimated distance between the bullet and target vehicle when they came to rest. The actual distance is shown using a red arrow.

As seen in table 1 and figures 2 through 4, there was a large variance between the smallest and largest value for each of the questions. However, the average of all the answers was close to the actual measured values, as other research suggested. The percentage error for the average estimate was calculated using the following equation.

The average of all the answers was close to the actual measured values, as other research suggested.

$$\% \text{ Error} = \frac{\text{Average Estimated Value} - \text{Actual Value}}{\text{Actual Value}} * 100$$

Using this equation, an average overestimation would yield a positive percent error whereas an average underestimation would result in a negative percent error. The percent error of questions 1, 2, and 3 was 6%, -31% and -10%, respectively. From this result of the percent error, participants in this study were able to estimate speed more accurately compared to distance.

Crash test #5: T-bone Collision with Moving Target

This test was completed about 3½ hours after the first survey. The organizers of the crash test purposely left several hours in between the first and second survey so that the participants would not pay any closer attention to the details of the collision in anticipation for another set of questions. This particular crash test was a T-bone impact wherein the front of a 2001 Chevrolet Impala (i.e. bullet vehicle) struck the passenger side front wheel area of a 1998 Toyota Corolla (i.e. target vehicle). Both vehicles were moving at impact.

Figure 5 illustrated this crash test and where the vantage point of the participants was.

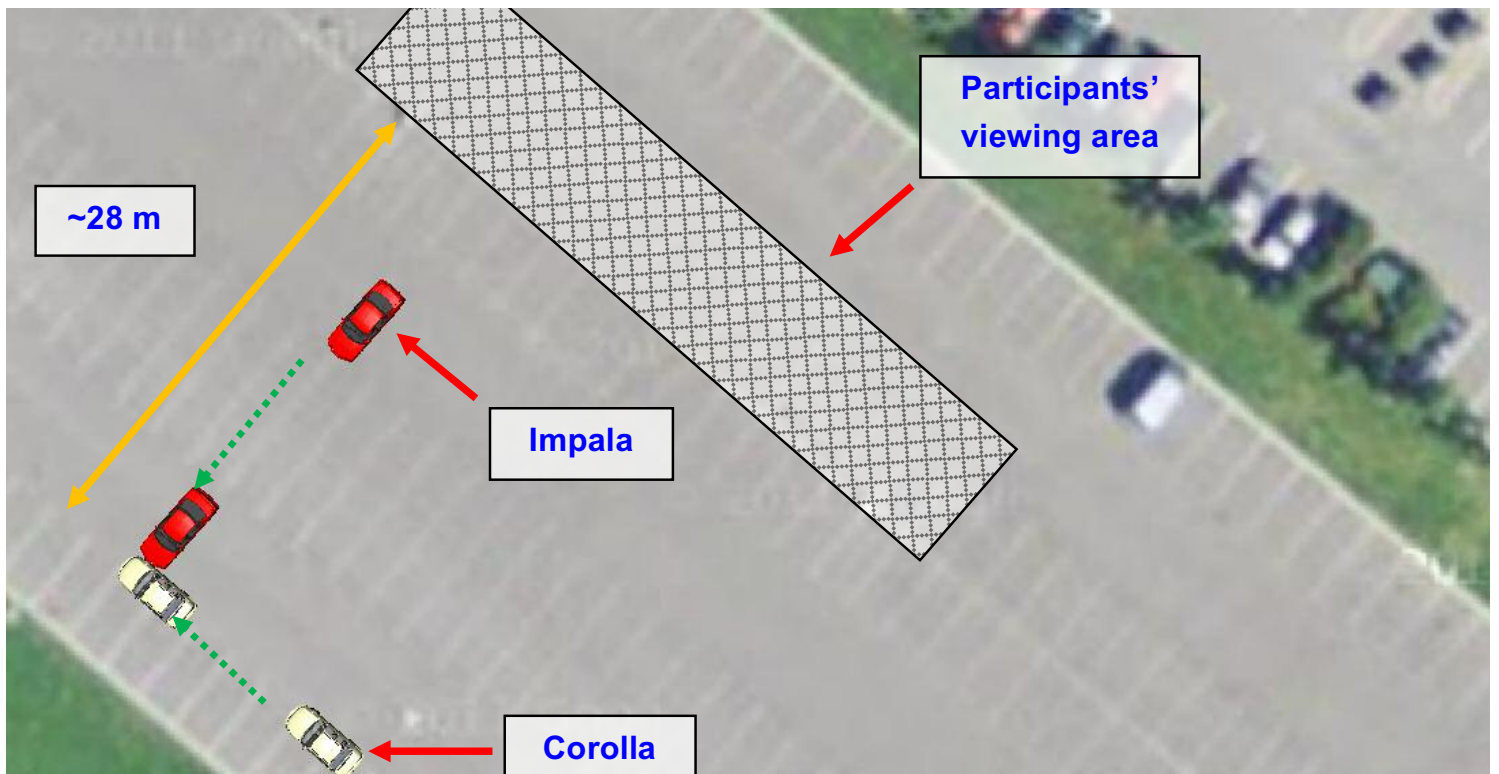


Figure 5: Illustration of crash test #5 showing the relative positions of both vehicles before and at impact as well as where the participant's vantage point was relative to the crash test.



Photograph 2: Top view of the test vehicles at impact.

For this second survey, the participants were asked to (1) estimate the speed of the Chevrolet at impact, (2) estimate the speed of the Toyota at impact, and (3) estimate the distance between the vehicles at rest.

The participants' answers are summarized in the table below and are compared with the actual measured value (note: statistical outliers were also removed):

	Speed of bullet vehicle (km/h)	Speed of target vehicle (km/h)	Distance between vehicles at rest (meters)
Number of Participants	89	78	66
Range of answers	10 to 55	10 to 35	0 to 3
Average of all answers	28	22	0.2
Median	26	20	0
Standard Deviation	9.1	5.5	0.25
Actual speed/distance measured	22.5	20	0 to 3(angled) (touching at corner)

Table 2: Summary of the results of the second survey for crash test #5 (T-bone collision).

It is noteworthy that at final rest, the vehicles were in contact (they were angled, touching at the corner as seen in the photo below). Attendees were also asked about the distance between the vehicles at rest and 66 participants responded:

- Range of answers from 0 to 3 meters
- Average of all answers 0.2 meters
- Median = 0
- Standard deviation = 0.25
- Actual distance measured = 0 (touching) to 3 meters (furthest separation between the vehicles)

Attendees were also asked about the distance between the vehicles at rest.

Photograph 3: Final Rest position of test vehicles.



Photograph 4: Top view of the final rest position of the tested vehicles.



Figure 6 and 7 show the results of the of participants' estimates for the two questions for crash #5.

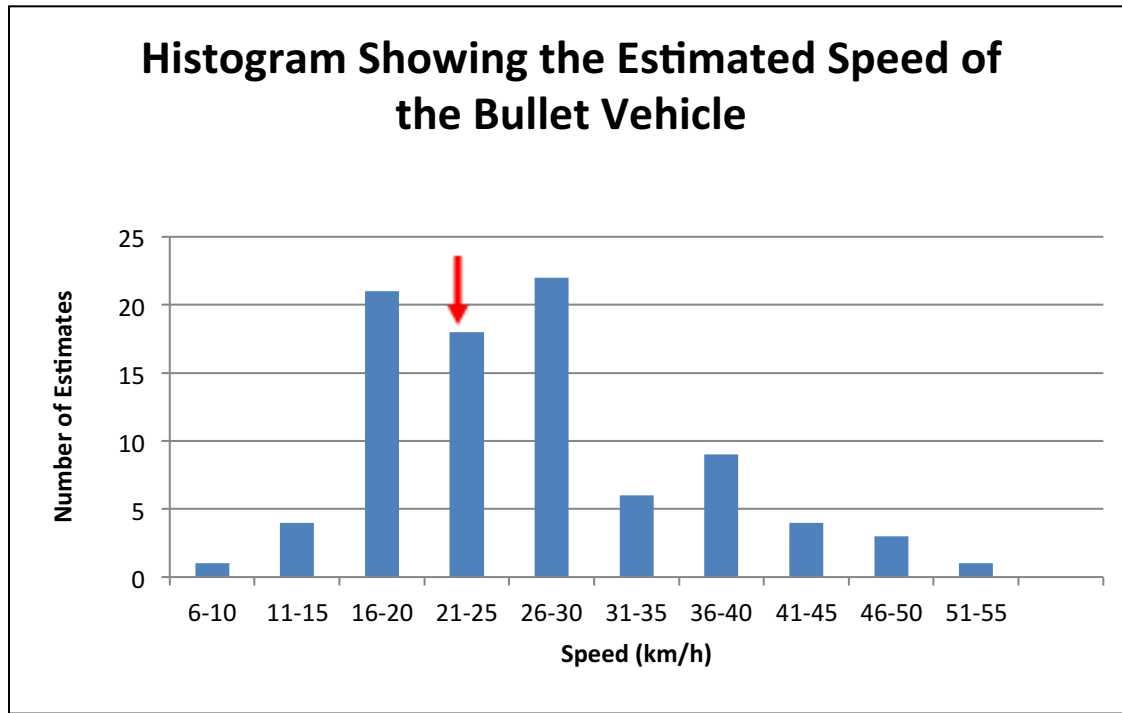


Figure 6: Histogram showing the estimated speed of the Chevrolet Impala (i.e. bullet vehicle). The actual speed is shown using a red arrow.

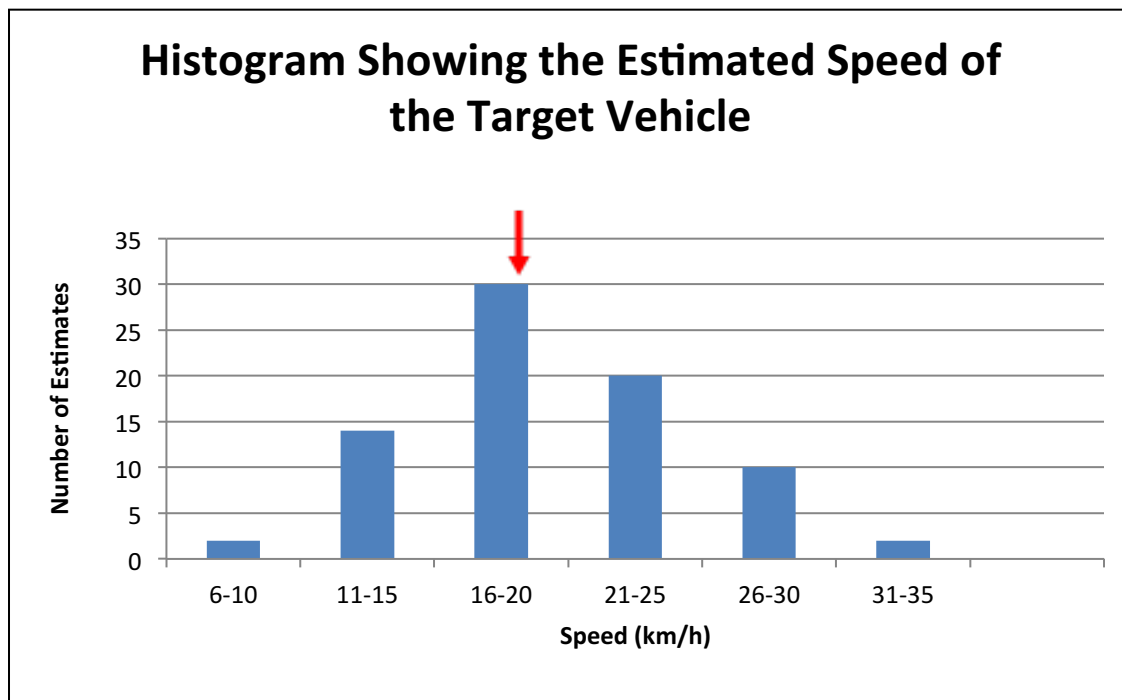


Figure 7: Histogram showing the estimated speed of the Toyota Corolla (i.e. target vehicle). The actual speed is shown using a red arrow.

As seen in Table 2 and figure 6 and 7, there was a large variance between the smallest and largest value for each of the questions, as was the case with the first survey. Interestingly, just like the first survey, the average of all the answers was close to the actual measured values. The percentage error for the average estimate was calculated for question 1 and 2 was 38% and 10% respectively.

Does vantage point play any role in the ability of estimating speed?

Discussion

With the wide range of answers provided for each question, there was a particular trend for most people to estimate a certain way. The results fit a normal distribution and the averages of the speed estimates for crash test #1 and #5 were an overestimation. Strauss et al ¹ found that pedestrians who estimated speeds of vehicles that passed by at less than 54.7 km/h tend to overestimate the speed of the passing vehicle. All the above discussed crash tests were conducted at speeds below 54.7 km/h, and we found that on average the participants overestimated the actual speeds as well.

What can become incredibly overwhelming at times is when a case involves many eyewitnesses with various vantage points to an incident and each one estimates a radically different speed. So does vantage point play any role in the ability of estimating speed? It was interesting to discover that the participants on average were more accurate in estimating the impact speed of vehicles that drove across from them compared to when one of the test vehicles drove away from them. The percentage error for estimating the impact speed of the Chevrolet Impala, which drove away from the participants, was the greatest (38%) compared to the Chevrolet Malibu and Toyota Corolla which both drove across the participants (6% and 10%, respectively).

In addition, the further away a vehicle was from the observer, the more error there was on average in estimating the actual impact speed of the vehicle. The Chevrolet Malibu in crash test #1 was the closest vehicle to the participants and had the smallest average percent error (6%). Compare this to the Chevrolet Impala in crash test #5, which along with the Toyota Corolla was the furthest crash test from the participants, and it yielded a greater percentage error for the average estimated impact speed (10% for the Corolla and 38% for the Impala). Generally, it is more difficult to estimate the speed of objects that are further away from an observer. In order to understand this, a hyperbolic analogy would be a speed estimate of a plane. While



in the sky, commercial planes can reach speeds of up to about 1000 km/h. While on the ground, it may be very difficult for an observer to estimate anything close to this speed while the plane is at its cruising altitude since it appears to be covering little ground. However, if the plane was able to cruise close to the observer, that individual may gain a greater appreciation of the speed and estimate something closer to the actual value.

Final Thoughts

So what can be learned from these surveys? As with most literature on this topic suggests, we found that an individual's estimate of speed and distance can be unreliable. However, if there is a large number of witnesses or participants, the average of all the speed and distance estimates may be fairly accurate.

As with any experiment, there are limitations that are inherently part of the procedure. Attendees of our crash test conference were anticipating, as the name suggests, crashes. Many eyewitnesses in real world collisions often report how the event took place "so quickly" or in a "split second". Research has found that the less time that a witness has to view a piece of information, the less accurate their perception and recollection of an event will be. Our attendees were not only anticipating a collision between vehicles, but were permitted to approach the vehicles and closely observe the outcome of the crash before they elected to participate in the survey. Many real-world eyewitnesses do not have this advantage. Even with all these advantageous circumstances for our participants, many individuals provided extremely inaccurate estimates.

Understanding eyewitness reliability has practical implications to collision investigators as they compare the reported information, along with the limitations with their reconstruction science.

¹ M. Strauss, J. Carnahan, and R. Ruhl, "The Accuracy of Pedestrians in Estimating the Speed of a Moving Vehicle," SAE Technical Paper 2013-01-0785 (Apr 2013).



Sami Shaker graduated with a Bachelor of Science degree (Honours Physics co-op) from McMaster University and has versatile industrial experience in nuclear energy, radiation health and safety, and has recently been conducting medical research in the field of rheumatology. Mr. Shaker has been able to use these past experiences and apply much of what he has learned to his current work. He has conducted damage consistency analysis, vehicle examinations (including black box data imaging and analysis), accident site survey as well as accident reconstruction including determining speed calculations/estimates, collision severity, computer simulations, vehicle and occupant kinematics, injury biomechanics, and slip, trip and fall investigations. Sami's personal interests include live jazz and classical music, trying new restaurants with his wife, and playing video games with his daughter.

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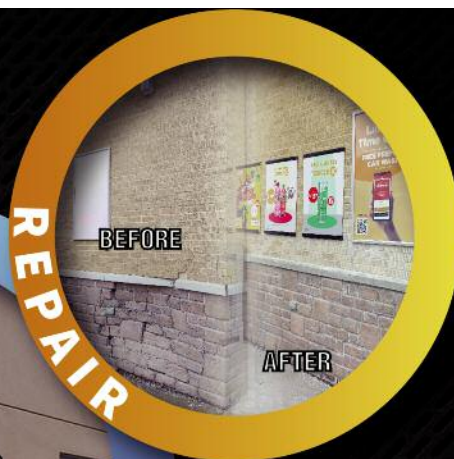
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"Come Back To Town"

**2022 Provincial Claims Conference
October 4th and 5th, 2022**

**At the Metro Toronto Convention Centre
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Agenda at a Glance

Metro Toronto Convention
Centre, Constitution Hall

TUESDAY, OCTOBER 4, 2022

12:00pm – 4:00pm: Exhibitor arrival and booth set up

4:00pm – 7:00pm: Kick off at the CN Tower

WEDNESDAY, OCTOBER 5, 2022

10:00am – 4:00pm: Trade show floor open

SEMINAR

A

9:30am – 10:30am Room 104A/B

Top 10 AB Cases of 2022

Presented by Philippa Samworth, B.A.,LL.B., Partner, Dutton Brock LLP



Philippa G. Samworth is a partner at Dutton Brock and her area of practice is in insurance defence (Accident Benefits), as well as providing Mediation and Arbitration services. Miss Samworth has a number of achievements and was retained by the Ministry of Finance of Ontario as a consultant to provide analysis and technical advice to the Ministry on its preparation and drafting of the new Automobile Insurance Legislation: Bill 59 and its regulations.

SEMINAR

B

9:30am – 10:30am Room 104 D/C

Tort Update

Presented by M. Edward (Ted) Key, Agro Zaffiro LLP



M. Edward (Ted) Key practices insurance-related litigation and has appeared as counsel before all levels of courts in Ontario, handling matters through to appeal. Ted specializes in the defence of motor vehicle tort claims, product liability, personal injury, municipal liability and first party property damage matters. As well, Ted is regularly asked by clients to provide coverage opinions in relation to automobile, homeowner, CGL, and professional liability policies.

SEMINAR

C

10:30am – 11:30am Room 104 A/B

Product Liability

Presented by Dr. Dennis Turriff, Senior Engineer, MEA Forensic Engineers & Scientists



Dr. Dennis Turriff is a senior engineer, and leads MEA Forensic's Failure Analysis group in Toronto. His background in both materials science and mechanical engineering help him isolate the root cause of failure in a wide variety of incidents involving vehicles, industrial equipment, consumer products, plumbing, fire protection systems and medical devices.

OIAA "Come Back To Town" 2022 Provincial Claims Conference

WEDNESDAY, OCTOBER 5, 2022

SEMINAR 10:30am – 11:30am Room 104 D/C

D

Sustainability within Insurance Restoration

Presented by Ross Huartt, President and CEO, MBC Group



Ross is a highly qualified and accredited Professional Quantity Surveyor registered with the Canadian Institute of Quantity Surveyors and recipient of the prestigious gold Seal Certification in Estimation issued by the Canadian Construction Association. He has international experience on diverse projects including civil, medical, education and commercial structures as well as multi-million dollar single dwelling residential buildings and high-volume refurbishments.

11:30am – Light Lunch – Tradeshow

SEMINAR 1:00pm – 2:00pm Room 104 A/B

E

Empowering Your Plan: Navigating the Fraud Environment

Presented by Wilf Cassidy, National Manager, Intrepid Investigations



For over 50 years, Wilf has been dedicated to the craft of investigation. He spent 30 years with the Toronto Police Service, many of which included specialty units, major crimes and fraud investigation. Wilf then transitioned his career to the private sector, and for the past 20 years has focused on corporate and insurance special investigation services, working innumerable cases ranging from simple fraud to criminal task force projects.

SEMINAR 1:00pm – 2:00pm Room 104 D/C

F

Optimizing the Large Property Loss Claim Process

Presented by Tom Streek, Rebuild Response



Tom Streek grew up in a family construction business and has done self-building projects over the last 25 years. Tom's experience has been with commercial and residential, custom builds and insurance rebuilds. He has been the owner of Harmony Homes since 2010 and began Rebuild Response in 2011. Tom and his team established Rebuild Response Group as a registered Ontario franchisor company in 2019 and have recently completed their goal of operating across Ontario with builder franchisees. Ultimately, Tom is passionate about using his corporate platform to positively impact his clients and industry connections, such as providing guest lectures for Ontario college students in relevant insurance programs.

3:00pm – 4:00pm – Tradeshow – Cocktail Hour

OIAA "Come Back To Town" 2022 Provincial Claims Conference

WEDNESDAY, OCTOBER 5, 2022

6:00pm: Dinner and Key Note Speaker

Key Note Speaker Stu Saunders



Stu Saunders

Entrepreneur + Educational Leadership Consultant

Stuart (Stu) Saunders has been the vision behind the organization Youth Leadership Camps Canada (YLCC) since it began in 1992. For the last thirty years, Stu has put his heart and soul into building a world-class summer camp and leadership development program that is now YLCC. Since 1991, he has also travelled North America and Europe speaking to more than three-thousand high schools, international schools, colleges, universities, camps, non-profit organizations and corporations. He has worked with over 3 million people, over 3 decades. YLCC has grown far beyond just a summer camp. Each year YLCC works with close to 200,000 youth, educators, parents and corporations across Canada and around the world. He has grown a small summer camp to a multi-million dollar company. Living by his credo, Purpose before Profits. As one of Canada's most sought-after educational leadership consultants, customer experience advocates, and speakers, Stu continues to work hard to change the conversation for the next generation of leaders. Stu is also the creator behind The EPIC Community.

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- Recognition on OIAA website
- 1 Pass to the Networking Kick-Off Event on Tuesday October 4th, 2022

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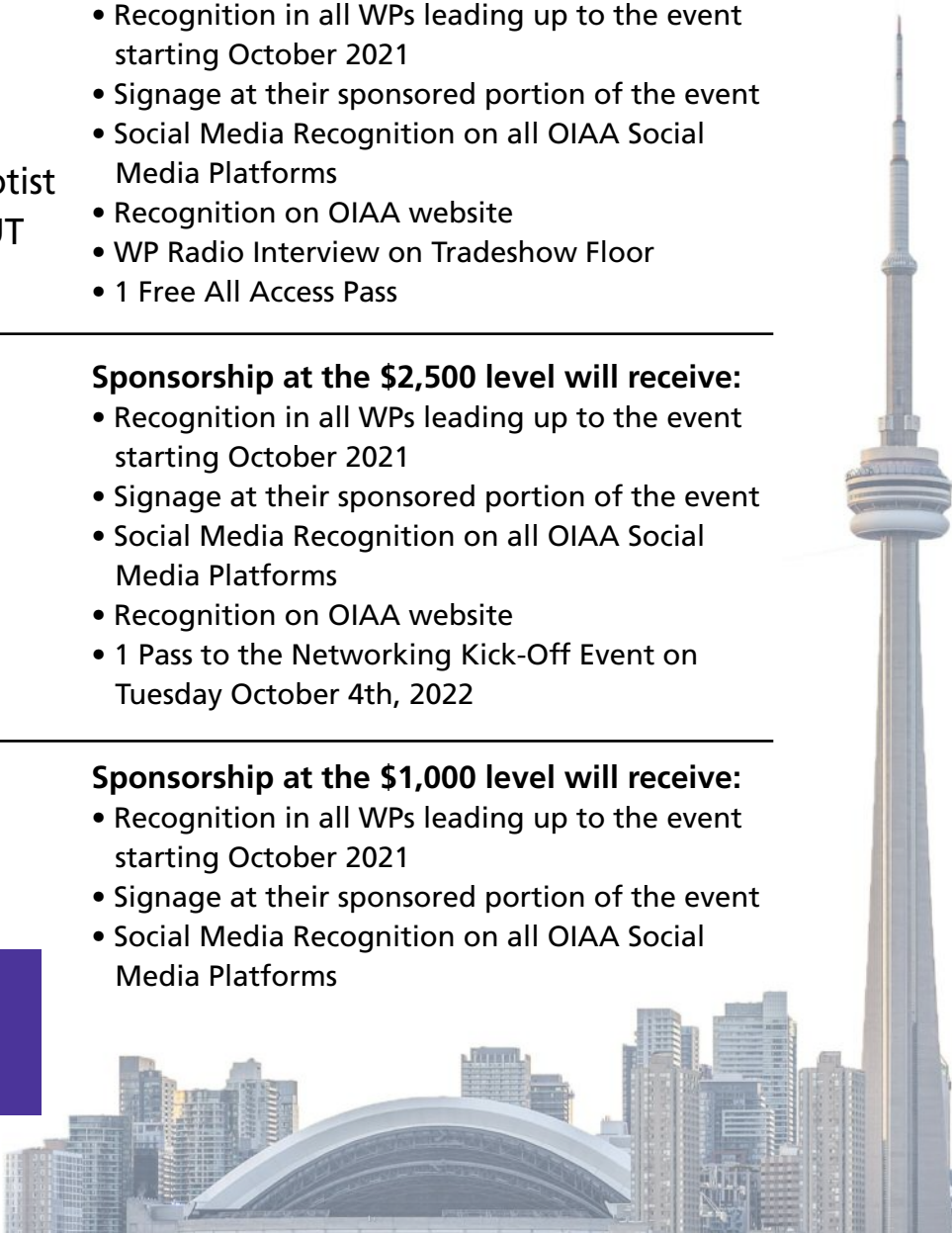
Tradeshow Light Lunch

October 5th Dinner

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Please contact Shawna Gillen at Shawna.Gillen@aig.com for further information.



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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.

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Dealing with a Self-Represented Litigants? Handle with Care





Sometimes during an intake meeting, a potential new client will tell me that they want to hire an “aggressive” lawyer. Their expectation usually has to do with making threats at the outset and being difficult and uncooperative with the other side. My response is always “if that’s what you want, I’m the wrong guy for the job. But I don’t think that’s what you really want.” I then go on to explain how, in my experience, it is general counterproductive to litigate in such an “aggressive” manner. It makes settlement more difficult; it drives up costs and does not impress judges. You can push back against such aggression but there is no need to instigate it. I recommend being as civil and cooperative as possible with the other side on procedural issues, narrowing the issues as much as possible, and then saving the real fight for what is actually in dispute.

*By David Thompson, Partner,
Carroll Heyd Chown LLP*

Dealing with a Self-Represented Litigants? Handle with Care

It can be especially tempting to engage in aggressive conduct towards a self-represented litigant (“self rep”) on the other side of a lawsuit. Self reps can be frustrating to deal with because they often do not understand the process.

In the recent Ontario Court of Appeal decision *Grand River Conservation Authority v. Ramdas*, the Court provided some observations about the duties that judges and opposing counsel have towards self reps. In this case, the self rep appellant Ms. Ramdas appealed two orders for permanent injunctions against her in respect of work she undertook on

her property, which backed onto a wetland, without the requisite permits. She argued that the application judge erred not granting an adjournment and in failing to require the matters in issue proceed to trial.

The applications were heard without any evidence from Ms. Ramdas. Ms. Ramdas’ previous counsel had served responding materials but had not filed them with the court. No factum had been served or filed. The application judge was not advised about the interim injunctions, nor Ms. Ramdas’ compliance with them. Both permanent injunctions were granted against Ms. Ramdas.



Ms. Ramdas lost the appeal. Despite this, no costs were awarded on appeal. The Court expressed some concerns with the way that Ms. Ramdas was treated as a self rep in this hearing.

First of all, the Court makes some suggestions of what judges can do to “permit self represented parties to explain how they understand the status quo.” One option would be for the judge to swear in a self rep and allow submissions to be made from the witness box. Another option would be for the judge to engage in “active adjudication in order to obtain relevant evidence from a self-represented party who might not fully understand what is relevant and what is not.”

The Court then refers to the obligations of counsel who are opposing a self rep. The Court refers to the duty set out in the Law Society’s *Rules of Professional Conduct* to make sure that the case is presented in a candid and comprehensive manner so that a tribunal is not misled. This gets applied “where the presence of a self-represented litigant might impede the full proof and argument expected when both sides are represented.”

The Court recommends that lawyers follow the guidance of the American College of Trial Lawyers’ *Canadian Code of Conduct for Trial Lawyers Involved in Civil Actions Involving Unrepresented Litigants*:

- Not attempt to derive benefit for clients from the fact that the opposing litigant is self-represented (s.9(a));
- Be aware of their duty to the court in considering reasonable requests for adjournments or waivers of procedural formalities when there is no real prejudice to their client’s rights or interests (s.9(b); and
- Advise the court of all material

communications and agreements reached with the self-represented litigant (s.12(c)).

The Court found the Conservation Authority and Township to be “remiss” for not alerting the application judge that interim injunctions were in place, that Ms. Ramdas had complied with them, and that Ms. Ramdas’ counsel had previously served responding materials. In light of this, no costs were awarded on the appeal.



This case should serve as a caution for counsel and their instructing clients to not attempt to take advantage of any situation when dealing with a self rep. Engaging in aggressive procedural tactics against a self rep could be especially risky.



David Thompson joined CHC in 2009 after practicing insurance litigation in Toronto, Ontario. He entered the partnership in 2018.

David handles complex litigation files such as multi-party construction litigation, personal injury, shareholder disputes and real estate litigation. He has appeared at all levels of court in Ontario. David’s common-sense approach to advocacy has earned him the respect of colleagues and opponents and produced favourable results for his clients.

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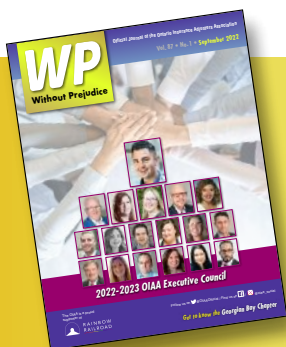


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The Magic of Mentoring: A Partnership That Makes a Real Difference!



A photograph of a man with a beard and glasses, wearing a light-colored suit jacket over a white shirt and a dark tie. He is looking towards the right side of the frame.

Throughout our entire lives, we have benefited from the wisdom and experience of others including our parents, siblings, grandparents, family, and friends when we have sought out advice and discussed solutions to the numerous dilemmas, challenges, and trials that life brings. And in so many cases and throughout so many times, have felt grateful and appreciative that there have been people that have been there for us. Today's workplace too is filled with people who could make great mentors and be invaluable resources to others in the department or throughout the company.

By Michael Lewis, Founder and Managing Director, Michael Lewis Training, Motivation and Development

The reality is...everyone owes someone, something.

Mentoring provides us with a remarkable opportunity to pay back all those who helped us – **by paying it forward** to those we can help today in our careers. We've learned a lot in our years at work, perhaps even been rewarded with promotions and recognition and appreciation from our peers. But I've learned that as much as we've learned often by trial and error in some cases, we all still have a lot to learn and maybe we owe it to ourselves to teach, inspire and guide future leaders through the age-old practice of mentoring.



If for no other reason, becoming a mentor might just be the one thing, that one experience that is missing in your career and the one experience in which you may come to value the most. A mutually rewarding experience that provides you a real chance to make a tangible difference in the professional life of someone who with a few more new skills, abilities, leadership tools, or interpersonal skills, could soon realize their goals and become the person they envision. In becoming a mentor, you will soon rediscover your own strengths and have a deeper understanding of your own abilities to connect, listen, advise, assess, solve problems, and provide timely, thoughtful counsel. No one who mentors is ever left untouched by the experience.

Why Mentoring?

Mentoring is the one of the highest forms (and most personal form) of shared learning and if you believe in lifelong learning, then mentoring is an extension of your own values and beliefs. Mentoring reflects a very personal relationship of knowledge sharing, gaining trust, and exploring through discussion problems and challenges and the free mutual exchange of ideas and potential solutions. We've all had moments when a problem befuddled us and that in the worst cases, paralyzed us to know what to do and what to do next. The greatest benefit of having a mentor is that you have a potentially objective resource that can see your problem differently and in a far more open and complete manner. When a problem or issue, especially a particularly challenging and/or emotional one emerges, a person can become deeply entrenched and even lost. A mentor is like a light that shines and can be purposely

objective and remain detached thus providing a clearer perspective and can remain free throughout to provide a range of solutions and ongoing advice. In short, a mentor can be the means to free their mentee from the chains of a problem or dilemma and move forward with new confidence!

A Mentor's "Checklist"

Before entering into a mentoring relationship, here is a brief checklist of the traits and characteristics of what a person most likely needs to succeed as a mentor. As you might imagine, people who are best suited to being mentors are often well-rounded people with solid career experience, better than average communication skills and strong people skills.

Desire

Even before you think about becoming a mentor, think for a moment and reflect on whether or not you have a desire or strong interest to be of help to someone. Is your heart in it and is your reason for being or acting as a mentor driven by the honest desire to be a trusted and engaged resource to someone you view as worthy of investing your effort into their growth and development? The commitment to be a willing mentor is essential!

Time

It is a myth that being a mentor will take up a lot of your time, time you might not feel you can spare. But mentoring can be simple as a phone call or brief meeting once a week. All you need to do is ensure that you can be available to your mentee either in person or on the phone and that could mean scheduling or reserving time during the week.

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More than anything, a mentor needs to remember to see the world (and problems and challenges) from the mentee's point of view.

Mentoring relationships can last as short as a few weeks or months or in some cases, they can turn into a lifelong connection.

Patience

Mentors need to be patient as sometimes your patience will be tested. As an example, acting as a mentor to someone who has taken on a new and/or higher role in management, and that your mentee might initially have a number of questions or a strong desire to meet often as they learn their new "ropes." Mentors need to be patient with mentees that are eager to talk, listen and learn. Think of mentoring as a journey that you will both travel with experiences that you can both share.

Empathy

More than anything, a mentor needs to remember to see the world (and

problems and challenges) from the mentee's point of view. What might seem like a likely solution to the mentor, might not seem achievable for the mentee. Empathy allows the mentor to better relate to their mentee, and to frame his or her advice and guidance in harmony and respect to their emotional state and their readiness to take on their challenges.

Ability/Skilled

To be a mentor (of any age or background) presupposes that you have the wisdom, experience, and skills needed to offer your mentee. Mentors are often imperfect people who too have learned from mistakes and poor judgement and may indeed be able to relate well with their mentees predicaments. Instead of just relating a solution, be willing together to explore a range of viable



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solutions and empower the mentee to choose a solution. As the adage goes, “give a fish to someone, and they eat for a day, teach them to fish, and they can eat for a lifetime!

Confidentiality and Trust

As with all important and meaningful relationships, trust is crucial, and your meetings with your mentee must be based on trust. Treat these meetings as confidential in nature so that your mentee knows that they can freely open up and have discussions that will remain between the two of you. No trust, no basis for a mentoring relationship.

It Requires Good Communication Skills

Most think of mentoring as providing advice and guidance when appropriate but often it is all about patiently listening without judgment. By asking questions and hearing your mentee out, not only will you learn more about whatever challenge they are facing, but sometimes, a mentee by just talking it through will start to form the basis of a solution that can then be discussed. From the mentor’s perspective, they should be able to communicate clearly, without judgment, provide a range of workable solutions and exhibit above-average lis-

tening skills with the desire to listen to understand the mentee’s issue or challenge fully.

How to Become a Mentor

Becoming a mentor is often as simple and straightforward as looking for a potential mentee candidate and then having identified them, meeting to have a brief conversation about acting as their mentor. Often people in positions of leadership or staff with significant experience are best positioned to offer their services as a mentor. Some organizations have created in-house mentoring initiatives that develop a list of people willing to serve as mentors and then matches them to potential mentees.

A potential mentoring relationship can begin by discussing how you as a mentor might be helpful to the mentee. Perhaps they have struggled with delegating, are having a difficult time being assertive, are overwhelmed with their workload, and lack the basic time or task management skills? There can be a number of issues and areas in which a mentor can be instrumental in helping their mentee. The most important thing to remember is that as a potential mentor, you want to ensure that you explain the benefits of the relationship and that working

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Mentors and Mentees need to agree on boundaries for their relationship such as in how often they should meet and when.

together, the mentee can examine, and execute new solutions and new approaches to their challenges (whatever they may be)...and move forward.

If you both agree to enter into a mentor/mentee relationship, then it is time to discuss what the framework of that relationship will look like.

Mentee Responsibilities

The mentee's responsibility is to follow the agreed meeting structure of the relationship. The mentor might suggest that they meet for 15-20 minutes once a week at a prescribed time – in-person, online, or even just on the phone. The mentee would be responsible for attending the meeting on time and be prepared and ready to talk to their mentor. Mentees should also remind mentors of their meetings from time to time,

advise if they cannot meet, and of course, as the relationship develops, report back on their progress as agreed.

Boundaries

Mentors and Mentees need to agree on boundaries for their relationship such as in how often they should meet and when. In most cases, mentoring activities would take place during business hours unless you both are willing to chat or email beyond that. Furthermore, you should both agree on what subjects would be out of bounds during your meetings.

Boundaries also include sticking to previously agreed timeframes. As both of you are likely busy people, you might decide on the best method to connect which could include pre-arranged times to talk (on the phone, video chat or in-person).

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Agreeing to End the Relationship

Finally, you entered into a mentoring relationship with some previously discussed goals and objectives and a clear understanding of how you could be of assistance, and when you both feel that you have achieved as much as you can then it falls to the mentor to end the relationship. Your time and work together concluded now is a suitable time to reflect on the progress made and the results accomplished.

And one last thought, you might also take this time to remind your mentee that in the future and when the time is right for them, that they should consider being a mentor and therefore the circle is completed and that they too can pay it forward.

So, that's it. If you are ready to make a real difference in someone's life and career, and maybe even learn a LOT about yourself and what you are capable of, then mentoring may be right for you.

Try it! I'll bet you'll be glad that you did.



Michael Lewis is the founder and managing director of Michael Lewis Training, Motivation and Development, a London, Ontario training and development firm founded in 1994 with a training passion for leadership and workplace solutions.

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COVID-19 Subsidy Programs and the Impact on Business Interruption Losses – Saved Expenses



March 2022 marks the two-year anniversary of the onset of COVID-19 restrictions across Canada. While provinces are slowly lifting health restrictions, there is no doubt that the toll of the pandemic will continue to be felt by businesses for years to come.

Over the past two years, various COVID-19 subsidies have been implemented by the federal and provincial governments. These programs have become known by their acronyms, used across news reports and press conferences alike.



*By Mark Boshnakis, CPA, CA, Manager,
MDD Forensic Accountants' Toronto*

COVID-19 Subsidy Programs and the Impact on Business Interruption Losses – Saved Expenses

Subsidies such as CERB and CRB have become infamous among Canadians. For some business owners, submitting CEWS and CERS applications became almost routine as they faced significant declines in revenues as the pandemic raged on.

CEWS was created to assist businesses with payroll expenses and prevent layoffs, whereas CERS was created to partially cover rent expenses to sustain rent payments to landlords.

How have these programs changed over time, and what's their current status? And how does this impact the calculation of saved fixed expenses? This article provides a high-level overview of these programs and how to consider them when calculating saved expenses.



CEWS (Canada Emergency Wage Subsidy)

CEWS was effective from March 15, 2020 to October 23, 2021, divided into 21 periods of 28 days each. Business can still apply for CEWS as long the application is received within 180 days of the period ending.¹

In order to receive CEWS, a business must:

- Pay their employees; and,
- Demonstrate a revenue drop.

The revenue drop and applicable subsidy rate are calculated based on a comparison of the insured's current revenues (i.e. impacted by COVID-19) versus revenue in either the prior year (e.g. April 2019 vs. April 2020) or immediately prior to March 2020 (e.g. February 2020 vs. April 2020). The CEWS will thus use historic revenues as a benchmark to determine if the insured has suffered enough of a revenue decline to trigger a benefit.

CERS (Canada Emergency Rent Subsidy)

CERS was effective from September 27, 2020 to October 23, 2021, divided into 14 periods of 28 days each. Business can still apply for CERS as long the application is received within 180 days of the period ending.²

Similar to CEWS, in order to receive CERS, a business must pay their rent and demonstrate a revenue drop. The calculation of the subsidy rate is similar to CEWS well.

You may wonder why the CERS program started later than CEWS. That's because CERS replaced the CECRA (Canada Emergency Commercial Rent Assistance) program, which ran for March to September 2020. The major difference between the programs is that CECRA was paid to landlords who reduced their tenant's rent. It

involved proof of a rent reduction agreement and other qualifiers,³ and was more complicated than CERS.

Did CEWS and CERS Actually End on October 23, 2021? The pandemic sure didn't.

The short answer is: no. The Tourism and Hospitality Recovery Program (THRP) was launched on October 24, 2021 and, thus far, has extended up to March 12, 2022. The THRP has both a wage and rent component that is calculated similar to their respective predecessors.⁴

The major difference is that THRP is intended for tourism, hospitality, arts, entertainment, and/or recreational businesses. The list of eligible businesses is exhaustive, and includes restaurants, convention and banquet halls, camps, hotels, live shows, and cinemas.⁵

Fun fact – the jury is still out on whether CEWS is pronounced “Ques” or “Sues”.

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Impact to Saved Expenses

In business interruption claims where the insured is operating at a significantly reduced capacity or is completely closed, there may be saved fixed expenses (non-continuing expenses or reduction in insured standing charges) to consider.

Rent may partially or fully abate/ cease to be paid. Also, it is common for payroll to be reduced as well.

Under normal circumstances, simply comparing the post loss rent or payroll expense (if any) to the pre-loss period is a basis to quantify savings. But what if the insured has been receiving subsidies for these expenses?

The insured is ultimately incurring a lower out-of-pocket expense if the government is subsidizing that expense.

For example, let’s assume Business XYZ was shut down for a month due to a vehicle impact. As a result of the loss, they did not pay

their rent or payroll.


We have illustrated the calculation of the saved expense calculation with and without the COVID-19 subsidy in Table 1:

It is important to note that many businesses record COVID-19 subsidies under ‘other income’ on their financials, separate from the payroll and rent expense accounts. As such, it is impera-

Table 1

Description	Expense Had No Loss Occurred	Expense Given the Loss	Savings
NO SUBSIDY			
Payroll Expense	\$ 25,000	\$ -	\$ 25,000
Rent Expense	5,000	-	5,000
	\$ 30,000	\$ -	\$ 30,000
WITH SUBSIDY			
Payroll Expense	\$ 25,000	\$ -	\$ 25,000
CEWS	(15,000)	-	(15,000)
Rent Expense	5,000	-	5,000
CERS	(3,000)	-	(3,000)
	\$ 12,000	\$ -	\$ 12,000

Based on the above example, the calculated saved expense is \$18,000 lower if Business XYZ was in receipt of CEWS and CERS.



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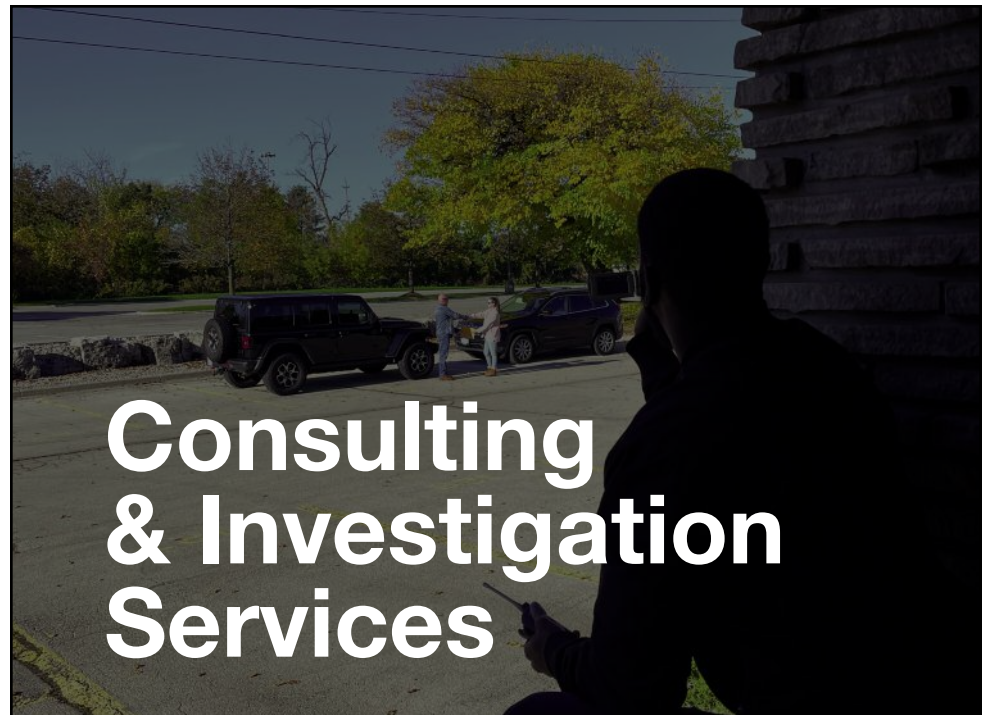
tive that a detailed understanding of the insured's accounting practices and subsidies received is established prior to performing any calculation.

- ¹ <https://www.canada.ca/en/revenue-agency/services/wage-rent-subsidies/emergency-wage-subsidy.html>
- ² <https://www.canada.ca/en/revenue-agency/services/wage-rent-subsidies/emergency-wage-subsidy.html>
- ³ <https://pm.gc.ca/en/news/news-releases/2020/04/24/prime-minister-announces-partnerships-provinces-and-territories>
- ⁴ <https://www.canada.ca/en/revenue-agency/services/wage-rent-subsidies/tourism-hospitality-recovery-program.html>
- ⁵ <https://www.canada.ca/en/revenue-agency/services/wage-rent-subsidies/tourism-hospitality-recovery-program/trhp-activities-qualify.html>



Mark Boshnakis is a Manager at MDD Forensic Accountants' Toronto office. Mark's practice specializes in quantifying economic damages related to business interruption, accident benefits, personal injury, fidelity, franchise rescission, and liability. He has recently worked on entertainment insurance claims primarily related to COVID-19 performance cancellations and suspensions. His industry experience includes construction, aviation, automotive, energy & mining, food service, hospitality, retail trade, and transportation. Mark obtained his Honours Bachelor of Business Administration in 2015 from Wilfrid Laurier University.

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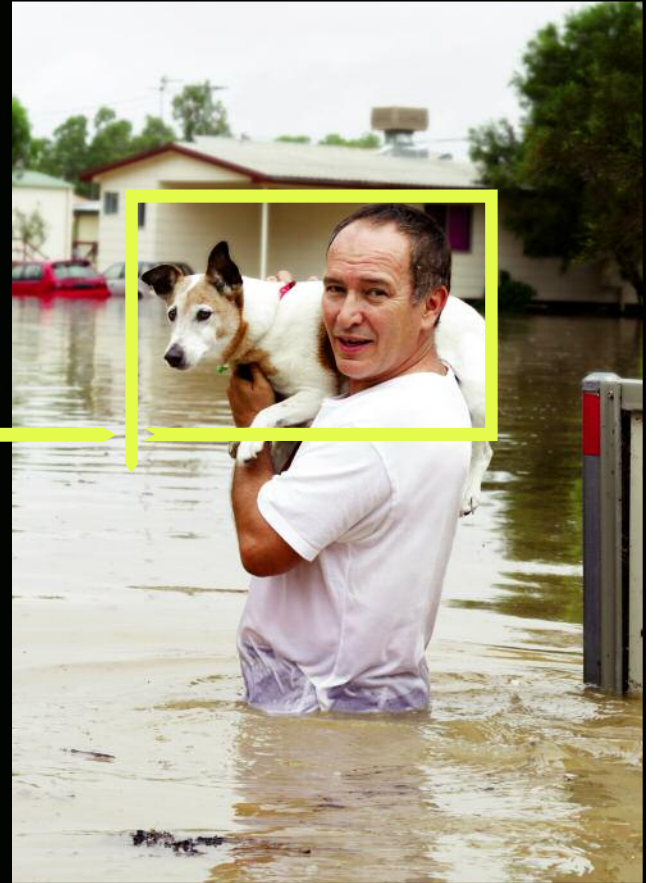


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Accomsure	48
AutoLux	19
BDO Canada	43
Beard Winter LLP.....	39/41
Brown & Beattie	34
Consolidated Salvage.....	42
CPI Ontario	51
Davis Martindale.....	40
GardaWorld	49

	Page No.
Global Resolutions.....	43
MDD Forensic Accountants.....	47
Nusens.....	21
Premiere Suites	29
ServiceMaster Restore	51
Servpro Industries (Canada) ULC	35
Williams Meaden & Moore Inc.	33
Xpera Risk Mitigation	52



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