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**OVAA Newsletter
Publication Deadlines**

If you have a submission for the newsletter, please advise the editor ASAP so space can be reserved. The actual submission content (articles, advertising changes, etc.) must then be received by the following dates:

Newsletter Issue Submission Deadline
June 2017..... May 15, 2017

If at any time you do not receive your newsletter, please contact a member of the OVAA Executive.

O.V.A.A. Reservation Policy
The O.V.A.A. would like to remind its members of our booking policy for dinner meetings and events.

The O.V.A.A. is charged for each person who registers for an event, whether they are able to attend or not. It is therefore necessary for us to charge anyone who registers for an event and does not attend.

We appreciate your support and understanding in this matter.

2017-2018 OTTAWA CHAPTER EXECUTIVE

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SEMINAR SUGGESTIONS

During the course of planning our year, we look to our members, associates, advertisers and friends either to provide guest speakers for our monthly meetings or to let us know what topics are of interest.

Should you wish to present a seminar for the OVAA Membership or should you have an idea for a seminar topic you would like to see presented, please contact:

Alex McCann, FCIP, CRM

T: 613.824.2674 or

613.407.5394

E: alexander.mccann@intact.net





President's *Pen* & REP'S *Ramblings*

April showers bring may flowers...No truer words could have been spoken for this year!! We did it... we made it to May... finally the nice weather is here!! It has definitely been a long time coming but nothing but blue skies and sunshine in our future

Our luncheon seminar that took place on the 18th of April presented by Yasser Korany for Origin and Cause on “ How to Maximize a Claims Subrogation Potential” was very interesting and informative. I would like to take this opportunity to once again thank Yasser for taking time out of his busy schedule and providing such a great presentation. Our next luncheon seminar will be on June 20th presented by Joseph Lawrence on “Whiplash and Head Injuries” . Once again at our new venue. This presentation will actually be overlooking the water which will be an added bonus to the day.

We hosted our first Annual Pool Tournament at Dooley's Pool Hall on April 27th, 2017. Despite the fact that it fell on the same night as the 1st game of the 2nd round of the playoffs, it was very well attended. A good time was had by all.

Our next event will be our 45th Annual Golf Tournament on July 13th, 2017 being held once again at the Meadows Golf & Country Club. Information and registrations forms will be in this month's issue. This event sells out very quickly each year. So don't delay, register today!! The 2017 Provincial Claims Conference that was hosted by the Kitchener/Waterloo Chapter on May 4th and May 5th, 2017 went off without a hitch. It was great to see a number of our local adjusters and vendors at this event. I would like to commend the excellent job done by the Executive and the committee. It's a lot of hard work and planning to host an event of this size. Congratulations to Kitchener/Waterloo.. Great job!! Part of the festivities is the “Passing of the Torch” to the upcoming host of the next Provincial Claims Conference I am pleased to announce that the Ottawa Adjuster's Association and the Thousand Island Adjuster's Association will be co-hosting the 2019 Claims Conference at the Shaw Centre on May 2nd and 3rd. It was an honour and a privilege to accept the torch with a representative of the TIAA and thank them for hosting such a great event. I now have the sacred torch in my possession to be passed on at our 2019 Provincial Claims Conference. A Save the Date is included in this issue, so mark your calendars This will be an event that you don't want to miss!!

The OIAA Elections were held for the position of Secretary. I am very excited to announce the successful candidate Rhu Sherrard. Congratulations Rhu!! You will be an amazing addition to the Senior Executive. As this term draws to a close, the final event before summer is the Changeover which is to take place June 16th & 17th. The Changeover signifies the change of the President for the OIAA from the recent President to the new President. I am very pleased to announce that our very own Jennifer Graham will be the incoming President for the 2017-2018 term. Congratulations Jen!! I am certain this is going to be a GREAT year!!

If you haven't had the opportunity please take a moment to have a look at our OVAA Facebook Page. Stay tuned more exciting things to come over the next couple of months!!

Finally once again, I invite anyone who might be interested in submitting an article for consideration to be published in the OVAA newsletter as well as the WP magazine to please let me know as we are always looking for new material. Registration forms included for all the upcoming events in this issue.

Cheers and see you soon!!

Cindy Bridge, CIP, CRM
OVA President/Ottawa Delegate

THE IMPACT OF CLIMATE CHANGE ON INSURANCE CLAIMS

BY Y. KORANY - ORIGIN AND CAUSE INC.

Over the past 6 years, the Canadian Disaster Financial Assistance Arrangements Program provided more funding than in the previous 39 years combined.* Reflecting on the cases we worked on over the years, we do not find this statistic surprising at all. It is clear to us that climate change is impacting the safety and durability of many existing structures. Climate change is a broad term that is used to cover several extreme weather conditions such as:

- heavy rains and floods,
- heavy snow falls,
- strong winds and tornados,
- thunder and lightning storms,
- thermal extremes, and
- large wild fires.

In many of the losses we recently investigated, our analyses demonstrated that the design and construction of the impacted/failed structure met the minimum requirements of the current Ontario Building Code, yet under the extreme weather conditions these structures sustained, albeit brief, failure took place. The main factors climate change has introduced and that directly impact the safety and service life of our built environment can be summarized as follows:

- Higher wind speeds, gusts, and more frequent microbursts;
- Thicker and denser snow accumulations;
- Deeper frost line**;
- Heavier rains and increased flash flooding.

We have investigated total roof failures (see photograph) resulting from microbursts where wind speeds exceeded the design wind speeds specified in the current building codes by over 35%. We also observed a sharp increase in the collapse of walls and roof trusses during construction as a result of strong winds for which the collapsed member was not properly braced. New records of low temperatures are causing a thicker ground layer to freeze.

Currently, building codes require the foundation to be placed at least 4 feet deep from the ground surface to be below the frost line. From our practice, there is ample anecdotal evidence that the frost line is moving deeper as we have investigated plenty of frost heave cases

where frozen ground expanded, causing damage to the foundation and superstructure.

Water leakage and flooding damage claims are also on the raise. Any minor flaws in roof construction become great vulnerabilities under the intense and heavy rains Ontario has been experiencing in the past a few years. In western Canada, we have been called upon by the insurance industry to investigate partial and total roof collapses under the weight of heavy snow accumulation. In the majority of these cases, Environment Canada snow accumulation records demonstrated higher snow weights than the minimums specified by building codes.

The impact of climate change on the intensity and frequency of the loads structural engineers use to design buildings is now well recognized by the Canadian Commission on Building and Fire Codes. A huge effort is underway to update the climate data in the National Building Code of Canada to account for the severe weather conditions. The new design values for climate data are expected to be in effect by 2020*. New construction will certainly benefit from these changes. However, it is left up to the judgment of the practicing engineers to select appropriate load intensities



Collingwood's Mr. Transmission Roof Collapsed on October 17, 2016 during a microburst (www.canadianunderwriter.ca)

for repair and renovation designs of existing structures. Designers must always remember that building code requirements are merely

Continued on page 8 >



If you have an article that will
**Enlighten, Educate or
Entertain,**
kindly contact a member of the
OVAA Executive (See page 1
for Contact Info) for submission
guidelines and publication
deadlines.

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Ottawa Valley Adjusters Association

Calendar of Upcoming Events

| May 2017 | | | | | | |
|----------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | | | |

| June 2017 | | | | | | |
|-----------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
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| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | |

May 4 & 5
Provincial Claims Conference

June 20
Lunch Seminar

May 18
Summit



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OVAA JUNE LUNCHEON SEMINAR

Speaker: Dr. Lawrence
Topic: Whiplash and Head Injuries
Date/Time: June 20, 2017 – 12PM
Location: Malone's, 1001 Queen Elizabeth Drive, Ottawa
Cost: Members\$40.00
Non-members...\$45.00



Ottawa Valley Adjusters Association

SEMINAR REGISTRATION FORM

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REGISTER IN ADVANCE BY EMAIL

Those who register but do not attend will be billed.

Speaker Bio: **Dr. Joseph O.M. Lawrence, BSc, DC, DACNB, FACFN, FABBIR**

Dr. Lawrence has been in practice in Ottawa since 1988 and is the Clinic Director of the Broadview Spine & Health Centre.

- Fellow of the American Board of Brain Injury Rehabilitation, 2015
- Fellow of the American College of Functional Neurology, 2011
- Diplomate of the American Chiropractic Neurology Board, 2011
- Doctor of Chiropractic, Canadian Memorial Chiropractic College, 1988
- Interviewed by CTV News, Ottawa Citizen, CFRA 1200, Rogers Cable and The Medical Post
- Abstracts accepted for publication in the **Frontiers in Neurology** titled: "Novel Brain Rehabilitation Program Reduces Post Concussion Symptoms in a 45 Year Old Female" and "Reduction of Palatal Myoclonus With Novel Brain Rehabilitation Treatment".

THE IMPACT OF CLIMATE CHANGE ON INSURANCE CLAIMS

BY Y. KORANY - ORIGIN AND CAUSE INC.

minimum values to meet and not targets.

Yasser Korany, Ph.D., P.E., P.Eng., LEED AP Consulting Forensic Structural Engineer

Yasser specializes in structural forensic investigation and construction litigation support. His engineering practice spans more than 25 years, and he is a licensed professional engineer in Ontario, Alberta, British Columbia and the State of Michigan. Throughout his career, Yasser has applied his unique combination of laboratory and field experience to identify the cause of structural distress and failures for institutional and commercial facilities, residential buildings and parking garages. Yasser is also an LEED® Accredited Professional. This accreditation signifies Yasser's expertise in providing sustainable engineering solutions that minimally impact the environment. Prior to joining Origin and Cause, he was a Professor of Structural Engineering at the University of Alberta where he taught structural analysis and mechanics courses, and provided forensic engineering consultancy services in Alberta.



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OUT_{OF} TOWN PROVINCIAL CLAIMS CONFERENCE

MAY 2ND & 3RD, 2019 AT THE SHAW CENTRE

Ottawa Valley Adjuster's Association & Thousand Island Adjuster's Association are co-hosting the event together here in Ottawa.



AN UPDATE ON CONFLICT OF INTEREST

BY ANNE HERRIOTTS

Conflict of Interest: a concept that we brush against regularly, but are only rarely forced to tackle head on. There have been three decisions in Ontario so far this year that address conflict of interest. Each decision looks at the subject from a slightly different perspective:

- The high stakes when counsel for one party switches to another party's firm;
- The fact that superficial interactions do not create a conflict of interest; and
- An odd-ball case where there was no conflict of interest.

Ontario v. Chartis: Very High Stakes Musical Chairs

In January 2017, the Ontario Court of Appeal handed down a decision on the matter of Ontario v. Chartis Insurance Company of Canada. The underlying issue is a coverage dispute between the province and

its various insurers, primarily Chartis (which is referenced as AIG in the decision). It is “a complex action involving the interpretation of [Ontario's] insurance policy and class actions involving a class period from the 1940s to 2009”. In the coverage dispute, lead counsel for AIG was Mr. McInnis at Lloyd Burns McInnis LLP (LBM). McInnis had docketed over 400 hours on the case.

Lead counsel for the province had been Mr. Foulds at Theall Group LLP (TG), where Foulds had docketed over 160 hours.

The issue arose in December 2013 when Foulds announced his intention to move from TG to LBM – he was moving from the insured's firm to the insurer's firm.

In anticipation of the move, LBM established an “ethical screen” that LBM believed would protect the parties against any conflict of

Continued on page 12 >





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AN UPDATE ON CONFLICT OF INTEREST

BY ANNE HERRIOTTS



The motion judge refused to remove counsel for AIG. The province appealed to the Divisional Court.

The Divisional Court decision acknowledged that there are very few lawyers available at all who were competent to litigate a matter of this complexity, and that no one was more expert than AIG's counsel McInnis at LBM. It acknowledged that LBM had implemented all the measures suggested by the Law Society of Upper Canada for such situations, and that all measures had been implemented in a timely manner. It even acknowledged that AIG should not be denied counsel of choice.

interest. The ethical screen obviously prevented Foulds from working on the subject matter once he arrived at LBM, nor could he discuss the matter with anyone at LBM. In addition, Foulds and all personnel at LBM would be required to sign an undertaking to adhere to the elements of the ethical screen. The undertaking included an acknowledgement that failure to abide by the terms of the ethical screen would result in sanctions that might include dismissal. The ethical screen would be monitored by a senior partner at LBM who was not involved in the action. Foulds' office would be several offices away from McInnis' and they would not share the same assistant.

However, Foulds obviously had a degree of expertise in this type of matter, and LBM is a boutique firm with only 14 lawyers. As such, Foulds did work for AIG on other matters. He also spent 50-60% of his time working with McInnis after joining LBM.

The province had lost their expert counsel to AIG's coverage defence firm. The province did not feel that the ethical screen was sufficient because of the intensive knowledge that Foulds had about the entire file, including Ontario's litigation strategy against AIG. The province filed a motion claiming that LBM could no longer represent AIG at all due to the conflict of interest that Foulds' move created.

However, in the end, the Divisional Court judge had to find that the relationship between McInnis and Foulds was "too close for comfort". The ethics of neither lawyer were in dispute, but the risk, the stakes, and the optics of the situation were too much, and AIG was instructed to find new counsel.

This time AIG appealed. Unfortunately for AIG, the Ontario Court of Appeal had to agree with the Divisional Court decision. Although LBM adhered to the letter of the guidelines in the ethical screen, the spirit of the guidelines would not have had the two lawyers working together at LBM 50-60% of the time.

The Lesson from Ontario v. Chartis

Every adjusting firm and claims department has protocols for ethical screens when there is potential for a conflict of interest. What we have to take away from Ontario v. Chartis is that it is not enough to have the ethical screen in place. We cannot just go through the motions; we have to mean it. And it seems that, sometimes, the ethical screen will not be enough.

Mayer v. Rubin: Superficial Exchanges May Not Create Conflict of Interest

Continued on page 13 >

AN UPDATE ON CONFLICT OF INTEREST

BY ANNE HERRIOTTS

The underlying action in [Mayer v. Rubin](#) is a tangled estate dispute in which the estate of the father was alleged by one daughter to have been mishandled by the surviving mother and adult children.

In [Ontario v. Chartis](#), the conflict of interest arose when counsel changed firms. In [Mayer v. Rubin](#), the alleged conflict of interest arose when the applicant changed her counsel.

Months earlier in the process, counsel for the respondent, Mr. Juroviesky, had some questions about potential involvement of the Public Guardian and Trustee related to competency issues of the mother, as well as US tax questions related to some US holdings. Juroviesky had contacted counsel at an associated law firm with some expertise in the matter, a Mr. Handelman.

The initial email interaction between Juroviesky and Handelman was on a “no names” basis. It was simply an overview of the fact situation to see whether Handelman would be interested in a retainer related to those issues. Handelman expressed interest, and Juroviesky sent a follow-up email with several specific legal questions, which did include specific information that the respondents considered privileged.

In the end, Handelman apparently never responded and was never retained by the respondents’ counsel.

Some months later, the daughter applicant changed counsel and retained a lawyer at the same firm as Handelman. The new counsel performed a conflict of interest search, but found no record that the firm had previously been involved in the matter.

The [Mayer v. Rubin](#) decision relates to a motion by the respondents to have the daughter’s new counsel removed due to a conflict of interest following those email interactions months earlier between their counsel and the other lawyer at the daughter’s new counsel’s firm.

In deciding the matter, the court cites the same Supreme Court of Canada decision referenced in [Ontario v. Chartis](#): [MacDonald Estate v. Martin](#) 1990 CanLII 32 (SCC). [MacDonald Estate](#) confirms the

need to remove opposing counsel where necessary to protect a client’s confidentiality.

However, the court in [Mayer v. Rubin](#) went on to point out that the only confidential information at question was the content of the one email. The respondents felt the email contained privileged information, but a copy of the email had been provided by the respondents as part of their motion materials. Not only had the email already been disclosed, but rules governing the estates process would have forced disclosure. Finally, the court pointed out that the daughter’s counsel had not been at the firm when the email was sent, and that Handelman himself had no specific recollection of the email or its contents.

The court’s decision was to dismiss the respondents’ request to have the daughter’s new counsel removed.

The Lesson from [Mayer v. Rubin](#):

In [Ontario v. Chartis](#) we saw how much can be at stake when a conflict of interest arises for counsel with in-depth knowledge of a file. In [Mayer v. Rubin](#) we see the other end of the spectrum: although there had been some exchange of information with another lawyer at the applicant’s counsel’s firm, the mere fact of the email exchange by itself was not enough to create a conflict of interest.

[Anderson v. McKellar](#): You Can’t Claim Conflict of Interest Just to Get Your Fees Paid

To recap, [Ontario v. Chartis](#) was an example where there definitely was a conflict of interest that was so significant it could not be overcome by an ethical screen. In [Mayer v. Rubin](#) there was potential for conflict of interest, but voluntary disclosure and rules of disclosure overrode that potential. In [Anderson v. McKellar](#) we have an example of a situation that was definitely not a conflict of interest.

The underlying action in [Anderson v. McKellar](#) involved a number of defendants, but the allegation against defendant James McKellar was that he threw a beer bottle that injured plaintiff Anderson.

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THE 45th Annual OVAA GOLF TOURNAMENT in support of Camp Quality.

We are incredibly excited to announce that we will once again be hosting our annual OVAA Golf Tournament at **The Meadows Golf Club on Thursday, July 13, 2017.**

We will be raising money towards a new charity this year. Camp Quality. Camp Quality strives to provide empowering camp experiences for kids with cancer. Our philosophy is that together, we can do anything, be anything and achieve everything. We have the power to turn life's challenges into adventures.



After the huge success and positive feedback of last year's event, we've decided to keep the same structure for registration. All adjusters are invited to the tournament **free of charge**. As long as you're a member of the OIAA, we would like you to come out to this event and meet some of the other members of the association and industry. We will be assigning registered adjusters on a random basis to teams sponsored by associate members, but will ensure that you are playing with members in the same line of business.

For associate members, you can register a team in the form provided, and please indicate the two members of your company who will be playing golf that day. The cost is \$600.00 per team, which includes a BBQ lunch, 18 holes of golf with cart and two sponsored adjusters, a Prime Rib dinner and prizes.

We look forward to seeing everyone out for a great day on the links in support of a great cause!

If you have any questions, please do not hesitate to contact

Cindy Bridge at Email: cindy.bridge@dgig.ca



45th Annual OVAA Golf Tournament

VOLUNTEERS & PRIZE DONATION

As always, in order to have a successful event, a lot of help is required.

If you are interested in joining the OVAA Golf Committee or if you would like to volunteer your time for the day of the tournament, please contact

Cindy Bridge at Email: cindy.bridge@dgig.ca

Volunteers Make It Happen!

Any firms wishing to donate items to be distributed as prizes at this year's annual OVAA Golf Tournament should contact **Cindy Bridge at Email: cindy.bridge@dgig.ca**

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45th Annual OVAA Golf Tournament – Thursday, July 13, 2017

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AN UPDATE ON CONFLICT OF INTEREST

BY ANNE HERRIOTTS

At the time of the incident, McKellar was 17 and was considered an “insured” under his parents’ homeowners’ policy through Allstate. Allstate did exactly what you would expect when the Statement of Claim was served two years later: they secured a Non-Waiver (related to policy exclusions for the alleged intentional and criminal acts) and assigned defence counsel, a Mr. Gilbert.

The Non-Waiver was signed by McKellar’s parents, but not by McKellar. McKellar had been in the room with his parents and the adjuster when the Non-Waiver was signed, but, for whatever reason, he was not asked to sign.

Since the claimed damages were \$6,000,000 and the Allstate policy had \$2,000,000 policy limits, Gilbert went through the usual process of writing to McKellar, advising of the unlikely but theoretical possibility that McKellar would be responsible for damages in excess of the policy limits. The letter advised McKellar of his right to retain his own counsel for uninsured exposures, but that it would be at his own expense.

McKellar did retain a Mr. Wymes, but apparently never paid him. Wymes acknowledged in the process that he was not the counsel of record. Nevertheless, he attended Examinations for Discovery in 2013 and remained involved in the entire process.

Things could have gone much worse for McKellar. Following mediation and pre-trial, the action settled for \$250,000. Of that settlement, Allstate’s contribution was \$25,000. Allstate even agreed not to pursue McKellar for that \$25,000. So where is the problem? Where is the conflict of interest?

Well, right after the settlement, Wymes filed a Notice of Change of Solicitors for McKellar, purporting to change counsel from Gilbert to himself. Wymes argued that Gilbert’s retainer was “unlawful”, apparently because it was not McKellar who had signed the Non-Waiver. Wymes also filed a motion to be declared co-counsel of record for McKellar. This 2017 decision relates to that motion.

The court discusses that an order appointing co-counsel is unusual,

Continued on page 19 >



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BY ANNE HERRIOTTS

but there are some circumstances where it is warranted: for example, if there is a conflict of interest. However, in this circumstance, there was no conflict of interest. The interests of Gilbert and Wymes were aligned: to settle the case within the policy limits and eliminate any personal exposure to McKellar.

The court held that there was no conflict of interest between Gilbert and Wymes, and no basis to appoint Wymes as co-counsel.

It turns out that Wymes' motivation for the motion was that he wanted to ensure that his \$60,000 in fees was paid. He'd even issued a Notice of Action against the plaintiff and co-defendants seeking an order that the settlement not proceed unless and until he had been paid. In addition to dismissing the motion, the court also issued an order barring Wymes from any further proceedings in this litigation.

The Lessons from Anderson v. McKellar

When the adjuster for Allstate met with the McKellar family, both parents and McKellar were present. McKellar was over 18 by then, but he was not asked to sign the Non-Waiver. There is no explanation given as to why he was not asked to sign. Would that have prevented Wymes' motion, though? Maybe. Probably not.

The other take-away from Anderson v. McKellar is the reassurance that, when an insured retains his own counsel for uninsured exposure, that does not automatically create a conflict of interest.

Summary

The cases that have come out of the Ontario courts so far in 2017 address conflict of interest for lawyers. However, lawyers are not

the only professionals in the claims process who may face conflict of interest.

As claims adjusters we need to disclose any potential conflict of interest. The best practice is to document in writing that you have advised of the potential, and seek confirmation in writing that the parties do not object. Early disclosure of even a potential conflict is critical for our own reputations and for the integrity of the profession. Even when, and especially when, the stakes are highest.

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