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OAAA 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
December 2018.....	November 15, 2018

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



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HOW THIS AUTO CLAIMANT WON ADDITIONAL PAIN AND SUFFERING DAMAGES

WRITTEN BY GREG MECKBACH

The controversial 2017 Saadati ruling from the Supreme Court of Canada was one reason an auto accident victim recently got an increase in pain and suffering damages.

In Saadati's lawsuit, a judge with the Supreme Court of B.C. awarded pain and suffering damages partly based on testimony from family and friends of Mohsen Saadati, rather than based on medical evidence.

In the most recent case, Leo John Riley, now 69, was a passenger in a vehicle in 2011 that was driving east along a road in Maple Ridge, B.C. when it T-boned a westbound vehicle making a left turn.



Riley sued both Paul Ritsco and Carol Ann Tones – respectively the driver of the other vehicle and the driver of the vehicle in which Riley was riding. In *Riley v Ritsco*, released June 5, 2016, Judge Gregory Bowden of the B.C. Supreme Court found Ritsco was 100% liable and Tones was not at fault because she could not have avoided the collision.

Ritsco was ordered pay Riley more than \$150,000, of which \$65,000 was for pain and suffering, known in legal parlance as non-pecuniary damages.

Both Riley and Insurance Corporation of B.C. appealed. Riley argued, among other things, that he should get a higher pain and suffering award. ICBC argued on cross-appeal that Judge Bowden should have deducted income tax in awarding damages for past wage loss.

In *Riley v Ritsco*, released this past Thursday, the Court of Appeal for B.C. ruled in favour of ICBC on the issue of deducting income tax. It also ruled in favour of Riley on several grounds, including the non-pecuniary damages. Riley's pain and suffering award is now \$85,000.

Originally, Judge Bowden said without expert evidence in the field of psychiatry or psychology, he could not conclude that the collision adversely affected Riley's emotional or mental state.

But Judge Bowden did not need evidence from a psychiatrist or psychologist, Judge Harvey Groberman of the B.C. Court of Appeal wrote, citing *Saadati v. Moorhead*, released June 2, 2017, three days before Judge Bowden released his ruling in *Riley*.

Mohsen Saadati was driving a tractor that was rear-ended by a Hummer in 2005, driven by Grant Moorhead. Saadati was awarded \$100,000 in 2014 in pain and suffering. The award was quashed on appeal but restored by Supreme Court of Canada. The Insurance Bureau of Canada – which had intervener status in *Saadati* – argued that a plaintiff should not be awarded damages for the psychological effect of a tort unless it causes a "recognizable psychiatric illness."

The Supreme Court of Canada disagreed, ruling that a judge in a lawsuit may use non-medical evidence

Continued on page 25 >



President's Pen & REP'S Ramblings

Fall is officially here... the leaves are starting to change colour on the trees and a cooler breeze is in the air... I love this time of year, it is so incredibly beautiful!!! Perfect time to take a drive in the country, a hike or a long bike ride to enjoy the scenery and vibrant colours of the season.

I am pleased to advise that we were able to raise \$1000.00 for our charity Camp Quality at our Annual Golf Tournament. I would like to take this opportunity once again to thank everyone that was in attendance and to all our sponsors because we wouldn't be able to do this without your continued support. Together we continue to make this event a great success!! Save the Date – June 27, 2019.

Our next luncheon seminar will take place on November 20, 2018 at the LIV Rooftop Lounge. JC Laplante from RSM Canada will be presenting on Business Interruption. The cost is \$35.00 for members and \$40.00 for non-members. Lunch and valet parking included. The next luncheon seminar will take place in the new year, January 22, 2019. Frances Shapiro Munn from Nelligan O'Brien Payne LLP will be presenting "Can a waiver be a defence to liability, including negligence? Court of Appeal says yes". We will be hosting seminars every two months instead of monthly. Please visit our website for the list of upcoming seminars, speakers, dates, topics and events.

Our next event will be our Children's Christmas Party which will be held at the Midway on the 30th of November. There is now an area for children four and under as well as batting cages for anyone that wants to improve their batting skills. Santa Clause will be making a special appearance and bringing presents for all the OVAA boys and girls!! Please visit our website to register online for any of the upcoming events.

Save the date – Inter-industry Christmas Social December 18, 2018 at the RCMP Officers Mess. Past President's Night March 26, 2019 at the Canadian Tire Centre. Sens VS Boston. Out of Town Provincial Claims Conference – Co-hosted with TIAA – May 2nd and 3rd, 2019.. 47 Annual Golf Tournament – June 27, 2019.

On September 19, 2018 the OIAA hosted our September Kick-off at the Ripley's Aquarium. This event sells out every year and this year was no exception. What a great way to start off the new term!

The Past President's Night will take place on October 10, 2018 at the Signature Sandman Hotel and will feature a local comedian.

Our OIAA Christmas Party this year will be held at the Westin Hotel on December 13, 2018. Registration will be open on October 11, 2018. This event sells out quickly so Save the Date!

Once again, I invite anyone that would like to submit an article for consideration for our magazine and/or the WP, please submit it for review. Also, if you are interested in joining our Executive, please send an email to ova.ca.

I hope to see everyone soon.

Sincerely,

Cindy Bridge, CIP, CRM
OVA President/Ottawa Delegate

Calendar of Upcoming Events

November 2018

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	

NOVEMBER 20, 2018

AT 12:00PM

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ARTIST OR HOARDER? WHY INSURERS DON'T LIKE CLUTTER

WRITTEN BY GREG MECKBACH

Self-employed artists who work from their own apartments with large quantities of material should have sprinkler systems and firewalls, a Toronto fire inspector suggests.

In 2017, Toronto Fire Services ordered an apartment tenant – identified only as K.R. – to remove combustible material from his unit and to make sure there was at least a meter between his collection and kitchen appliances.

The resident challenged the order on the grounds that it did not take into account the fact that his apartment is a “live/work studio,” wrote Ontario Fire Safety Commission members Luisa Ritacca, Santina Moccio and Maureen Helt in *K.R. v. Toronto Fire Services*, an FSC ruling released Tuesday.

FSC is a quasi-judicial agency to which Ontarians can challenge orders made by fire marshals. In the case of K.R., described both as an artist and a hoarder – the commission ruled in favour of Toronto Fire Services.

During the 2017 inspection, Toronto Fire observed a “high volume of materials stored in all visible areas

of the unit, including clothing, children's toys, books, paper boxes, plastic bins, furniture and textiles.” The inspector noted there “appears to be a hoarding concern” in K.R.'s apartment.

Tenants who hoard puts other residents at risk if fire breaks out, warns Aviva Canada, the nation's second-large property and casualty insurance carrier. Aviva Canada advises building owners to inspect all units twice a year, check their condition and ensure maintenance staff report any excess clutter in a unit. Toronto tenant K.R. told the fire commission he is an artist who uses children's toys and post-consumer industrial packaging in his work and also collects vintage clothing, porcelain, ceramics, glass and textiles.

But that collection could potentially put firefighters and neighbours at risk, Toronto Fire Services noted, adding that in a “true live/work unit” there should be a sprinkler system as well as fire walls between each space.

Among other things, K.R. took issue with Toronto Fire's contention that he should have one metre of clearance between his stuff and the ceiling, to ensure to the smoke detectors are not blocked. The fire commission disagreed, ruling that K.R.'s unit presents a fire risk.

Ontario law gives fire inspectors the ability to enter any premises “at any reasonable time” with no notice, FSC noted in its ruling.



WHAT MADE THE DUNROBIN TORNADO SO UNIQUE

WRITTEN BY JASON CONTANT

One tornado that struck the Dunrobin, Ont. area Friday was only the second EF3 twister to touch down in the province in September or later – and the first during this time period in 120 years, said Glenn McGillivray, managing director of the Institute for Catastrophic Loss Reduction (ICLR).

The last F3 tornado to touch down in Ontario in September was in 1898 in Merritton, Ont. (now known as St. Catharines).

Under the Enhanced Fujita Scale, in use in Canada since April 2013, EF3 tornadoes can see wind speeds reach between 225-265 km/h. The two tornadoes that struck the Ottawa/Gatineau, Que. area on Friday were rated as high EF3 (Dunrobin/Gatineau) and EF2 (west and south Ottawa, with wind speeds of between 180-220 km/h).

"So, the Dunrobin tornado can be considered quite rare from a strength versus time of the year perspective," McGillivray told Canadian Underwriter Monday. "Also, not many tornadoes occur in this part of the province."

One of the last memorable tornadoes to hit the area was an F3 tornado in August 1994 (wind speeds between 250-320 km/h, according to the Fujita Scale that Environment Canada used until the 2012 tornado season). The event in the Gatineau suburb of Aylmer, Que. damaged about 385 homes and resulted in several injuries.

The most recent tornadoes will be heavily insured because wind – unlike overland flood – is commonly included in virtually all property policies, McGillivray said. However, coverage for things like outbuildings and fences can depend on policy specifics. Damage to vehicles is covered, provided comprehensive coverage is in place.

Business interruption may be triggered if a building holding the coverage experiences damage and is offline for a period outlined in the policy wording, McGillivray added. "Generally speaking, there would be no coverage for damage related to lack of power if there was no damage to the insured property itself," he said. "In order to be covered for a power failure, the insured would require coverage known as 'off premise power.'"

Hydro Ottawa first reported 147,000 customers were without power in the Ottawa area; by 3 p.m. Monday, 3,570 remained without power. One tornado also badly damaged the Merivale hydro transformer station.

McGillivray said if history holds true, "insured damage for this event will not be as high as scenes of the damage may imply." While damage is extensive, insured damage tends not to be extremely high. For example, the June 2014 tornado in Angus, Ont. damaged about 100 homes and caused about \$48 million in insured damage. An August 2011 event in Goderich, Ont. caused insured damage of about \$110 million.

The Canadian Press reported 51 homes were destroyed or severely damaged in Ottawa. About 215 buildings were damaged or destroyed in Gatineau.





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HOW THIS AUTO CLAIMANT WON ADDITIONAL PAIN AND SUFFERING DAMAGES

WRITTEN BY GREG MECKBACH

to find that a plaintiff has suffered a mental injury.

"It also remains open to the defendant, in rebutting a claim, to call expert evidence establishing that the accident cannot have caused any mental injury, or at least any mental injury known to psychiatry," Justice Russell Brown of the Supreme Court of Canada wrote in Saadati.

In Saadati's lawsuit, a judge with the Supreme Court of B.C. had awarded non-pecuniary damages partly based on testimony from family and friends of

Saadati, rather than based on medical evidence.

As an intervenor, IBC argued against "allowing for highly subjective second-hand lay evidence to support claims for psychological harm."

But in its unanimous ruling, the Supreme Court of Canada said a trial judge should look at "the level of harm" shown by a plaintiff's symptoms, "not to whether a label could be attached to them."

A 'LESSEE' IS NOT NECESSARILY THE PERSON WHO PAID FOR THE RENTED VEHICLE

WRITTEN BY DAVID GAMBRILL

A "lessee" under Ontario's Insurance Act is the person whom the rental company would sue to enforce the rental contract, a court reaffirmed Monday.

In *Aviva v. Wawanesa*, the Ontario Superior Court decided a recent priority dispute between insurers. The court ultimately sided with a straightforward definition of a lessee, ruling that it does not matter who paid for the rental, nor does it matter whether the purpose of the rental was for work.

Maroof Mahamood, a college student who immigrated to Canada in 2000, was asked by his employer, Fine Furnishings, to do some furniture deliveries in October 2010. Mahamood rented a truck from New Horizons Car Truck Rentals/Discount Rent-a-Car in Hamilton, Ont.

Mahamood testified in court that did not understand the terms of the employment contract he signed

with his employer, Fine Furnishings, which stipulated that he carry his own auto insurance. Also, he did not own a credit card.

Mahamood rented a 2010 Ford CTV truck, signing a rental agreement between himself and New Horizons. He did not provide any credit card for this booking. New Horizons had within their computer system an account assigned to Fine Furnishings. The Visa card associated with the account belonged to the owner of Fine Furnishings. Court records included computer screen printouts of New Horizon's system concerning Mahamood's rental; in those printouts, Fine Furnishings is listed as the referral agency.

The rental agreement signed by Mahamood did not list Fine Furnishings on the agreement, but only Mr. Mahamood's name and his signature. He is identified as the renter and there are no other listed drivers. The address provided on the rental agreement

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WRITTEN BY DAVID GAMBRILL

is Mahamood's home address. He provided the business telephone number of Fine Furnishings as his contact number.

While doing deliveries for Fine Furnishings, Mahamood rear-ended Hy Kiet Liu, who made a \$3-million claim for injuries that he says he sustained from the collision. Liu's claim remains outstanding.

Since Mahamood was uninsured, a priority dispute developed between Aviva, the insurance company for the rental agency New Horizons, and Wawanesa Mutual Insurance Company, the insurer for Fine Furnishings.

The court sided with Ontario Superior Court Justice Paul Perell's 2013 decision in *Intact Insurance Company of Canada v. American Home Assurance Company of Canada*.



"I see no unfairness in a straightforward interpretation of [s. 277 of the Insurance Act, defining a "lessee"]," Perell wrote for the court at the time. "And I see no reason to give s. 277 a reading that would introduce the concept of 'de facto lessee' and encourage

factual and legal disputes between insurers about how employment law, agency law, corporate law, partnership law and the law of contract might apply to cast doubt on who is a lessee under s. 277 of the Insurance Act.

"Who is the lessee can be tested and determined by asking the following question: Who can the lessor... sue to enforce the car rental contract?"

Reaching the same conclusion in *Aviva v. Wawanesa*, Ontario Superior Court Justice Shaun Nakatsuru rejected Aviva's contention that the "lessee" was the furniture company that paid for the rental and not the independent contractor who signed the rental agreement.

Aviva argued the owner of the credit card was effectively the "lessee" of the vehicle, meaning that Wawanesa, which insured the furniture company that paid for the vehicle, should be on the hook to pay for the auto insurance claim. But the court disagreed. Since the driver was uninsured, and since the furniture company was not responsible for renting the vehicle, Aviva (representing the the car rental agency) became the priority insurer as a result of the court decision.

CANADIAN DRIVERS DON'T FULLY UNDERSTAND CANNABIS IMPAIRMENT

WRITTEN BY DAVID GAMBRILL

Canadians know that driving while high on marijuana causes a risk to road safety, but they don't seem to understand cannabis impairment fully, according to a recent Leger poll conducted on behalf of the Insurance Bureau of Canada (IBC).

Eighty-four per cent of 1,517 Canadians polled in August believe that driving while high poses a real risk to road safety. Seven out of 10 Canadians believe driving while high is as dangerous as driving while impaired by alcohol.

However, despite being aware of the safety implications, Canadians don't appear to understand cannabis impairment, or how it might differ from the effects of alcohol impairment.

For example, 43% of Canadians polled said they do not know how long to wait before it is safe to drive once they have consumed cannabis. And 61% of Canadian cannabis users believe it's safe to wait less than three hours after consuming cannabis to drive, IBC notes in an announcement of the poll results.

Most Canadians polled (60%) think the police will

use a cannabis-impairment test equivalent to the breathalyzer.

The lack of clarity is unsettling, given that 62% of Canadian cannabis users have either driven or been a passenger in a car in which the driver had recently consumed cannabis, the Leger poll reveals.

"Drinking and driving is now socially unacceptable," IBC president and CEO Don Forgeron commented on the Leger poll results. "Unfortunately, we can't assume the same for driving while under the use of cannabis. We need the same approach to deterrence – appropriate penalties and detection tools – to discourage all forms of impaired driving so that broader use of legalized cannabis doesn't put public safety at risk."

Reflecting the opinions of Canadians cited in the Leger study, IBC has expressed concern that legalization could normalize and increase cannabis use, resulting in a corresponding increase in the risk of harm due to impaired behaviours, especially as they relate to road safety.

A recent study commissioned by Public Safety Canada found that 28% of 2,132 respondents admitted to having driven high; of those, 17% believed the influence of cannabis posed no real risks.

"What is more troubling is that one in 10 of those respondents believed cannabis makes a person a 'better driver,'" IBC said.

The margin of error in the Leger poll is plus or minus 2.5%, 19 times out of 20.

