



# Condominium Insurance and Liability Considerations

**Plus...**

**Every Word Counts:  
Jazayeri v. Economical**



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**Every Word Counts:  
Jazayeri v. Economical**

On July 19, 2021, the applicant witnessed her boyfriend being killed by a vehicle, and she claimed that she was almost struck herself during the course of events. She sought payment of accident benefits from Economical Insurance, which denied her claim.



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**Condominium Insurance  
and Liability Considerations**

It is important for condominium unit owners, condominium boards and insurers of both condominium corporations and unit owners to understand the unique insurance requirements that come along with for life in a condominium building.



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**End the Unpleasantness...  
Summarily**

It is trite to say, but condo board members deal with a lot of complaints. Occasionally, these complaints become the subject of an Application before the Human Rights Tribunal of Ontario ("HRTO"). Some of these complaints are legitimate, many are not. It has become somewhat commonplace for a disgruntled tenant/owner to use the HRTO to air their grievances about a dispute involving their condo board and/or property manager.

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**SHAWNA GILLEN, CFEI**  
**President, CIP**

I hope everyone had a wonderful holiday season and enjoyed their time with family and friends! Happy New Year and welcome 2025! On January 29th it is the Chinese New Year. 2025 is the Year of the Wood Snake which promises introspection, wisdom and growth.

Thank you to everyone that attended the 2024 OIAA Holiday Party and Past President's Night! The night was truly magical with the party taking place at



the breathtaking, Fairmont Royal York Hotel. We had almost 600 attendees with many decked out in black and gold. The Royal York Hotel was beautifully decorated with the breathtaking Christmas tree



located near the front entrance. Shout out to our dj, Chris Masterminds who had everyone dancing whether it was on the dance floor or in their seats.

We had several special guests attend the party. The star of the evening was Alex Winter! Alex is an amazing 10-year-old who is a Client Ambassador for Holland Bloorview. Alex was joined by his parents, Tyler and Sarah, and his sister, Elizabeth. In addition, Keisha Goberdhan who is the Community



Engagement Coordinator from Holland Bloorview was also in attendance. I want to thank Holland Bloorview for sending this wonderful family and the amazing, Keisha to our event! Their presence was truly the highlight of the evening. I would also like to thank everyone who donated to Holland Bloorview at the party. If you would still like to donate to this incredible organization, please scan the QR code or visit [www.hollandbloorview.ca](http://www.hollandbloorview.ca).

**Holland Bloorview**  
Kids Rehabilitation Hospital Foundation

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Thank you for attending the 2024 OIAA Holiday Party and supporting Holland Bloorview Kids Rehabilitation Hospital. You can increase your impact for kids with disabilities by making a donation by scanning the QR code or filling in the details below. Your generous support will make a huge difference for kids with disabilities and their families in so many ways!



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Thank you for supporting Holland Bloorview Kids Rehabilitation Hospital.

In addition, we also had several Past President's of the OIAA who attended the event. As per tradition, the Past President's were piped in by bag piper. Thank you to our entertaining bag piper, Glenn Donovan.



The Past President's who attended the event are:

- 1972 ..... Chet Gibula
- 1985 ..... Steve Sobel
- 1988 ..... James Cameron
- 1989 ..... George Szyпка
- 1992 ..... Jan Rutherford
- 1998 ..... Garth Roscoe
- 2003 ..... Frank Castaldo
- 2006 ..... Marie Gallagher
- 2007 ..... Alan Gallagher
- 2010 ..... Geoff Sullivan
- 2011 ..... Brett Colville
- 2012 ..... Steve Del Greco
- 2013 ..... Tammie Kip
- 2015 ..... Catherine Groot
- 2016 ..... Ian Gallagher
- 2017 ..... Jennifer Graham
- 2018 ..... Michael McLeod
- 2019 ..... Leanne Hardman
- 2021 ..... Rhu Sherrard
- 2022 ..... Kyle Case
- 2023 ..... Terry Doherty



It is in the prevue of the President to nominate someone who has made a significant contribution to the OIAA as an Honorary Life Member. There was one person who immediately came to mind and who I had the privilege of serving on the Executive



with from 2016 to 2024. That person was Kyle Case. Kyle served as the OIAA President in 2022. In addition, he served his local chapter, London Claims Association for many years by serving as both President and Delegate. Congratulations, Kyle!

Our next event is the 2025 Claims Conference taking place on Wednesday, April 2, 2025 at the Metro Convention Centre. Booth and sponsorships sales are now available at [www.oiaa.com](http://www.oiaa.com). General registration will open in January 2025.

I welcome your comments and feedback. Please feel free to reach out to me at [sgillen@facilityassociation.com](mailto:sgillen@facilityassociation.com).

**Yours truly,**  
**SHAWNA GILLEN, CIP**  
**President**  
**(437) 962-5820**



# SAVE THE DATE

## JANUARY 2025

January 23 ..... London: Chili Cook Off & Trivia Night - German Club

January 24 .....Kawartha Durham: Hockey Night in Oshawa - Oshawa Generals vs. Peterborough Pete's

January 24.....Hamilton: From Data to Destiny- Shoeless Joe's Burlington - Burlington, ON

## FEBRUARY 2025

February 26 ..... London: Annual Curling Funspiel - Highland Community Curling Club

February 27 .....Niagara: Curling Bonspiel - St. Catharines Golf & Country Club



## Constitution Changes

### NOTICE OF MOTION

In accordance with the OIAA Constitution; please be advised of the following proposed changes to Article 14 of the OIAA constitution

#### Article # 14 states:

The Official Journal of the Association shall be the magazine, "Without Prejudice", with editors appointed by the Executive Council. It shall record the activities of the Association and matters of general interest to the members. It shall publish all notices of motions and notice of all regular meetings.

#### Article 14 shall be replaced with:

The Official Journal of the Association shall be the publication, "Without Prejudice", with editors appointed by the Executive Council. It shall record the activities of the Association and matters of general interest to the members. It shall publish all notices of motions and notice of all regular meetings.

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Without Prejudice Articles	Natalie Barrow	Peter Riediger, Nadine Dionne	John E. Lowes - Insurance Institute	Emily Feindel	
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GTA Membership	Toronto Delegates		Membership	Peter Riediger	Sherry Desai, All Chapter Delegates
<b>EDUCATION</b>			Discipline	Terry Doherty	
Speakers & Meetings	Joel Bobb	Zohair Nassur	Constitution/Incorporation	Jennifer Brown	Sr. Exec.
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Strategic Planning	Emily Feindel	Carrie Keogh, Chrisitne Andrews	Nominating	Terry Doherty	
Bursary	Mike Bottan		Vendor Relations/Sponsorship	Emily Feindel	Terry Doherty, Joel Bobb
<b>CONFERENCES</b>			<b>ENTERTAINMENT</b>		
Toronto Claims Conference	Christine Andrews, Jennifer Brown	Kayla Helmond, Natalie Barrow, Peter Riediger, Rob Fiorido	Christmas Party & PP Night	Emily Feindel	Carrie Keogh, Joel Bobb
Career Fair - In association with Claims Conference	Michele Field/ Sheri Turner	Nadine Dionne	Golf Tournament	Sheri Turner	Kayla Helmond
			September Kick Off	Sherry Desai	Zohair Nassur, Natalie Barrow



# FOR THE MAGAZINE



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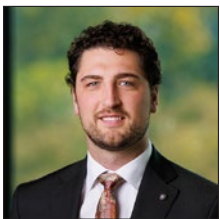
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Taylor Wilcox is an associate lawyer in the Saskatoon office with a general practice in civil litigation, construction law, condominium law and foreclosure matters. Taylor also has experience in residential real estate, cannabis law and corporate commercial law.



## Ryland MacDonald

Ryland MacDonald is a Partner at SBA Lawyers. His diverse law practice includes defence of human rights claims against condominium corporations, directors and property managers as well as fraud investigations and personal injury defence.



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# Every Word Counts: Jazayeri v. Economical

By: Selina Ferenac



**O**n July 19, 2021, the applicant witnessed her boyfriend being killed by a vehicle, and she claimed that she was almost struck herself during the course of events. She sought payment of accident benefits from Economical Insurance, which denied her claim. She then applied to the LAT for a determination, and LAT Adjudicator Deol denied her application on the preliminary issue of whether she was an “insured person” who was “involved in” and accident on the facts of the case. On May 1, 2024, the applicant requested reconsideration of the preliminary issue hearing decision, pursuant to Rule 18.2(b). In that decision, adjudicator Deol found that the applicant was not “involved in” an accident on July 19, 2021, and therefore was not eligible to claim benefits under an automobile insurance policy.

The applicant had submitted that she should be found to be an “insured person” by operation of either subsection (a)(i) or (b) of the definition of “insured person” in s. 3. (1) of the Schedule.

On reconsideration, Adjudicator Deol held that the applicant did not satisfy the test for reconsideration under Rule 18.2, as there was no misapprehension of the law. However, the applicant did satisfy the test under Rule 18.2(b), and Adjudicator Deol acknowledged that she made an error of law in two instances the first arose from her determination that physical contact with a vehicle was required to be held to be “involved in” an accident. She determined that the second error occurred because she did not conduct a clear analysis of whether having

psychological injuries from the apprehension of being struck on two separate occasions would meet the definition of being “involved in” an accident.



Adjudicator Deol applied the case of *Madore v. Intact Insurance Company*, 2023 ONSC 11 (“*Madore*”) in which the Divisional Court had held that physical contact is not required to be found to be “involved in” an accident. In that case, the Court emphasized that in determining direct causation, it is the use and operation of the automobile that is the relevant cause, not the vehicle itself. Further, under subsection 3.(1)(a)(i), there is no requirement for physical contact with a vehicle to be “involved in” an accident. As the court in *Madore* noted at paragraph 49, it is an error of law to introduce a requirement in the Schedule that is not specifically provided for in the definition. Adjudicator Deol also cited *Downer v. The Personal Insurance Company*, 2012 ONCA 302 (“*Downer*”), where the Court of Appeal determined that when the applicant thought he ran over one of his assailants with a vehicle, and sustained psychological injuries as a result, this met the definition of an “accident.” Under s. 3.(1), physical injuries are not required to meet the definition of being “involved in.”

In the original decision, Adjudicator Deol found that witnessing an

accident and believing you may be hit did not meet the definition of “involved in” under either subsections 3.1 (a)(i) or (b) of “insured person.” Further, Adjudicator Deol never dealt with the issue of whether having an apprehension of being struck by the car on two separate occasions as the accident unfolded, would amount to being “involved in” an accident. Rather these arguments were conflated, which amounted to an error of law.

On appeal, the applicant submitted that she could have been “involved in” an accident based on two separate theories, the first being that she witnessed her boyfriend being killed, and the second being the psychological injuries that flowed from her apprehension of being struck by the vehicle on two separate occasions. However, Adjudicator Deol found that while proximity to an accident alone is insufficient to be “involved in” an accident, witnessing an event is not the same as being “involved in” an event, and she cited the following cases where witnessing an event had been held not to amount to being “involved in” an accident to support this conclusion:

1. *Amiri*, where witnessing an accident first-hand, and hearing it and witnessing the aftermath, did

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- not amount to being involved in an accident;
2. Bustin, where the applicant witnessed an accident, and developed psychological injuries thereafter, did not amount to being involved in an accident; and
  3. Boyle, where although the applicant heard the accident take place, there is was no suggestion that this caused psychological impairment.

The Applicant never cited any authority or made submissions on why the Tribunal's reasoning in the decisions in Amiri, Bustin, and Boyle should not be applied. Further, in various expert reports submitted by the applicant, there was no indication that the applicant's psychological impairments arose from her fear of being struck by the vehicle.

Adjudicator Deol classified the applicant's psychological injuries as "nervous shock" injuries, which are contemplated by the Schedule. However, these claims are limited to accidents involving certain prescribed family members of the insured person who was injured or killed by the use or operation of an automobile. The applicant did not qualify for benefits under this condition precedent to be an "insured person." Thus, the applicant was not "involved in" the accident on July 19, 2021. The remainder of the applicant's request for reconsideration was dismissed.

While the Schedule is consumer protection legislation, and should be interpreted accordingly, this reconsideration decision reinforces the basic principle of statutory interpretation that every word found in a statute has been included there for a reason. If the legislature intended for subsection 3.1 (a)(i) to cover individuals who witnessed an event, and sustained psychological injuries as a result, then there would have been no need for subsection 3.1 (a)(ii). If the applicant in this case was found to be "involved in" an accident based on witnessing the event, this would open the floodgates to potential

claimants and countless claims. This decision provides a reminder that the Insurance Act and the Schedule do not provide unlimited benefits to everyone.

Selina Ferenac is a member of the Licence Appeal Tribunal practice group at the firm, and author of this blog. If you have a question about this decision, or you have a similar file, please contact Selina at 416-777-2811 ext. 5295.



**Selina Ferenac**

Selina received her Juris Doctor from the University of Ottawa's Faculty of Common Law in 2023. Prior to law school, Selina received a Bachelor of Applied Sciences in Legal Studies from the University of Guelph-Humber. During law school Selina was involved in the 2021 Laskin Moot and competed in the Richard Weiler Mediation

Competition for Effective Lawyer-Client Advocacy. Selina joined the firm as a summer student in 2021 and completed her articles at ZTGH. She was hired as an associate following her call to the Bar in 2024. Selina's practice focuses on tort and accident benefits, but she is also interested in commercial general liability. Selina is committed to providing clients with effective advocacy in a practical and cost-effective manner.

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# Condominium Insurance and Liability Considerations

By: Taylor Wilcox



**I**t is important for condominium unit owners, condominium boards and insurers of both condominium corporations and unit owners to understand the unique insurance requirements that come along with for life in a condominium building. Determining who is responsible for arranging what insurance, and understanding what insurance options exist are important for all stakeholders within the condominium community.

## Legislation

While other provinces will have their own condominium legislation, in Saskatchewan, The Condominium Property Act, 1993 (the “Act”) imposes a duty on the Corporation to carry insurance for the benefit of the condominium corporation and unit owners to cover the common property, common facilities, structural properties and service units. All condominium corporations must maintain insurance

coverage under a master insurance policy, with annual reviews and appraisals of the common property and main building structure. The master policy protects against major perils in an amount equal to the replacement cost of the insured property, and against any other perils that are specified in the bylaws of the corporation, or as directed by the Board. However, issues may arise for insurers of a unit owner in the event of a specific loss, in view of what the unit owner is and is not entitled to under the master condominium corporation policy.

While it is important to understand what is covered by the master policy of a condominium corporation, all too often owners and their insurers are naive about what is and is not covered under the master policy for replacement and rebuilding common condominium property, as distinct from damage to improvements within a unit.

### Standard Unit Description

Generally, a standard unit description (the "SUD") is set by the developer of a condominium, which is inherited by the condominium corporation and their owners. The Act defines SUD as the standard

unit description for each unit or class of units that is: (i) prepared by the developer and accompanies an application to issue titles pursuant to section 5.1; or (ii) contained in the bylaws. The SUD details the minimum standard unit the condominium corporation is responsible to replace or repair, through its insurance policy, to build back.

### Improvements

Disputes arise when the owner has completed "improvements" to the unit, which they believe would be covered by the master policy, or where the owner's insurer becomes responsible for significantly more than they bargained, when the SUD is overly simplistic. Any betterments or improvements installed by the owner, in addition to items covered by the SUD will not be covered by the master policy. In some instances, the insured owner has no concept of what improvements a prior owner may have made, and this only becomes apparent during adjustment of a loss.

How can insurers protect themselves from a claim for incidences not covered by betterments and improvements?

"Improvements" are defined under the Act as an



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improvement made or acquired by an owner with respect to a unit, as determined in accordance with the SUD if any, for that unit or the class of units of which the unit is a member.

Given the ambiguous wording of the Act, insurers should exercise diligence to understand what betterments and improvements they may be insuring for a condominium property. SUD's can be simple or comprehensive, and often will not cover things such as upgraded appliances or flooring. Where no SUD exists, debate between insurers will most likely ensue as to which insurer is responsible for what portion of a loss.

Insurers should work to understand the SUD. Receiving and reviewing a copy of the condominium corporation bylaws to assess what the SUD says is an important step an insurer could take during the underwriting process. Further, confirming with the insured what improvements they have made, at each renewal of their policy, and trying to understand any improvements that may have been made by prior owners, before the insured's purchase of the unit would assist in understanding possible exposure in the event of a loss. For claims examiners, all of

these items require consideration when adjusting a loss. It is imperative for insurers to understand the betterments and improvements that their clients have made or inherited in their condominium unit. Failure to appreciate this can result in surprises after an insured condominium unit loss.



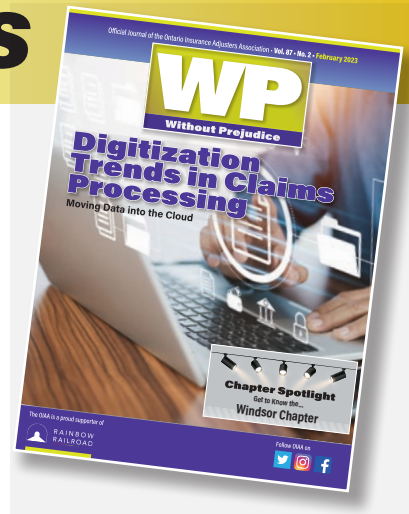
### Taylor Wilcox

Taylor Wilcox is an associate lawyer in the Saskatoon office with a general practice in civil litigation, construction law, condominium law and foreclosure matters. Taylor also has experience in residential real estate, cannabis law and corporate commercial law. Taylor has appeared at various levels of court, including the Provincial Court of Saskatchewan, King's Bench of Saskatchewan, and the Saskatchewan Court of Appeal. He has also appeared before numerous administrative tribunals and quasi-judicial bodies.

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# Chapter Spotlight

Get to Know the...

## NORTHERN CHAPTER

### President's Message

I'd like to take this opportunity to introduce our Board members for this term. Vice-President Ian Johnston and Treasurer Greg Mcauley, both of Sault Ste. Marie. Our Board members also include David Marshall of Sault Ste. Marie, Jesse Vermette of Kapuskasing, along with Dan Ross of Sudbury, Bob Palangio of North Bay, Mike Bottan of New Liskeard (who is our Chapter Delegate) and I live and work in Elliot Lake. As you can see, our Board is made up of members from a very, very large geographical area.

In early December we experienced some significant snowfall in this area, after experiencing a winter that barely arrived during the previous year. Today is December 6, 2024 and already I have learned of collapses due to snow load taking place in the Soo. Many of us still enjoy the 4 seasons and all they have to offer in the North. I, for one, look forward to ice on the lakes and snow on the hill.

Mining and forestry are still some of the largest employers in the North; mining having grown exponentially in the last 10 years. I am somewhat familiar with mining, as it is where I got my start as a summer student and then for a short time as an employee out of high school. Mining is taking the majority of individuals from other industries as the wages and benefits offered are second to none. It makes it tough for other industries (such as Insurance - brokers, adjusters, restoration contractors) to hire and hold on to qualified people.

I have been in the Insurance industry for 38 years and have been part of the OIAA for 34 of them. I have met many excellent people and have made great friends along the way. Friends are truly one of the bonuses of being involved in the Ontario Insurance Adjusters Association and we continue to try and provide this

opportunity to new members within our industry. Time has definitely flown by.

A friend recently reminded me how he keeps track of the speed of time passing...in miles per hour. When one is 10 years old and summer seems to last forever... one is moving at 10 mph. (for those of us who still remember miles per hour). When one is 30 years of age, one is picking up speed and life is going a little quicker - whether working hard at a career and/or raising a family, etc...30 mph. By the time one hits 60 years of age, one is cruising along pretty fast at 60 mph and there seems to be no way to slow down the pace. Seasons and years go by very swiftly. The older we get, the more rapidly time seems to move.





This past year we worked jointly with the IAAI and the North Bay Fire Department to sponsor the first-ever, NFPA-921 course in North Bay. This was well-attended. Mike Bottan will speak more about that in his article in the WP.

You will see photos in the magazine from our various Board members as at Christmas, our Board makes donations to local charitable organizations in the communities where we live, work and play.

The Board has faced challenges with amalgamation of companies and our brokers' association has grown quite small with mergers and acquisitions. We continue to work at getting things back up and running following the pandemic. We are hoping to have a golf tournament this year along with other activities, in order to enjoy interaction with others in our industry. Online webinars are great opportunities for learning however, they cannot match the benefits of a physical handshake and conversation with others at a conference or meeting.

Wishing you all the best in 2025 ! Good health is really all that matters. Stay well ! Stay safe !

**Sincerely,  
Blair Boilard, President, Northern Chapter OIAA**

## **Chapter Delegate's Message**

***Hello and Greetings from the Northern Chapter of the OIAA.***

As delegate for the Northern Chapter, I am pleased, once again, to be able to write a short note for our chapter. While looking back it seems the last couple of times, I produced the delegate report weather was a common theme. Yet again, we awoke this morning to a fresh Blanket of white snow, covering all that can be seen for miles around. I must admit, I do enjoy, getting up before the sun rises and find it interesting

how bright it is outside with a fresh snow fall. As usual Mother nature did not disappoint.

Our chapter has had an active year and was able to work with some fine organizations to bring the NFP 921 program to Northern Ontario. For those who have participated in the past, you will recall the organization and work that goes into bringing a program like this to your region. The amount



of volunteer hours required to assemble all the infrastructure is a large task. It had been more than 20 years since the north had the opportunity to have this type of education in our region. There are so many people we are grateful to have worked with and must thank. The northern Chapter of the OIAA being supported by provincial was successful in partnering with North Bay Fire Services, Chief Jason Whitley and the IAAI (International Association of Aron Investigators) Craig Ozog, along with Canadore College. A big thank you to all the experts from private industry and The office of the Fire Marshal. The level of experts that were assembled was second to none. It was fantastic to receive so many positive reactions on the success for the program. A big thank you to all who participated, all that organized and all those experts who shared their time and knowledge. I would be remise if I failed to thank all those sponsors, who gave of time, money and materials to make this happen. There were far too many involved to list within the confines of this report but a big thank you for your generosity.

I wish you all the best and a prosperous 2025, I look forward to meeting up at an OIAA event.

**Mike Bottan  
Northern Chapter Delegate**



# Chapter Spotlight

Get to Know the...

## THUNDER BAY CHAPTER

### President's Message

As we reflect on the year 2024, I am proud to say that it has been a remarkable one for our association. Our community has come together to create memorable experiences and strengthen our bonds through various events.

In June, we launched our summer with an unforgettable softball tournament. The event was a great success, filled with spirited competition and camaraderie. We even revisited our childhood by playing a game of Scrub, which made the day feel like a trip down memory lane. It was wonderful to see so many of you come out to support and join in the fun!

September brought us our much-anticipated annual golf tournament, where members braved a slightly rainy and chilly day on the greens. But hey, a day of golf beats a day at the office any time! The tournament wasn't just about showing off our swings and putts; it was a fantastic opportunity to mingle, network, and forge lasting connections within our industry. Despite the weather, spirits were high, and everyone had a blast. Here's to many more rounds to come!

We wrapped up the year with a bang at our festive holiday party in November! We celebrated our achievements and reminisced about the wild weather that kept us on our toes. The highlight of the afternoon was the gift-stealing game, which reached a fever pitch when the

most coveted prize was snatched away in the final moments! It was an afternoon bursting with laughter, delicious food, and fantastic company.

Looking ahead, we are excited to announce that we are planning some joint events with the brokers next year. These collaborations will undoubtedly provide even more opportunities for professional growth and networking.

Thank you to everyone who contributed to making this year so special. Your dedication and enthusiasm are what make our association thrive. I look forward to an even more successful and engaging 2025.

Sincerely,

**Alisa Hainrich, President**

**Thunder Bay Insurance Adjusters Association**





# Chapter Spotlight

Get to Know the...

## THUNDER BAY CHAPTER

### Delegate's Report

It gives me great pleasure to write this report just days after the OIAA Holiday Party held this year at the beautiful Fairmont Royal York. It was truly a lovely event for those lucky enough to attend and a well-deserved shout out to the Executive Committee for an incredible job!

Also, well-deserved praise for our local Executive Committee for our local Holiday Party held this year at the Valhalla Inn. While not a grand "black and gold" event it was fun and heart-warming and "just so good" to see one another again.

We have a hard-working Chapter here in Thunder Bay and I can't thank them enough for their loyalty and endless commitment to the TBIAA. In fact, they have been hard-working all year with the baseball tournament in June and our annual golf in September. These events are so important in keeping us connected with not only insurance adjusters but our vital social members and sponsors.

The OIAA will be celebrating 100 years in 2030 and it is exciting to think about the changes and opportunities ahead. The strategic committee has a lot to consider but each Chapter should be considering what their own local community will look like and what they want to see in 5 years. Believe me, it will be here in a flash.

A five-year plan is on the books for discussion and brainstorming and in the meantime, we are enjoying our tried-and-true events with immediate plans for an upcoming educational seminar in January, followed by a mid-

winter chili cook-off.

The OIAA as a professional association has done a tremendous job amidst significant changes in advancing our profession and supporting our interests. The OIAA has always been great at providing a platform for fostering relationships and encouraging professional growth amidst peers and mentors and colleagues. Our local Chapter has provided the same support and opportunities, albeit on a smaller scale, but with the same energy and passion so we are all looking forward to a fun and eventful 2025 – wrapped up with another exquisite Holiday Party.

Hope to see you there.

*Sincerely,*

**Claire Richardson, BA, CIPOIAA**  
Thunder Bay Chapter Delegate

## Follow OIAA!



# End the Unpleasantness... Summarily

By: Ryland MacDonald

**A Quick Guide to Dismissing Frivolous Human Rights Complaints Brought Against Condo Boards and Property Managers.**



It is trite to say, but condo board members deal with a lot of complaints. Occasionally, these complaints become the subject of an Application before the Human Rights Tribunal of Ontario (“HRTO”). Some of these complaints are legitimate, many are not. It has become somewhat commonplace for a disgruntled tenant/owner to use the HRTO to air their grievances about a dispute involving their condo board and/or property manager. Often these complaints arise from unpleasant interactions between owners and board and/or property manager. The owner feels wronged because they believe

they have been treated unfairly by the board and/or the property manager. This perceived unfairness is internalized and interpreted as discrimination.

When faced with such a Human Rights complaint, a Summary Hearing under Rule 19A of the Tribunal’s Rules of Procedure (“Rules”) may be an appropriate avenue for adjudication.

The Summary Hearing is an expedited process where the HRTO will consider, early in the proceedings, whether an Application should be dismissed in whole or in part because there is no reasonable prospect that the application will succeed.

## The Test For Summary Hearing

The test that is applied at the Summary Hearing stage was set out in *Dabic v. Windsor Police Service*, 2010 HRTO 1994 at paragraph 8-10:

- [8 ] In some cases, the issue at the summary hearing may be whether, assuming all the allegations in the application to be true, it has a reasonable prospect of success. In these cases, the focus will generally be on the legal analysis and whether what the applicant alleges may be reasonably considered to amount to a Code violation.
- [9] In other cases, the focus of the summary hearing may be on whether there is a reasonable prospect that the applicant can prove, on a balance of probabilities, that his or her Code rights were violated. Often, such cases will deal with whether the applicant can show a link between an event and the grounds upon which he or she makes the claim. The issue will be whether there is a reasonable prospect that evidence the applicant has or that is reasonably available to him or her can show a link between the event and the alleged prohibited ground.

- [10] In considering what evidence is reasonably available to the applicant, the Tribunal must be attentive to the fact that in some cases of alleged discrimination, information about the reasons for the actions taken by a respondent are within the sole knowledge of the respondent. Evidence about the reasons for actions taken by a respondent may sometimes come through the disclosure process and through cross-examination of the people involved. The Tribunal must consider whether there is a reasonable prospect that such evidence may lead to a finding of discrimination. However, when there is no reasonable prospect that any such evidence could allow the applicant to prove his or her case on a balance of probabilities, the application be dismissed following the summary hearing.

At this stage, the HRTO is not tasked with determining the truthfulness of the owner's claims or evaluating the impact of the treatment they experienced. The test for "no reasonable prospect of success" is applied by assuming that the owner's account of events is true, unless there is clear evidence to the contrary.

However, it is important to note that accepting the facts as presented by the owner does not extend to



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accepting their assumptions about their perceived unfairness. The purpose of the summary hearing is to assess whether the applicant can provide any information that supports their belief that they have been subjected to discrimination or reprisal under the Human Rights Code (“Code”). The Tribunal’s role at this stage is to determine whether there is likely to be any evidence that the applicant could reasonably obtain to link the alleged unfair treatment with the protections afforded by the Code.<sup>1</sup>

For an application to continue in the HRTO’s process following a summary hearing, there must be a basis beyond mere speculation that an applicant could show a breach of the Code.<sup>2</sup>

### **Unpleasant Interaction Is Not Discrimination**

Human rights complaints arising from disagreements or unpleasant interactions between tenants/owners and board members/property managers are often prime candidates for Summary Hearing consideration because the tenant/owner usually cannot present any objective evidence of discrimination under the Code.

To meet the traditional three step test for prima facie discrimination, as set out by the Supreme Court of Canada in *Moore v. British Columbia (Education)*, the applicant must show that:

1. The applicant has a protected characteristic under the Human Rights Code.
2. The applicant suffered disadvantage or an adverse impact; and
3. The protected characteristic was a factor in the disadvantage or adverse impact.<sup>3</sup>

1 *Nitunga v. 1749400 Ontario Inc. o/a Tim Hortons, 2023 HRTO 14 (CanLII)*

2 *Forde v. Elementary Teachers’ Federation of Ontario, 2011 HRTO 1389*

3 *2012 SCC 61 at para. 33*

The HRTO has held that in order to prove discrimination:

An applicant must do more than simply rely on an “unpleasant interaction” and declare that it must result from discrimination. The HRTO has repeatedly said that an applicant’s belief, no matter how strongly held, is not evidence upon which the Tribunal might find that discrimination has occurred.<sup>4</sup>

The applicant may subjectively believe that the respondent has breached the Code; however, the HRTO has repeatedly held that it cannot make a finding that there has been a breach where the only evidence put forth is the applicant’s subjective beliefs.

In *Exil v. Liberte Brand Products*, the HRTO outlined the necessity for objective evidence as follows:

The applicant’s belief that the respondent mistreated him on the basis of such prohibited grounds is not evidence that the respondents did so. It is not open to the Tribunal to make a finding of discrimination or harassment based only on the applicant’s assertions, feelings or beliefs. The Tribunal cannot find that the respondent discriminated against the applicant unless there are facts alleged that, if true, would allow the Tribunal itself to conclude that the respondents’ actions towards the applicant were linked to a



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prohibited ground of discrimination under the Code.<sup>5</sup>

An example of a case where the HRTO found that “unpleasant interaction” did not result from discrimination can be found in *Noble v. The Genuine Canadian Corp*:

The applicant arrived at the store only a few minutes prior to its scheduled closing time of 7:00 pm. By his own admission the applicant ignored Lizana’s initial announcement that the store was closing and continued browsing. Several minutes later she approached him again, told him that the store was closed and that he would have to take his items to the cash register. When he requested additional time and was denied he became angry. According to the applicant’s testimony he threw the items close to the racks where he was standing and informed her he would not be purchasing the items. He admits that he told her that she was rude and disrespectful and when she followed him to the door, so she could unlock it, he told her that she was acting like a bitch and told her she should lose weight.<sup>6</sup>

4 *Noble v. The Genuine Canadian Corp., 2023 HRTO 1788 (CanLII) at para. 79; Nitunga v. Tim Hortons, 2023 HRTO 14, at para. 25.*

5 *Exil v. Liberte Brand Products, 2012 HRTO 382*

6 *Noble at para. 71.*

In *Noble v. The Genuine Canadian Corp*, the applicant simply believed he was discriminated based on race but provided no objective evidence to prove same. The HRTO dismissed the case, citing that the applicant experienced an “unpleasant interaction” that was not discriminatory in nature.

### Conclusion

A Summary Hearing can be an effective tool in dismissing frivolous Human Rights complaints in expeditious manner. The HRTO, which is endlessly encumbered by an ever-growing caseload, is not shy in utilizing its powers to dismiss cases through the Summary Hearing process.



### Ryland MacDonald

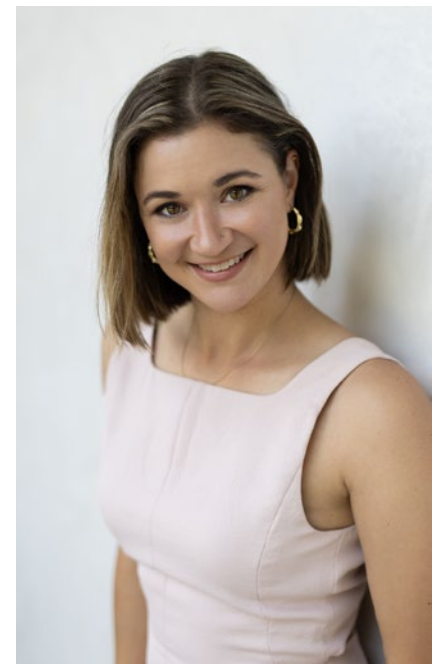
Ryland MacDonald is a Partner at SBA Lawyers. His diverse law practice includes defence of human rights claims against condominium corporations, directors and property managers as well as fraud investigations and personal injury defence.

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<sup>1</sup> Ad to be provided by the sponsor

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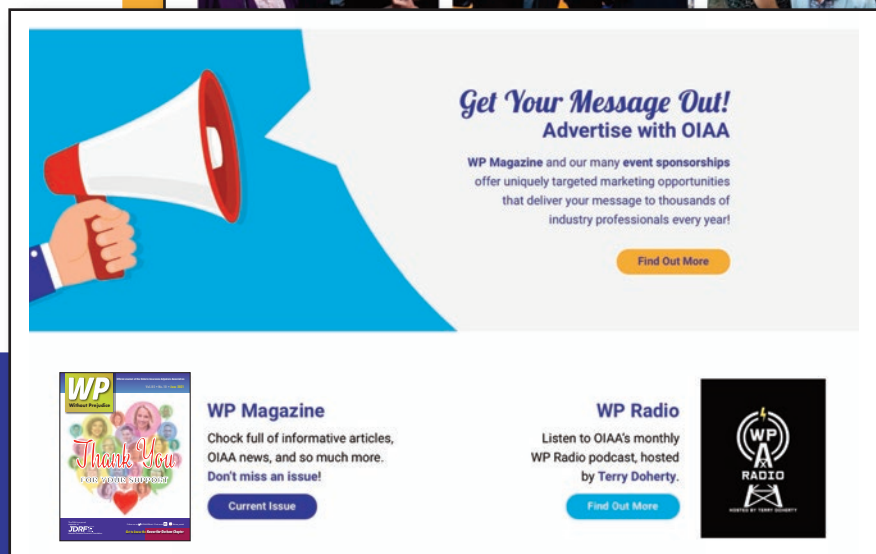
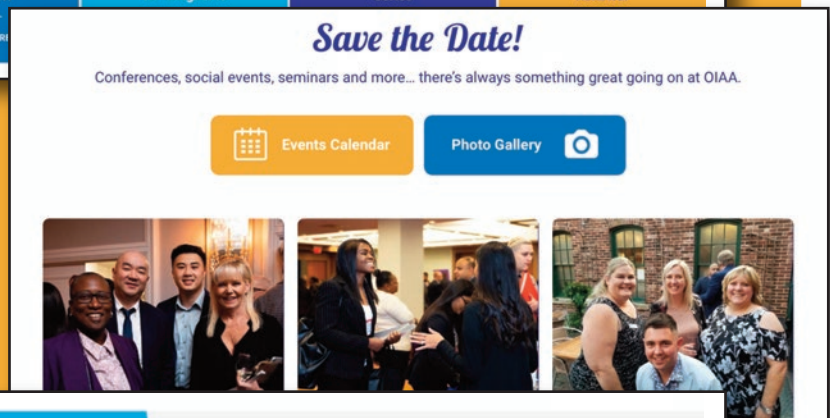
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Ontario Insurance Adjusters Association

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