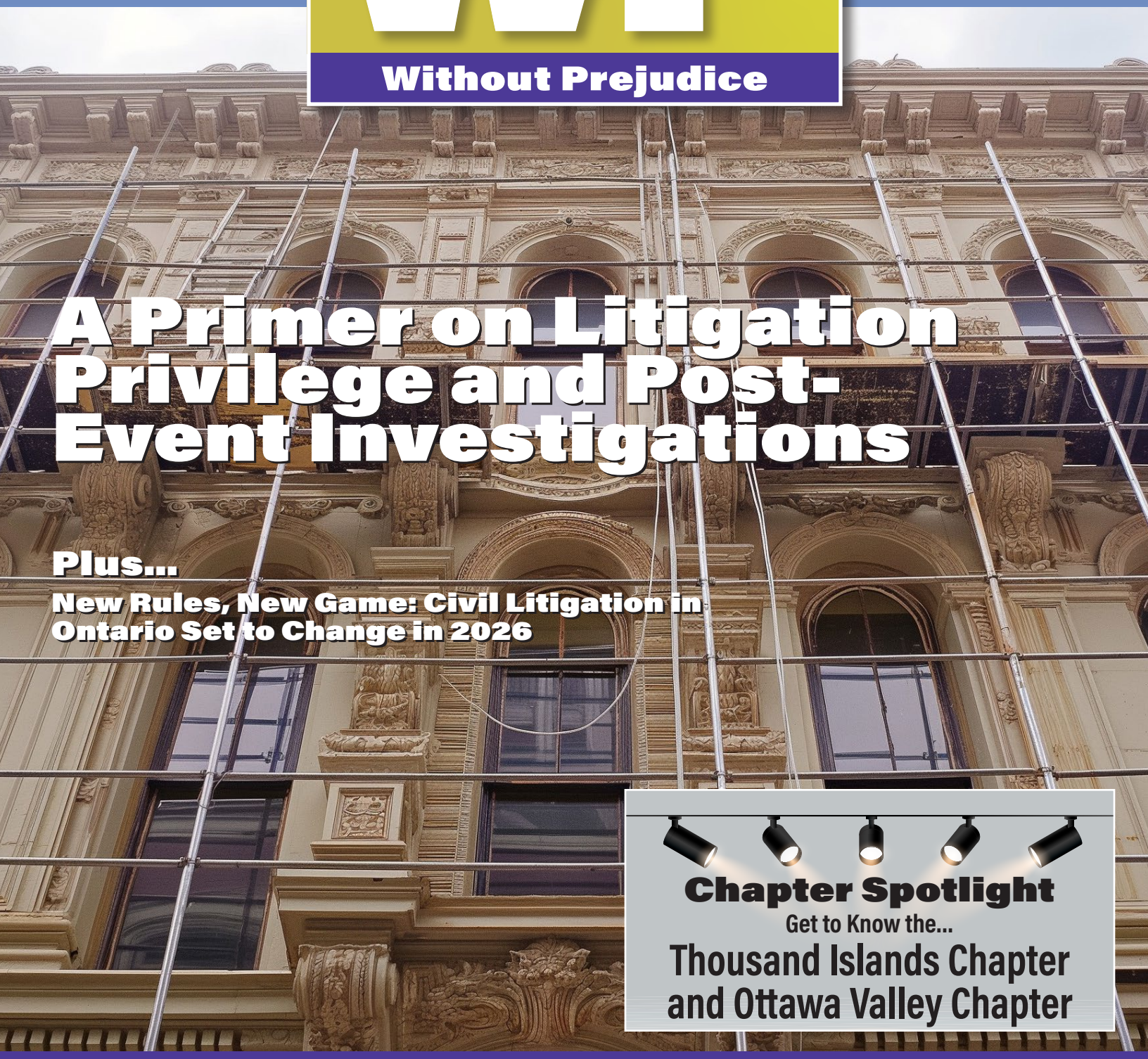
Official Journal of the Ontario Insurance Adjusters Association • Vol. 89 • No. 10 • JUNE 2025

WP

Without Prejudice



A Primer on Litigation Privilege and Post-Event Investigations

Plus...

New Rules, New Game: Civil Litigation in Ontario Set to Change in 2026

Chapter Spotlight

Get to Know the...

Thousand Islands Chapter and Ottawa Valley Chapter

Follow OIAA on

ACCOMSURE ALE MANAGEMENT SOLUTIONS

Free up precious time for your adjusters to focus on their claims

- Immediate and long-term accommodation arrangements
- Indemnity control
- Personalized ALE solutions tailored to your policyholders
- Canadian company assisting Canadians

Full ALE collection, including:

- Hotels
- Rental furniture
- Rental Homes
- Pet boarding
- Transportation coordination
- Moving services

SUBMIT A CLAIM: 1.888.212.5815 claims@accomsure.com www.accomsure.com

WP
Without Prejudice

Official Journal of the Ontario Insurance Adjusters Association

Vol. 89 • No. 10 • JUNE 2025

JUNE 2025 WP

CONTENTS

REGULAR FEATURES

WHAT'S HAPPENING

STAY CONNECTED

Visit us at www.oiaa.com

@OIAAOfficial

@OIAAOfficial

@oiaaprovincial

@oiaa

WP Radio Podcast
Apple iTunes:WP Radio
www.soundcloud.com/wpradio

President's Message

SHAWNA GILLEN, CFEI
President, CIP

As my term as President comes to a close, I want to take a moment to reflect on what has been an incredible year for our organization. From our very first event in September — a lively karaoke night — it was clear we were in for a fun and engaging year. That evening set the tone, with members singing their hearts out and reconnecting after the summer break..

Our Holiday Party and Past Presidents' Night was another highlight, made even more special by a visit from Alex, who represented our charity for the 2024-2025 year, Holland Bloorview Children's Hospital. His infectious energy and positive spirit reminded us

all of the impact our community can have when we come together. There were over 600 attendees at the party including over 20 Past Presidents. We felt very blessed that we were able to spend some time with Past President Garth Roscoe who sadly passed away in January.

In April, we hosted our annual Claims Conference, and the feedback was overwhelmingly positive. Attendees appreciated the wide variety of seminars, the quality of the content, and the vibrant trade show floor — a testament to the planning team's hard work and the support of our industry partners.

As we now look forward to our Golf Tournament at the end of May, I'm reminded once again of how much we've accomplished — and how much of that is due to the incredible collaboration and support we've received throughout the year.

We were also proud to support Holland Bloorview throughout the 2024-2025 year. A $5 benevolent portion from ticket sales from both the Holiday Party and Past Presidents' Night, and Golf Tournament will be donated to Holland Bloorview. In addition, all

proceeds from the raffles held at the Golf Tournament will be going directly to the charity. We're truly grateful for the opportunity to give back and support such a meaningful cause.

A heartfelt thank you goes out to all of our sponsors and vendors who made these events possible, and to our dedicated members and attendees who continue to show up, engage, and help our organization thrive. We've also been proud to collaborate with like-minded organizations such as OIPA, WICC, CABIP, and LINK, and we look forward to continuing to strengthen those partnerships in the future.

I also want to extend my deepest thanks to the entire OIAA Executive team — especially our Senior Executive — for their unwavering support, ideas, and leadership throughout the year.

As I hand over the reins, I do so with confidence and excitement for what's ahead. It has truly been a privilege to serve as President, and I am proud of all we have achieved together. I know the organization is in excellent hands with our incoming President, Jennifer Brown, and I look forward to seeing all that she and the team will accomplish in the year ahead.

Thank you again for the opportunity to lead this incredible community.

Warm regards,
SHAWNA GILLEN, CIP
President
(437) 962-5820

SAVE THE DATE

JUNE 2025

June 12 ..... **OIAA Hamilton - Bocce Ball Tournament & Dinner @ Croatia Sports & Community Centre Hamilton SOLD OUT - this is a partnered event with IIO & IBAH!**

June 12 ..... **OIAA Thousand Islands - Kingston 1000 Island Boat Cruise**

June 12 ..... **Kawartha Durham OIAA Election Day - 11:00 am**

June 12 ..... **Kawartha Durham OIAA Golf Tournament 9 & Dine @ Winchester Golf Club - 1:30 PM**

June 25 ..... **Kitchener Waterloo - Annual Golf Tournament @ Ariss Valley**

JULY 2025

July 16 ..... **OIAA Niagara - Christmas in July @ Cardinal Lakes Golf Club in Welland**

July 31 ..... **Ottawa Valley Adjusters Association - Annual Golf Tournament @ The Canadian Golf & Country Club**

AUGUST 2025

August 14 ..... **London Claims Association Golf Tournament @ Fanshawe Golf Course**

August 21 ..... **OIAA Hamilton - Golf Tournament @ Flamborough Hills Golf & Country Club**

OIAA - EXECUTIVE COUNCIL 2024 – 2025

SHAWNA GILLEN, *CIP*
President
Facility Association
(437) 962-5820
E-mail: sgillen@facilityassociation.com

JENNIFER BROWN, *FCIP*
First Vice-President
Echelon Insurance
416-427-1324
E-mail: jenniferbrownfcip@outlook.com

EMILY FEINDEL
Second Vice-President
AIG Insurance Company of Canada
(416) 596-3917
FAX : (855) 453-1063
E-mail: emily.feindel@aig.com

CHRISTINE ANDREWS, *CRM, FCIP*
Secretary
Sage Claims Solutions Inc.
(905) 389-4522
E-mail: Christine@sageclaims.ca

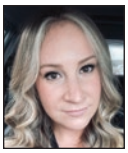
CARRIE KEOGH, *BA Hons.*
Treasurer
Co-Operators, Cambridge
Email: Carrie.anne.keogh@gmail.com

TERRY DOHERTY, *CFEI*
Past President
Aviva Canada Inc.
(613) 386-5513
FAX: 1-866-805-8585
E-mail: terry.doherty@aviva.com

SHERI TURNER
Georgian Bay Delegate
West Wawanosh Mutual Insurance Company
(800)265-5595 ext 883
Email sheri.turner@wwmic.com

Jeni Hamu, *B.Soc., CIP, CRM*
Hamilton Delegate
ClaimsPro
800-268-8080
jennifer.hamu@claimspro.ca

Nadine Dionne, *BA, CIP*
Kawartha/Durham Delegate
ClaimsPro
(289) 387-0936
E-mail: Nadine.dionne@claimspro.ca



KAYLA HELMOND, *CIP*
Kitchener-Waterloo Delegate
Gore Mutual
1-844-974-4673 ext. 4240
FAX: 1-800-601-9773
E-mail: KHelmond@GoreMutual.ca

MICHELE FIELD, *FCIP*
London Delegate
Trillium Mutual Insurance Company
(519) 291-9300 ext. 5713
FAX: (519) 291-1800
E-mail:mfield@trilliummutual.com

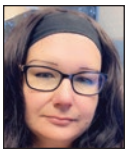
ROB FIORIDO, *CIP*
Niagara Delegate
Portage Mutual Insurance
(289) 974-0211
FAX: (289) 937-4919
E-mail: rfiorido@portagemutual.com

MIKE BOTTAN, *CIP, CFEI*
Northern Delegate
Crawford and Company Canada Inc.
(705) 647-6781
FAX: (705) 647-6783
E-mail: Mike.bottan@crawco.ca

MAYA PANCHMATIA
Ottawa Delegate
Definity Insurance
(613) 691-9104
E-mail: maya.panchmatia@definity.com

ERIN SHEARD
Thousand Islands Delegate
Claims Pro
(613) 777-3811
E-mail: erin.sheard@claimspro.ca

CLAIRE RICHARDSON, *BA, CIP*
Thunder Bay Delegate
Sedgwick
(807) 345-7676 ext.1
E-mail: claire.richardson@sedgwick.com



NATALIE BARROW, *CIP*| Claims Adjuster
Toronto Delegate
Sedgwick Canada Inc
DIRECT 905.709.5072 | CELL 437.424.3471
E-mail: Natalie.Barrow@sedgwick.com

SHERRY DESAI, *CIP, CRM, ACS*
Toronto Delegate
AIG Insurance Company of Canada
(416) 646-3722
FAX : (855) 326-5546
E-mail: shery.desai@aig.com

ZOHAIR M. NASSUR, *BBA, AIII, CertCII, CertCILA, GIE*
Toronto Delegate
Sedgwick Canada Inc
(437) 286-1791
E-mail: zohair.nassur@sedgwick.com

JOEL BOBB, Claims Adjuster
Toronto Delegate
Axis Reinsurance Company
(416) 361-6663
M: (437) 216-1637
E-mail: joel.bobb@axiscapital.com

PETER REIDIGER, *CIP*
Windsor Delegate
ClaimsPro
(226) 782-1469
E-mail: peter.riediger@scm.ca

OIAA - EXECUTIVE COUNCIL COMMITTEES 2024 – 2025

COMMITTEE NAME	CHAIRPERSON	COMMITTEE MEMBERS
COMMUNICATIONS		
Without Prejudice Editorial	Jennifer Brown	Nadine Dionne and Jeni Hamu
Without Prejudice Articles	Natalie Barrow	Peter Riediger, Nadine Dionne
WP Radio	Terry Doherty	
Advertising-Sales - WP, Website, Links	Nadine Dionne	Rob Fiorido, Peter Riediger
Media Relations	Joel Bobb	
Website	Sherry Desai	
Social Media	Joel Bobb	Emily Feindel
GTA Membership	Toronto Delegates	
EDUCATION		
Speakers & Meetings	Joel Bobb	Zohair Nassur
Seminars & Education	Christine Andrews	Joel Bobb, Shawna Gillen
Adjuster Training	Mike Bottan	
Strategic Planning	Emily Feindel	Carrie Keogh, Chrisitne Andrews
Bursary	Mike Bottan	
CONFERENCES		
Toronto Claims Conference	Christine Andrews, Jennifer Brown	Kayla Helmond, Natalie Barrow, Peter Riediger, Rob Fiorido
Career Fair - In association with Claims Conference	Michele Field/ Sheri Turner	Nadine Dionne

COMMITTEE NAME	CHAIRPERSON	COMMITTEE MEMBERS
BENEVOLENT & COMMUNITY		
Charity & Gifts	Shawna Gillen	
John E. Lowes - Insurance Institute	Emily Feindel	
INDUSTRY		
Licensing	Zohair Nassur	Nadine Dionne
Industry Liason	Shawna Gillen	
ASSOCIATION OPERATIONS		
Chapter Liaison	Shawna Gillen	
Membership	Peter Riediger	Sherry Desai, All Chapter Delegates
Discipline	Terry Doherty	
Constitution/Incorporation	Jennifer Brown	Sr. Exec.
Handbook	Claire Richardson	Sr. Exec.
Mentoring (Ways and Means)	Shawna Gillen	Sr. Exec.
Nominating	Terry Doherty	
Vendor Relations/Sponsorship	Emily Feindel	Terry Doherty, Joel Bobb
ENTERTAINMENT		
Christmas Party & PP Night	Emily Feindel	Carrie Keogh, Joel Bobb
Golf Tournament	Sheri Turner	Kayla Helmond
September Kick Off	Sherry Desai	Zohair Nassur, Natalie Barrow

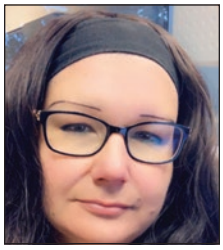
FOR THE MAGAZINE

JENNIFER BROWN
Managing Editor

NADINE DIONNE,
Associate Editor

JENI HAMU,
Associate Editor

NADINE DIONNE,
Advertising Manager



NATALIE BARROW
Articles

CONTRIBUTORS

Sebastian di Domenico
Sebastian di Domenico is an associate at Rogers Partners LLP. Prior to joining the firm, he gained experience representing insurers in occupiers' liability and automobile accident (tort and accident benefits) claims, and he also acted for plaintiffs in medical malpractice and a variety of personal injury cases.

Yasser Korany
Yasser Korany is a Consulting Forensic Engineer and the Managing Principal of KSI Engineering, a firm that investigates property insurance claims and provides construction litigation support. He is a senior member of the National Academy of Forensic Engineers in the USA and has been qualified numerous times as an Expert Witness. He served as a Professor of Structural Engineering at the University of Alberta prior to calling Ontario home. Dr. Korany is a Fellow of the Canadian Society of Civil Engineering.

Deborah Ikede
Deborah Ikede is an associate specializing in commercial and insurance litigation. Deborah received her Bachelor of Science (Honours) in Psychology from Dalhousie University in 2007, and her Juris Doctor from the University of Ottawa, Faculty of Law, in 2011. During her time in Law School, Deborah was actively involved in community advocacy and won the distinguished Elizabeth Fry Social Justice Interest Award. She was also elected president of the Ontario Black Law Students Association in her second year of law school.

Allison Pressé
Allison Pressé is an insurance litigation lawyer at SBA Lawyers LLP with a practice that concentrates on tort cases. She represents insurers in all aspects of general insurance liability, including property loss, fire loss, motor vehicle accidents, professional negligence, construction negligence, CGL claims, product liability, occupier's liability, and social host liability. She has represented clients at all levels of the provincial court system.

WP
Without Prejudice

Official Journal of the Ontario Insurance Adjusters Association

OIAA

"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. Contents of "WP" are copyrighted and may not be reproduced without written consent of the Association.

The magazine is distributed free of charge to all active and associate members of the OIAA.

For change of address or inquiries regarding distribution, please contact us at: **membership@oiaa.com**

For information regarding the OIAA Privacy Policy, please refer to our website at www.oiaa.com

For information on advertising specifications, costs, production of ads or ad placement, please contact Nadine Dionne.

For submission of proposed articles please contact Natalie Barrow or Nadine Dionne.
E-mail: wp@oiaa.com

ISSN 0833-1278

S. 29.1(1) of Ontario's Class Proceedings Act: When Can a Court Dismiss a Class Action for Delay?

By: Sebastian di Domenico

In Tataryn v. Diamond & Diamond Lawyers LLP, 2025 ONCA 5, the Ontario Court of Appeal addressed the issue of how to interpret s. 29.1(1) of the Class Proceedings Act, 1992, S.O. 1992, c. 6 (the "CPA") which came into force on October 1, 2020. The particular section addresses when a class action shall be dismissed for delay. Before this case, there was little jurisprudence on its interpretation.

The appellants, William Tataryn and Daya Nand Rajan, were representative plaintiffs in a class proceeding commenced in 2018 against the respondent, Diamond & Diamond Lawyers LLP. The appellants made various allegations, including that the respondent had breached its fiduciary duties regarding the respondent's client referral practices and contingency fee agreements, and had breached the provisions of the Solicitors Act, R.S.O. 1990, c. S.15, and the Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A.

The appellants commenced the class action in May 2018. On November 1, 2023, the motion judge dismissed their action for delay, but they appealed.

In dismissing the action, the motion judge had relied on s. 29.1(1) of the CPA. That section provides as follows:

The court shall, on motion, dismiss for delay a proceeding commenced under section 2 unless, by the first anniversary of the day on which the proceeding was commenced,

(a) the representative plaintiff has filed a final and complete motion record in the motion for certification;

(b) the parties have agreed in writing to a timetable for service of the representative plaintiff's motion record in the motion for certification or for completion of one or more other steps required to advance the proceeding, and have filed the timetable with the court;

(c) the court has established a timetable for service of the representative plaintiff's motion record in the motion for certification or for completion of one or more other steps required to advance the proceeding; or

(d) any other steps, occurrences or circumstances specified by the regulations have taken place.

Statutory Interpretation

The case largely depended on the exercise of statutory interpretation. Accordingly, the Court provided a useful reminder of the key cases, which remain applicable in the context of class actions:

[25] As is oft stated, the words of an Act are to be "read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the intention of Parliament": Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27, at p. 41.

[26] There is a presumption of statutory interpretation that the provisions of a statute are meant to work together and form an internally consistent framework: Heritage Capital Corp. v. Equitable Trust Co., 2016 SCC 19, [2016] 1 S.C.R. 306, at para. 28. When analyzing the scheme of the statute, the court seeks to determine how the provisions or parts of the statute work together to give effect to a plausible and coherent plan. It then considers how the provision to be interpreted can be understood in terms of that plan: Ruth Sullivan, The Construction of Statutes, 7th ed (Toronto: LexisNexis, 2022), at § 13.02[4].

[27] Where applicable, a statutory provision is presumed to be coherent with related statutes: Point-Claire (City) v. Quebec (Labour Court), [1997] 1 S.C.R. 1015, at p. 1054. When statutes deal with the same subject, it is presumed that their language is consistent throughout. Identical phrases and expressions are presumed to have the same meaning: see e.g. Notaries Public of British Columbia v. Law Society of British Columbia, 2017 BCCA 448, 6 B.C.L.R. (6th) 271, at paras. 28-29; Sullivan, at § 13.04[4]. In addition, the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, expressly apply to proceedings

under the CPA. Accordingly, those Rules, including their definition of "timetable", should be considered when interpreting the CPA.

[28] Statements made about a statute in the legislature, especially by the Minister introducing it, may assist in ascertaining legislative purpose: see e.g. Freedom of Information and Privacy Association v. British Columbia (Attorney General), 2017 SCC 6, [2017] 1 S.C.R. 93, at para. 34; Sullivan, at § 9.03[3]. The reports of Law Reform Commissions and similar studies can provide insight into the mischief that the legislation is designed to address: see e.g. Toronto Star Newspapers Ltd. v. Canada, 2010 SCC 21, [2010] 1 S.C.R. 721, at paras. 11, 14 and 23; Sullivan, at § 9.03[3].

[29] Legislative purpose may also be inferred by tracing legislative history. Changes in statutory language may be the product of a decision by the legislature to reorder the prior arrangements of legal rights and obligations: see e.g. Medovarski v. Canada (Minister of Citizenship and Immigration), 2005 SCC 51, [2005] 2 S.C.R. 539, at para. 10; Sullivan, at § 9.03[8]. To that end it is helpful to review the provenance of s. 29.1.

The Applicable Test

After considering the above, the Court made it clear that the interpretation of s. 29.1(1) of the Ontario CPA is not a mechanical exercise, but a contextual one. Given the circumstances, the Court noted that the motion judge had to determine if a timetable for the steps required to advance the proceeding has been established. In terms of the timetable, the Court wrote:

[50] The CPA does not define timetable or "steps required to advance the proceeding". On the face of s. 29.1(1), three things are required:

i. a timetable;

ii. the timetable must provide either for the service of the representative plaintiff's motion record in the motion for certification, or for the completion of "one or more other steps"; and

iii. the "one or more other steps" are required to advance the proceeding. As the steps are "other steps", this means steps other than the service of the representative plaintiff's motion record in the motion for certification.

[51] Typically, ascertaining whether a timetable has been established will be a straightforward exercise. As for the remaining requirements, as mentioned, the CPA provides at s. 35 that the rules of court apply to proceedings under the Act and reference may be had to the Rules of Civil Procedure. Rule 1.03 defines timetable as meaning "a schedule for the completion of one or more steps required to advance the proceeding (including delivery of affidavits of documents, examinations under oath, where available, or motions), established by order of the court or by written agreement of the parties that is not contrary to an order". That definition encompasses a variety of initiatives that could constitute a step. Notably, each of the examples

represents a step that is considered as required to advance the proceeding.

[52] Not any step would qualify to meet the s. 29.1(1) requirement. On a case-by-case basis, the case management judge[6] would have to consider the totality of the proceeding and whether the completion of the step that was timetabled was required to advance the proceeding.

The Positions of the Parties

The appellants had five grounds of appeal. They argued that the motion judge erred in:

i. concluding that the appellants had failed to comply with s. 29.1(1);

ii. finding no waiver of s. 29.1(1) by the respondent;

iii. declining to make a Phoenix order;

iv. failing to consider the courts' inherent jurisdiction over the accounts of lawyers and the absence of any time bar in the Solicitors Act; and

v. dismissing the action of the Rajan appellant who had been added as a party on January 11, 2023.

The respondents argued that compliance with s.29.1(1) was not onerous because a representative plaintiff only needs to file the certification motion record within the one-year deadline and that the appellants had failed to comply with s.29.1(1).

Disposition

The Court noted that there was no dispute that the appellants had not complied with (a), (b), or (d) of s. 29.1(1). Thus, the Court turned to s.29.1(1)(c) of the Ontario CPA.

The Court held that, in this case, there was no timetable to meet the requirements under s.29.1(1)(c). The facts supported this finding:

- The proceeding was commenced by notice of application on May 17, 2018.
- On March 20, 2019, the representative plaintiff amended the notice of application and then amended it again on June 6, 2019.
- On May 8, 2020, the representative plaintiff consented to an order that the application be converted to an action.
- On June 22, 2020, he delivered a statement of claim mirroring the notice of application but adding new claims.
- From May 17, 2018, until the one-year time frame expired on October 1, 2021, the appellant delivered three different notices of application and four different statements of claim.

In the end, there was no error in the motion judge's conclusion, so the Ontario Court of Appeal dismissed the appeal.

Takeaways

There are three important takeaways from this case. First, in terms of s. 29.1(1) of the Ontario CPA, the courts will be stringent when examining the timeline associated with the first step of the class action, as there is no judicial discretion with respect to the one-year deadline. However, the Courts will take a contextual approach to assessing whether a timetable for completion was established.

Second, the case underscores the detrimental effect of delays in the class actions context. As the Court highlighted, the legislature had enacted s. 29.1(1) in order to address the delay in class actions. This was evident in the Attorney General's comments, which were referred to by the Court at para. 34, and are as follows: "there are also significant financial and reputational risks for Ontario businesses."

Lastly, this case provides a useful reminder of the leading cases for statutory interpretation, which play a crucial role when addressing new statutes.

Sebastian di Domenico
Sebastian di Domenico is an associate at Rogers Partners LLP. Prior to joining the firm, he gained experience representing insurers in occupiers' liability and automobile accident (tort and accident benefits) claims, and he also acted for plaintiffs in medical malpractice and a variety of personal injury cases.
At Osgoode Hall Law School, Sebastian was the recipient of the Dean's Gold Key for exceptional leadership and involvement. He was very active in the law school community, including serving as President of Osgoode Latin American Students and Senior Editor of the Journal of Law and Social Policy. Before law school, Sebastian earned Bachelor of Arts and Master of Arts degrees in criminology.
Sebastian is fluent in Spanish and has intermediate knowledge of French.

Past President's Message

TERRY DOHERTY, CFEI
Past President, OIAA

As my term within the OIAA comes to a close, it's time to say goodbye – and most importantly, thank you.

Serving on the OIAA Executive has been an incredible honour. Throughout the years, I've had the privilege of working alongside and learning from some of the most dedicated and inspiring professionals in our industry. To everyone I've met along the way – our members, vendors, partners, and insurance professionals across Ontario – thank you for making this journey so memorable.

My year as President was especially meaningful to me. With your support, we raised an incredible amount of money for the MacKids Foundation – something that wouldn't have been possible without the generous and enthusiastic participation of so many of you. I'm deeply grateful for your involvement.

A special thank you goes to Simone Cybulski, who first encouraged me to get involved back in 2015 as a delegate for the TIAA Chapter. That one conversation truly changed my life.

While I will miss the many responsibilities that came with this role, I'm excited to see the OIAA flourish under the leadership of our incoming board. I know the future is in very capable hands, and I look forward to the innovative ideas and continued growth to come.

It's been a joy to host the WP Radio Podcast – both monthly and live at our annual Claims Conference – and I will always look back on those experiences with great fondness.

To my beautiful wife and amazing kids – thank you from the bottom of my heart. You've supported me through all the travel, last-minute requests, and endless meetings. I couldn't have done this without your patience, love, and encouragement.

Finally, I'm thrilled that moving Past Presidents' Night to our Holiday Party Celebration was such a success. It was truly special to honour so many wonderful Past Presidents dating back to the 1970s, and I'm proud that it will now be an annual tradition.

Thank you again to all Past, Present, and Future Presidents, and to our membership at large. As we head into the OIAA's 95th year, I'm confident we have many more reasons to celebrate. I look forward to seeing you all in Niagara Falls for what promises to be an unforgettable Holiday Party.

With sincere gratitude,
Terence Doherty,
93rd President
Ontario Insurance Adjusters Association

Can Every Damaged Building be Restored to its pre-loss condition?

By: Yasser Korany

Introduction

One of the fundamental principles of the insurance industry is to restore damaged insured properties to their pre-loss conditions without betterment using materials of like-kind and quality. While reasonable and fair, there are numerous scenarios where pre-loss conditions are unsafe or unhealthy. In some instances, the original construction may not have complied with the requirements of the code edition that was in effect at the time. In such cases, upholding the principle of restoring losses to their original conditions could endanger the health and safety of the occupants and is likely to increase the chances of repeated damage. It is no secret that building codes continually evolve and what was satisfactory under older code editions may no longer be acceptable under current ones. Some insurance policies include coverage for mandatory code upgrades, others do not. Cash payout might be the only option when insureds decline, or cannot pay for, code upgrades that are not covered under their policies.

What makes this issue even more complex is the fact that it is not always clear whether a damaged building should simply be restored to its pre-loss construction or upgraded to comply with the code edition in effect. When do building code upgrades become necessary?

This question often arises in property loss claims during the restoration phase. The answer usually depends on the conditions of the property and the discretion of building officials. This article discusses the different types of building code upgrades and the conditions under which they become mandatory.

Building Code Upgrades

Early building codes had to specify design loads based on limited research data and weather records. Building codes have since been periodically updated to improve performance and structural safety. As a result, structures that were built decades ago were designed for lower wind pressures and snow accumulations than currently required. For instance, before the sixties, roof snow loads were derived from ground snow accumulations without considering the effects of snowdrift or rain. Between the 1960s and 1980s, the effect of snowdrift was taken into consideration and an associated "rain on snow" load was added to design snow loads in the 1990s. Also, building and energy codes continually update the insulation requirements to help create more energy-efficient and healthier buildings.

Building codes are not intended to be applied retroactively to enforce new requirements on existing buildings that are not being altered. However, where a building is undergoing alterations or restorations, the building or the affected area of the building may be required to comply with the requirements of the latest edition of the building code. Renovation and restoration of buildings that have been in existence for more than five years and built in compliance with the code edition in effect at the time of original construction fall under the scope of Part 11 of the Ontario Building Code (OBC). While titled "Renovation", the provisions of Part 11 apply to the restoration of damaged existing buildings and include "compliance alternatives" intended to offer relief where it is impractical to meet all the requirements of the code edition in effect.

For example, compliance alternative # C192 under Part 11 of the 2024 edition of the OBC provides that existing wood frame construction compliant with Part 9 of the OBC, which covers houses and small buildings, does not need to be upgraded to meet the requirements of the OBC edition in force at the time of repair. This compliance alternative does not mean that structurally deficient framing that was damaged can be reconstructed the way it was. Rether, there is an obvious distinction between members that became under-designed due to increased design loads and revisions to the design methodology, and those that are structurally deficient and can potentially pose a safety threat.

Another example is compliance alternative # C207 under Part 11 of the 2024 edition of the OBC which exempts damaged existing buildings of residential occupancy that are within the scope of Part 9 of the OBC from the need to meet the energy efficiency requirements in effect at the time of repair. This compliance alternative applies to cases such as smoke damaged exterior walls framed with 2x4 wood studs complete with R14 batt insulation between the studs. Due to their narrow depth, it is not physically possible to upgrade the thermal resistance of 2x4 walls to an R22 insulation or better as may be required by the OBC edition in effect at the time of restoration.

The long list of compliance alternatives under Part 11 helps reduce the incidents where building officials have to make a judgement call on the need for code upgrades. Still, the OBC grants chief building officials the discretion to decide whether a particular code upgrade requirement can be relaxed.

When Are Code Upgrades Mandatory?

The answer to this seemingly simple question depends on several factors such as whether original construction was compliant with the requirements of the code edition of the time and the extent and impact of the proposed restoration work. The flowchart shown in Figure #1 was developed to help answer this question. In general, the OBC does not require a building or any of its systems to be upgraded unless the proposed restoration work can result in reduced fire safety, reduced structural integrity, reduced performance of any of the building's systems, or the creation of an unhealthy environment.

Upgrades are mandatory when original construction was not compliant with the requirements of the OBC edition in effect at the time. Where non-compliant construction may threaten the health or safety of the

occupants, all non-compliant assemblies related to health or safety must be upgraded regardless of the extent of damage resulting from the loss. Otherwise, only loss-affected areas need to be upgraded. One of the common examples of existing non-compliant construction is the absence of fire separation between multiple units. Unfortunately, it is not uncommon that secondary units are created in the basements of dwellings without building permits and without fire separation from the rest of the dwelling. The absence of fire separations must be rectified during the restoration work following a loss.

When the damaged building is compliant with the requirements of the code edition in force at the time of its original construction, the determination of whether code upgrades are mandatory depends on the extent of damage and required restoration work. If the scope is confined to one space of a single-family dwelling or one unit of a multi-suite building, restoration is considered limited, and no code upgrades are required provided that the work does not impact life safety systems such as access to exits. On the other hand, the OBC requires new building elements for extensive restoration work that includes replacing or removing existing walls, floors and ceilings to comply with the provisions of the latest edition or applicable compliance alternatives that may be available under Part 11. During a major restoration project, upgrading wall and/or attic insulation may also be required when existing insulation does not meet the minimum thermal resistance required by the code edition in effect.

An example of a mandatory upgrade due to health concerns is the need to replace asbestos containing insulation. Due to its serious health risks, the use of asbestos and asbestos containing materials (ACM) in construction ended in the late 1980s. The restoration of buildings constructed before 1990 requires testing for and the removal of ACM. As such, damaged or removed asbestos containing insulation products cannot be replaced with like-kind materials and must be replaced with asbestos-free alternatives and upgraded to the latest required thermal resistance value (R-value).

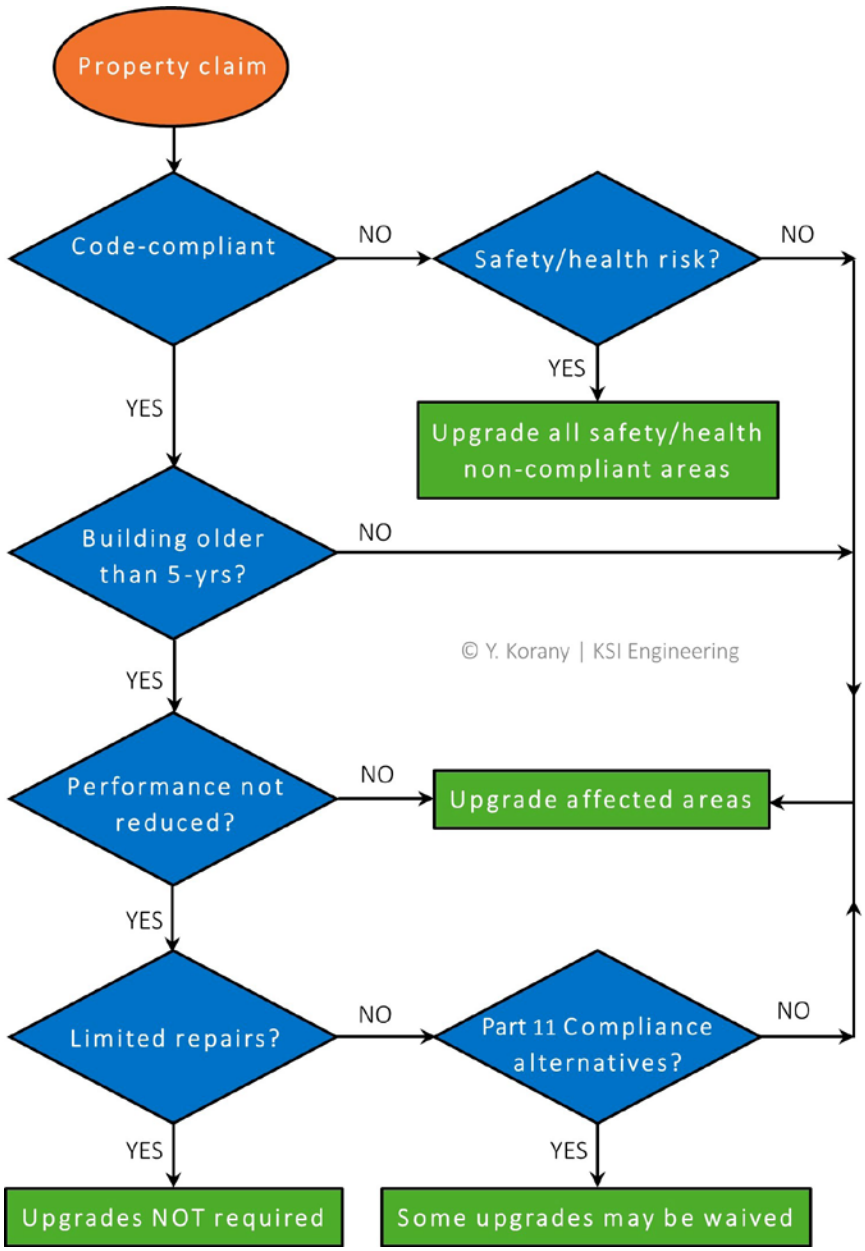
If a relatively small roof area of a residential building was impacted by a fallen tree and damaged, it is

generally acceptable to restore that area to match existing construction. However, if the extent of damage was substantial, or the structure was a non-code-compliant building, then the new roof framing must be upgraded to comply with the requirements of the OBC edition in effect unless a Part 11 compliance alternative is available. If asbestos containing insulation was used in the attic space, it must be removed before any demolition and restoration work can start because of the health risks of disturbing ACM. While Part 11 compliance alternative # C207 exempts this residential building from the need to be upgraded to the thermal resistance levels (R-values) required under the code edition in effect at the time of repair, the building cannot be restored to its pre-loss condition using like-kind and quality insulation that contains asbestos.

Closing Remarks

The discussion above demonstrates that not every building can, or should, be restored to its pre-loss condition and that building code upgrades are not betterment and can help prevent claim recurrence. Restoration of recently constructed buildings that are 5 years old or less must comply with the latest OBC edition in effect at the time of restoration. The restoration of damaged buildings that existed for over 5 years may be required to comply with the requirements of the OBC edition in effect at the time of original construction or the latest code edition depending on the scope of work among other factors.

In general, building code upgrades are not required for buildings constructed in compliance with the OBC edition in effect at the time of construction and remain unaltered. Building code upgrades are not mandatory when the scope required to restore a building to its pre-loss condition is limited provided that the performance levels of the building systems such as structural adequacy, fire protection, and thermal insulation remain the same. However, major restoration work to a building or a part thereof requires a careful review of the requirements of the OBC to determine the extent of required upgrades. The chief building official and building inspectors are the ultimate authority on that matter.



Yasser Korany, Ph.D., P.Eng., P.E., PMP, FCSCE

Yasser Korany is a Consulting Forensic Engineer and the Managing Principal of KSI Engineering, a firm that investigates property insurance claims and provides construction litigation support. He is a senior member of the National Academy of Forensic Engineers in the USA and has been qualified numerous times as an Expert Witness. He served as a Professor of Structural Engineering at the University of Alberta prior to calling Ontario home. Dr. Korany is a Fellow of the Canadian Society of Civil Engineering.

A Primer on Litigation Privilege

and Post-Event Investigations

By: Deborah Ikede, Associate Lawyer

Litigation privilege is fundamental to the proper functioning of our legal system. It allows for the adversarial process to function effectively as it allows parties to investigate facts and develop strategies knowing that this information is protected from disclosure. The courts have found that litigation privilege is meant to create a "zone of privacy" in relation to anticipated litigation so that litigants can prepare their respective cases in private without adversarial interference.[1].

The Supreme Court of Canada in Lizotte v Aviva Company of Canada[2] differentiated between litigation privilege and solicitor-client privilege as follows:

The purpose of solicitor-client privilege is to protect a relationship, while that of litigation privilege is to ensure the efficacy of the adversarial process; ... litigation privilege is not directed necessarily at communications between solicitors and clients – it applies to any document or communication whose dominant purpose is preparation for litigation.

Litigation privilege has a much broader scope and may extend to outside parties such as experts and investigators so long as they are helping within the purview of anticipated litigation.

Test for Applicability of Litigation Privilege

Blank v. Canada (Minister of Justice)[3] is the Supreme Court of Canada's seminal ruling on the scope of

litigation privilege and brought much-needed clarity to how courts determine whether a document is protected by litigation privilege. The Blank decision re-affirmed the two-part legal test for litigation privilege namely that a document must have been created:

1. At a time where there was a reasonable prospect of litigation; and
2. For the dominant purpose of obtaining legal advice or to assist in the conduct of anticipated litigation.

Each aspect of the two-part test involves a factual determination, and the onus is on the party claiming privilege to establish on a balance of probabilities that both parts of the test are met with respect to each document that is subject to the claim. [4] Dominant purpose does not mean the sole or only purpose. A claim for privilege will succeed when a party can establish that a document produced for dual or multiple purposes, one of them being litigation, was produced for the dominant purpose of litigation.[5]

Litigation Privilege for Investigative Materials

After having suffered a loss, a risk manager, claims professional or insurer will often begin an investigation in an attempt to determine the cause of the loss and to develop a strategy for the actions to be taken in managing the anticipated risk. These materials are typically prepared at a time where it is too early to determine whether the claim being investigated will eventually lead to litigation or if the report will be communicated to lawyers for their assistance and advice. Are these investigative materials still subject to litigation privilege?

According to the jurisprudence that have considered these matters, it would depend on the nature of the claim. For third party liability claims tort), a primary reason that risk managers and claims professionals become involved is to prepare and assist with the anticipated respond to an eventual claim.[6]

In Panetta v Retrocom Mid Market Real Estate[7], the Court ruled on whether post-incident investigation records are privileged. The action arose following a slip-and-fall accident. The Plaintiff sought production of the statement that the Defendant's third party liability insurer took from its insured along with the adjuster's notes that were created before the plaintiff provided notice that a claim was being advanced. The Defendant challenged the production of the requested documents and asserted litigation privilege. At issue was whether the adjuster's notes and reports which were prepared well before litigation was initiated were

subject to litigation privilege.

The Court in Panetta disagreed with the plaintiff's position that for litigation privilege to arise, there must already be a substantial likelihood of litigation and concluded that in third party claims that there is no preliminary investigative phase where privilege does not attach to notes, reports, and/or files of adjusters. The Court stated that the only reason for any investigation on behalf of the third party liability insurer is for the prospect of litigation. The Court ultimately held that potential third party claims trigger a prima facie adversarial position where litigation privilege will typically apply to documents created immediately following a loss or incident.

The Panetta decision provides a useful primer on the nature of litigation privilege and set out the following important principles that apply to the potential application of litigation privilege:

In order for a document to be protected from disclosure by litigation privilege, it must be prepared with the dominant purpose of defending a claim that is brought;

It is not essential that counsel be retained before litigation privilege attaches to a document;

The document must be created for the dominant purpose of use in existing, contemplated, or anticipated litigation;

Documents and correspondence regarding reserves as well as internal memoranda and work sheets of the adjuster are within the domain of litigation privilege;

Written witness statements, having been prepared for the purpose of litigation, are privileged, and need not be disclosed. However, the facts relevant to the cases (including the names of all potential witnesses whether reflected in the privileged documents or not), are not privileged and must be disclosed if sought by one party through an examination for discovery;

Whether litigation privilege attaches to a document is a case specific inquiry; and

Portions of the file created for investigation, assessment, settlement before claim, and defence are all points along a continuum and are all created with a view to adjusting a claim.

These principles have been adopted by other Courts when contemplating the application of litigation privilege in the domain of risk management documentation created well before litigation has

commenced.

Notably, the Plenert v Melnick Estate[8] case provided additional clarity, and served to strengthen the position of third-party liability insurers who find themselves facing an application for production of adjusters' investigative materials. Plenert reaffirmed that litigation privilege will typically attach to adjusters' pre-litigation material.

This case involved a motor vehicle accident in which the Defendants commenced third party proceedings against a number of defendants including a road maintenance contractor, Emil Anderson Maintenance Co. Ltd. ("Emil Anderson"). Several defendants sought the production of preliminary reports and witness statements, which had been prepared and obtained by several adjusters on behalf of Emil Anderson. At issue was whether Emil Anderson was required to disclose reports and witness statements prepared by its independent adjuster.

Emil Anderson argued that the documents were prepared at a time when litigation had been reasonably anticipated, for the dominant purpose of litigation and therefore protected by litigation privilege. In support of its position, affidavit evidence from its insurer who stated that the only reason the insurer requires its claims handlers to undertake an investigation – open a file, retain independent insurance adjusters, and obtain witness statements – is to prepare for anticipated litigation against an insured.

The Defendants argued that there is a spectrum to an investigation, and that it is not until the underlying facts of a case have been determined that litigation can be said to be reasonably contemplated. In this case, the documents had been prepared simply for the dominant purpose of investigating the accident, not for the purpose of anticipated litigation. In addition, the leading email had stated the documentation were being created out of an "abundance of caution".

Applying the dominant purpose test, the Court relied on the decision of Panetta and determined that in third party claims, the main purpose for creating any investigative materials would be for anticipated litigation, to set reserves and to seek legal advice. The Court noted that the type and severity of the accident, together with the fact that an adjuster had requested Emil Anderson's road maintenance schedule, was sufficient to demonstrate that there was a reasonable belief of imminent litigation when the documents were created.

Thus, while the initial investigative actions were made out of an "abundance of caution", the overall evidence suggested that litigation was likely. Accordingly, the court held that the documents were protected by litigation privilege. However, the court was clear to point out that preliminary investigations will not attract litigation privilege in all cases and will depend on the particular circumstances of the facts.

If a document is created for a dual or multiple purpose (for example, to investigate the cause of the accident and to furnish information to a lawyer for advice) and none of which is "dominant", then the document is not protected by litigation privilege because it was not

created "wholly or mainly" for litigation.[9]

Practical Implications

The courts have held repeatedly that a determination of whether litigation privilege applies is a fact specific inquiry. When determining whether litigation privilege applies, Courts will analyze each factual pattern on a case-by-case basis paying attention to the type of claim, the nature of the loss and the affidavit evidence of parties retained to investigate the claim.

While there is a prima facie presumption that litigation privilege will apply to any document collected at these earliest stages of a claim by a risk manager or claim professional as litigation is often anticipated immediately following a loss, there is not an automatic right to assert litigation privilege over investigative materials. In order to determine whether litigation was reasonably anticipated, Courts pay meticulous attention to the nature of claim being advanced and whether the investigation was undertaken in anticipation of litigation.

Companies would be wise to have clear policies and procedures for investigating and managing risk that identify the purpose for which documents are created. Such a practice will increase the likelihood of successfully asserting litigation privilege.

[1] Blank v Canada (Minister of Justice),1999 CanLII 7320 (ON CA) at paras 27-28 and 34.

[2] Lizotte v Aviva Insurance Company of Canada, 2016 SCC 52 (CanLII), [2016] 2 SCR 521 at para 22.

[3] Blank, supra note 1.

[4] Hamalainen v Sippola,1991 CanLII 440 (BC CA).

[5] Hamalainen, ibid. at 25

[6] Panetta v Retrocom et al, 2013 ONSC 2386 (CANLII), see also Plenert v Melnick Estate 2016 BCSC 403 (CanLII).

[7] Panetta v Retrocom et al, ibid.

[8] Plenert v Melnick Estate 2016 BCSC 403 (CanLII).

[9] Hamalainen, supra note 4 at para 22.

Deborah Ikede

Deborah Ikede is an associate specializing in commercial and insurance litigation.

Deborah received her Bachelor of Science (Honours) in Psychology from Dalhousie University in 2007, and her Juris Doctor from the University of Ottawa, Faculty of Law, in 2011. During her time in Law School, Deborah was actively involved in community advocacy and won the distinguished Elizabeth Fry Social Justice Interest Award. She was also elected president of the Ontario Black Law Students Association in her second year of law school.

Following her Call to the Ontario Bar in 2013, Deborah joined a reputable Toronto litigation law firm, where she gained valuable experience in accident benefits claims and tort litigation. Deborah has represented clients before the Financial Services Commission of Ontario (FSCO), the Ontario Court of Justice and the Ontario Superior Court of Justice.

Prior to joining MBBM Lawyers LLP, Deborah worked as in-house legal counsel for an environmental company where she practiced primarily in the areas of civil and commercial litigation. She also worked with the Indigenous Litigation Practice Group of a distinguished Alberta litigation law firm. Her diverse background and extensive litigation experience has allowed Deborah to further excel in written and oral advocacy.

Beyond practicing law, Deborah enjoys exploring Legoland, the Ripley's Aquarium and the Science Museum with her energetic young son. She has a passion for Pilates and is an advanced practitioner.

Opportunities Await You

JOIN US
WE WANT YOU

The OIAA provides professional development, networking, inside industry news and support to insurance adjusters across Ontario. By joining our 1500 plus network of active and associate members, you receive:

- Access to informative seminars and educational training
- Opportunities for your children or grandchildren to apply for one of three $1,000 OIAA Education Bursary's
- Member pricing for professional development and social events
- Ability to collaborate with others through our Mentorship program
- Participate in shaping claims adjustment and risk management services in Ontario

All Memberships (except Social) are $50+HST per year. Social memberships are $75+HST per year.

Renew your membership today!

To learn more please visit our website at:

www.oiaa.com

OIAA
Ontario Insurance Adjusters Association

Chapter Spotlight

Get to Know the...

THOUSAND ISLANDS CHAPTER

President's Message

From 2021 until 2024 I had the pleasure of acting as the Thousand Islands Adjusters Association Delegate on the OIAA. While it was not a role I had intended to pursue, I am very grateful that I agreed to take the position back in 2021. The role as Delegate offered me the opportunity to make connections with many wonderful people on the OIAA. I truly valued my time working with the OIAA members and attending such great events. I am lucky to have been a part of such a great organization – and most importantly - fortunate to have made some great friends.

I would like to acknowledge and thank the OIAA Presidents that served during my tenure – Rhu Sherrard, Kyle Case, Terry Doherty and Shawna Gillen. Thank you for all your efforts - it was a pleasure working with you!

As I leave my role as Delegate, I am excited to move to a new chapter (pun intended) as President of the Thousand Islands Adjusters Association. Since July 2024 we have been working hard to resume our established events and create new, exciting events and opportunities. We are thankful that our Chapter members have shown great support and eagerness to once again get together for networking and professional development opportunities.

As I move to role of President, Erin Sheard has taken on the role as TIAA Delegate on the OIAA. I'm sure Erin will value her time with the OIAA as much as I did. I look forward to all of the upcoming OIAA events, and reconnecting with old friends.

On behalf of the Thousand Islands Adjusters Association, I wish everyone a safe and fantastic Summer!

Sincerely,

Duncan Southall, President

Thousand Islands Adjusters Association

Chapter Spotlight

Get to Know the...

THOUSAND ISLANDS CHAPTER

Delegates Report

My name is Erin Sheard and this is my first year as the delegate for our Thousand Islands Chapter. Although I was nervous at first, I have settled into my role in representing our chapter and have really enjoyed meeting new people involved in the OIAA.

Our small chapter had been affected by the pandemic, and we were not doing as many events and luncheons for a number of years afterwards. The members of our chapter wanted to start getting together with our peers again and we have worked hard to bring everyone back together for more social events.

On top of our annual Golf Tournament held at the Colonnade Golf and Country Club in Kingston every September, we have started to have some great Holiday Parties in December and have tried to arrange Lunch and Learn events whenever we can.

In February, we had Ted Posadowski, Chief Fire Prevention Officer for the City of Kingston, speak at our Luncheon about the effects the rise of homelessness in our area has had on fire prevention and safety. It was a very interesting presentation which explained some of the different ways that people have been trying to stay warm over the winter and the hazards that come with it.

In May, we had Jeffery Howell of Bay of Quinte Mutual attend our Luncheon to talk about farm mutual companies; where they are located, why they were formed, how they differ from the stock companies as well as the risk facing insurance companies with regards to new exposures. It was a great turn out at Trillium Wood Golf Club in Corbyville.

Our big event for 2025 will be our Thousand Islands Boat Cruise which is being held on June 12th in Kingston. We are really looking forward to this event and already have a lot of interest and people registered to attend and have sold out our sponsorship

opportunities. We give thanks and appreciate the support from our 14 sponsors.

We will board the Island Queen at Crawford Wharf in downtown Kingston at 6:30pm and tour the St. Lawrence River until 9:00pm, the sun setting while we return to the dock. If you have not already registered for this event, please go to our website. We would love to see you there! www.wearetiaa.com

Our annual TIAA Golf Tournament is coming up on September 18th at the Colonnade Golf and Country Club just north of Kingston. We always have a lot of support for this event, and we are really looking forward to another great day on the course! Details regarding registration will come out in late June, so keep your eyes open for that!

Being a member of the TIAA has been really enjoyable over the years. I look forward to our meetings and events and love to meet up with our local, and out of town, peers to socialize. Becoming the Delegate for our Chapter has broadened my circle of peers further and I look forward to continuing to get to know lots of great people who also enjoy spending time with others in our industry.

Erin Sheard
Thousand Islands Chapter Delegate
TIAA Secretary
Claims Adjuster for ClaimsPro Inc.

Chapter Spotlight

Get to Know the...

OTTAWA VALLEY CHAPTER

Dear Colleagues

As we welcome the arrival of summer, we are reminded of the busy claims season that lies ahead. This period is crucial for us, as it presents both challenges and opportunities to demonstrate our commitment to excellence in the insurance industry.

I want to extend my heartfelt gratitude to each and every one of you who plays a part in our industry. Your dedication and hard work are the driving forces behind our success. Together, we strive to ensure that our clients have an exceptional claims experience, providing them with the support and service they deserve during their times of need.

As we prepare for the months ahead, let us continue to work collaboratively, innovate, and uphold the values that make us leaders in our field. Your efforts make a significant impact, and I am confident that we will navigate this busy season with the same professionalism and excellence that define us. Thank you for your unwavering commitment and teamwork.

I am pleased to share the success of the recent claims summit hosted by the OVAA on May 1st. This event brought together brokers, adjusters, underwriters, and other claims professionals for a day dedicated to learning and exploring valuable resources within the insurance industry.

We are proud to announce that the summit was a sold-out event, with over 100 attendees joining us to enhance their knowledge and skills. This remarkable turnout is a testament to the commitment and enthusiasm of our industry professionals.

I would like to extend my sincere gratitude to our sponsors, whose unwavering support made this event possible. Your contributions are vital to our mission, and we are grateful for your partnership in advancing our cause. Thank you to everyone involved for making this summit a resounding success. Together, we continue to foster growth, innovation, and excellence in the insurance industry.

I am excited to announce our upcoming annual WICC/OVAA Golf Tournament, scheduled for July 31st. This event is a wonderful opportunity for camaraderie and competition, all while supporting a noble cause. I encourage you to visit our website at ovaa.ca to sign up, as this promises to be a sold-out event. Be sure to register as soon as possible to secure your spot. Reflecting on our achievements, I am proud to share that in 2024, our WICC/OVAA Golf Tournament successfully donated $20,000 toward cancer research. This significant contribution was recognized at the recent WICC Gala, where the OVAA was honored with the Hall of Flame award. This accolade underscores our commitment to making a positive impact in the fight against cancer.

Thank you to everyone who has supported our efforts. We look forward to another memorable tournament and continuing our tradition of excellence, philanthropy and education.

Warm regards,
Margaret Mackenzie
OVAA President

Chapter Spotlight

Get to Know the...

OTTAWA VALLEY CHAPTER

Chapter Delegate Report

As the Ottawa chapter delegate for the Ontario Insurance Adjuster Association for the last year, it has truly been a great privilege and such a positive experience! I've had the honor of working with some truly esteemed and established adjusters throughout Ontario and more specifically in the Ottawa space. This has been an exceptional adventure being able to travel from Ottawa to Toronto for events. I've had the pleasure of contributing to this rewarding organization.

Thinking back over the last year, I'm truly in awe of the successful events that we've been able to host in the Ottawa space. WICC and Ontario Valley Adjuster Association have merged forces to host an annual Golf Tournament. Last years tournament was sold out and OVAA was able to raise over $17,000 which was generously donated to WICC (Women in Insurance Cancer Crusade). This led to WICC presenting an award to the OVAA for the Hall of Fame!

We were also able to host our inaugural Gala in Ottawa with the assistance of OVAA and WICC. This was held at the Aviation Space Museum. This event was not only one of a kind, but an incredible space to build some amazing connections for work and within the industry.

I've had the pleasure of volunteering at the OIAA Conference and getting to see an incredible amount of vendors from across Ontario. It was such an amazing opportunity to learn more about of the vendors which are working in our market and what they do overall.

We are proud to host our annual golf tournament this

year at The Canadian Golf Club on July 31st, 2025. We are anticipating this tournament to sell out for both sponsors and attendee's. We are also hosting our second annual WICC Gala on October 24th, 2025 at the Aviation Space Museum, the theme this year is Hollywood Glam. These will be amazing events to be able to network with people both in the Ottawa and Toronto regions.

I've been truly honored to be apart of such an incredible association! I look forward to participating for many years to come!

Sincerely,
Maya Panchmatia
OVAA Delegate

OIAA BURSARY 2025

DO YOU HAVE A CHILD OR GRANDCHILD ENROLLING OR ENROLLED IN POST-SECONDARY EDUCATION FOR 2025/2026?

The OIAA Student bursary offers financial assistance in the form of 3 awards in the amount of $1,000.00 each. The applicant must be pursuing full time post-secondary studies at a College or University.

Selection is based on financial need, contribution to school, community life and/or other meaningful pursuits, major accomplishments and strong indication of academic promise. Eligible applicants will be a child or grandchild of an active OIAA member, who has been a member in good standing for a year and is a current member in good standing for 2025-2026.

Previously successful award recipients are welcome to apply again with a new Essay.

The deadline to apply is October 3, 2025 at 5:00 pm.

Visit our website www.oiaa.com for further details.

THE OIAA GOLF TOURNAMENT WANTS TO...

thank you

FOR YOUR SUPPORT

FRONT NINE SPONSORS

Accomsure
ALE Management Solutions

CANBILT GROUP

COMPLEX CLAIMS RESTORATION

DKI
NATIONAL PROPERTY RESTORATION

SERVPRO CANADA

SRB Lawyers LLP

sinistar

VFORENSICS

WINMAR
PROPERTY RESTORATION SPECIALISTS

BACK NINE SPONSORS

30
Forensic Engineering

DocuSketch

HUDSON RESTORATION
PROPERTY DAMAGE & CONSTRUCTION PROFESSIONALS
FIRE | WATER | ENVIRO | CONTENTS

HERO RESPONSE

mykey
GLOBAL ACCOMMODATIONS

PINCHIN

REBUILD RESPONSE

RIMKUS

ServiceMASTER Restore

DINNER SPONSORS

ARS
GLOBAL EMERGENCY MANAGEMENT
ARSGEM.COM

Investigations
Forensic Files
Data Recovery
Research
AXIS VERO INCORPORATED
WWW.AXISVERO.COM

CRDN

JS|HELD

BUILT GROUP

BALL SPONSOR

ABERDEEN INVESTIGATIONS INC
NATIONAL COVERAGE | EXPERT TEAM | INTEGRITY DRIVEN | RESULTS ORIENTED

CART BAG SPONSOR

ICON GLOBAL INC

CART SPONSOR

BELFOR PROPERTY RESTORATION

New Rules, New Game:
Civil Litigation in Ontario Set to Change in 2026

By: Allison Pressé

On April 1, 2025, a Phase 2 Consultation Paper was published by the Civil Rules Review Working Group (CRRWG), proposing considerable changes to Ontario's Rules of Civil Procedure.

The proposals contained in the Phase 2 Paper form part of a 3-Phase project spanning over two years entitled "the Civil Rules Review" announced on September 23, 2024 by Attorney General Downey and Chief Justice Morawetz. The CRRWG was assembled in January 2024, and is made up of a selection of the judiciary, members of the Bar and academics, whose goal is to identify and develop proposals for reforming the Rules to make them more affordable and accessible. Phase 1, which is now complete, was used to scope out potential areas of reform. Phase 2 was a thorough evaluation and assessment of the reforms identified in the first phase, along with a proposal. Phase 3 will be the approval of the proposed reform.

The proposed changes contained in the Phase 2 Paper focus on resolving the high costs of litigation, horrific delays due to service and motions, and general access to justice. From the perspective of defence counsel and insurers, the most shocking of the proposed changes has to be the complete elimination of oral examinations for discovery. That said, we have highlighted below a list of some of the most significant proposed changes:

◆ **Pre-Litigation Communication**
Certain cases would require early exchange of documents and positions, and discussion of potential resolution prior to any claim being filed.

◆ **Universal Pleadings**
An implementation of online forms for commencing claims or applications.

◆ **Service by E-mail**
The acceptance of service by e-mail with a requirement for defendants to confirm acceptance of service when a claim comes to their attention, by any means. Defendants who do not do so would face costs consequences.

◆ **Notice of Default Proceedings**
A Plaintiff would be required to serve a Notice of Default before noting a Defendant in default. The Defendant would then have 14 days to have the default set aside. If set aside, there would be a presumptive entitled of full indemnity costs to the Plaintiff and a peremptory deadline for delivery of the defence set.

◆ **Early Evidence Exchange**
Parties would be required to begin producing evidence immediately upon serving pleadings.

◆ **Reliant-Only Documentary Disclosure**
Parties would exchange only documents they intend to rely on at trial rather than all relevant documents. In addition to that, parties would also be required to exchange any documents that are adverse, but also be able to request additional documents through an arbitration style "Redfern Request" procedure and written interrogatories.

◆ **Elimination of Examinations for Discovery**
Oral examinations for discovery would be replaced with an "up front" exchange of affidavits from all anticipated trial witnesses.

◆ **Simpler and Faster Motions**
Parties could bring a motion at a Directors Conference, where a judge would have the ability to decide the motion without evidence or order evidence or submissions, dependent on the type of motion.

◆ **Mandatory Case Conferences and Mandatory Mediation**
All cases would be assigned a scheduling conference approximately one year after claim issuance, aimed at decreasing the amount of motions, setting trial and mediation dates. Mandatory mediation would occur before trial in all cases.

◆ **Fewer and Jointly Retained Experts**
A maximum of one expert per party per issue would be allowed as well as increased use of joint experts for specific issues like business valuations and standard of care. Further, there would be pre-trial expert conferences to determine areas of agreement/disagreement between experts.

◆ **Consequences to Delays**
Significant consequences to delays would be introduced, such as striking a party's pleadings. A Delay Penalty would follow a missed interim deadline.

◆ **Trial Sooner and Simpler**
Trials would be scheduled within two years of commencement of the claim. Joint chronologies would replace Agreed Statements of Facts and Requests to Admit and Mandatory Joint Books of Documents and Glossaries would be required for all trials.

◆ **Clarity with Appeals**
There would be clarity as to the definitions of a final and an interlocutory order so there would be fewer disputes over appellate jurisdiction and requirements for leave to appeal.

- **More Costs**

There would be a presumption of partial indemnity costs, and a lower threshold for full indemnity costs.

How do the Proposed Changes Affect Defendants?

The elimination of examinations for discovery is certainly the most startling proposal for Defendants in civil litigation actions. With only written statements, rather than oral, this limits a Defendant's ability to assess credibility of Plaintiffs, as well as uncover inconsistencies. Further, despite having efficiency as the goal of this reform to the Rules, eliminating discoveries could actually slow down trials. The proposed changes could be the very first time some defence counsel will have to perform an examination, no longer getting that practice out of Court.

Further, with no oral examinations for discovery, parties will be unable to ask for an undertaking for certain documents. Given the newly proposed reliance-based documentary disclosure, there may be a number of documents that Plaintiffs are not sharing with Defendants that could help bolster the defence's case. Without the ability to ask for undertakings, any document production request will be that much more difficult to make.

That said, the up-front evidence model should be helpful to insurers who are faced with claimants who are hoping to settle early for a large sum, but have put little effort into backing their vague or boiler plate claims. This will require claimants and their counsel to put in the work early, possibly even before litigation, if they wish to settle.

The mandatory conferences, whereby counsel can bring motions, sometimes without evidence, will be beneficial to all parties in moving cases forward at a quicker, less costly pace. There are a number of simple production motions that do not, and should not, require the amount of documentation that we currently compile into motion records. Further, eliminating the delay associated with booking motions many months out will speed up the movement of cases.

Finally, the theme of cooperation and working together that is resonant throughout the reform to the Rules is a welcome one. The requirement for parties to cooperate throughout the litigation process, such as engaging in pre-litigation discussions and jointly retaining experts, will not only bring costs down and speed up litigation, but will make for a more congenial Bar.

Still Time to Critique

The CRRWG will accept any feedback regarding their proposed changes to the Rules up until June 16, 2025. One can provide this feedback by sending an e-mail to Jennifer.smart@ontario.ca. The Final Proposal will be delivered by CRRWG in July 2025, with the new Rules coming into effect in 2026.

SBA Lawyers LLP is taking an active role in the consultation process, with Partner, Krista Groen, member of the CDL Civil Rules Recommendations Committee, working to prepare a response on behalf of the defence Bar.

If there is further interest in these changes and hearing from the CRRWG itself, they will present at a webinar on May 12, 2025 to discuss the proposed reforms. Please go to the Superior Court's website for the details.

We are monitoring this very closely and will report further updates as they come along.

See Civil Rules Review: Phase 2 Consultation Paper https://www.ontariocourts.ca/scj/files/pubs/Civil-Rules-Review-2025-phase-two-EN.pdf

Allison Pressé

Allison Pressé is an insurance litigation lawyer at SBA Lawyers LLP with a practice that concentrates on tort cases. She represents insurers in all aspects of general insurance liability, including property loss, fire loss, motor vehicle accidents, professional negligence, construction negligence, CGL claims, product liability, occupier's liability, and social host liability. She has represented clients at all levels of the provincial court system.

Allison obtained her J.D. from the Schulich School of Law at Dalhousie University and her B.A. (First Class Honours) from St. Francis Xavier University. She was called to the Bar of Ontario in 2015.

Allison has an affinity for volunteer work and giving back and spends a portion of her free time performing legal work pro bono for organizations in and out of province. She also has a flair for musical theatre, and has enjoyed being a part of Nightwood Theatre's The Lawyer Show for the past several years. At home, Allison spends time with her two rescued sighthounds, Hickory, a Saluki, and Soleil, a Sloughi.

A look at the K-W OIAA Battle of the Bands

A look at the K-W OIAA Battle of the Bands

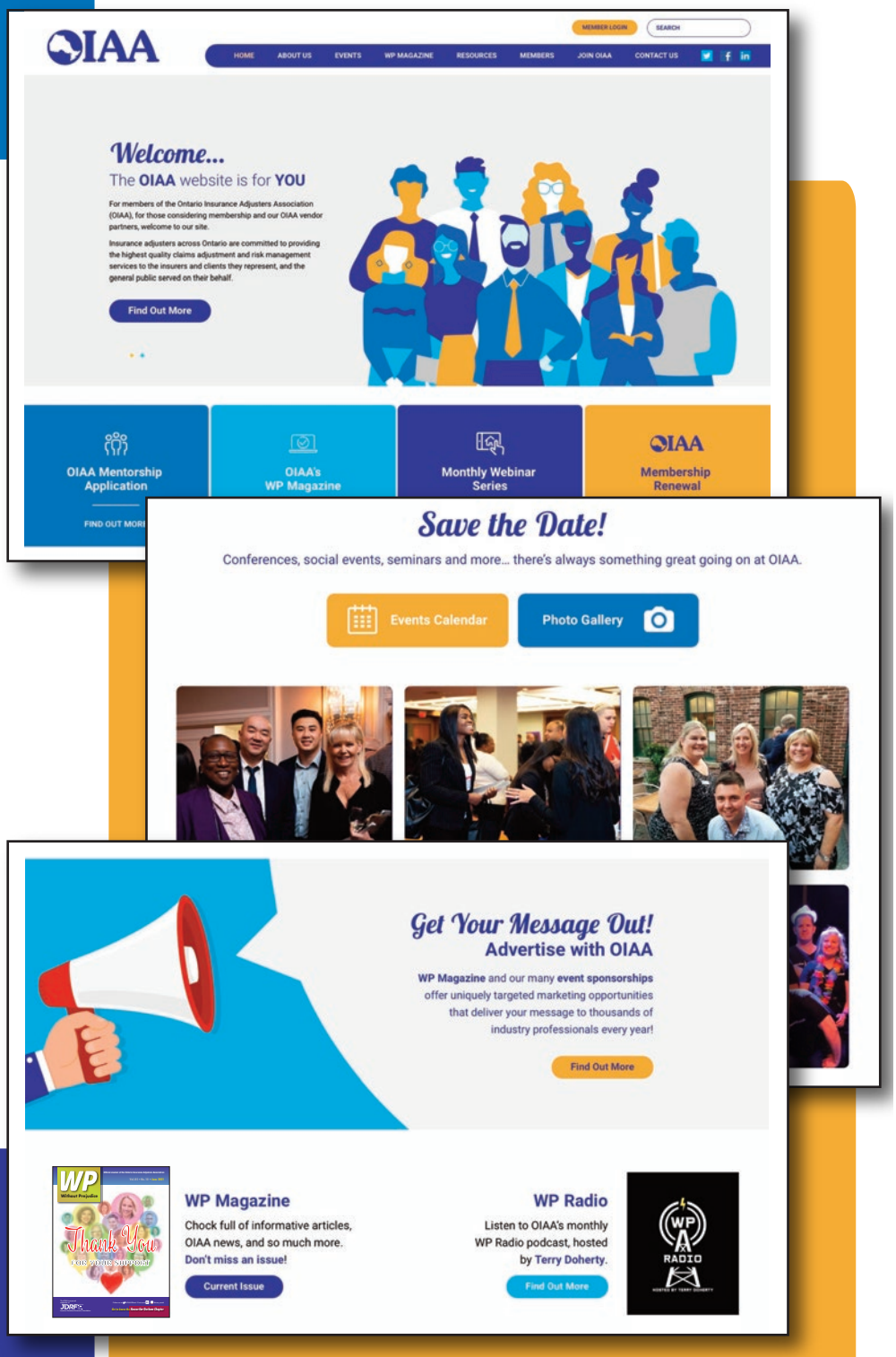
Introducing our New and Improved Website

oiaa.com

- Better viewing experience
- More informative
- Easier to navigate
- More interactive and user friendly
- Enhanced photo gallery

Check it out today:
oiaa.com

Your hub for adjuster related information.



2025 OIAA NINE & DINE PHOTO GALLERY

2025 OIAA NINE & DINE PHOTO GALLERY

Ontario Insurance Adjusters Association

GET IN TOUCH

We would love to hear from you! If you have any inquiries or comments, please contact us.

Inquiries ..... info@oiaa.com
President ..... president@oiaa.com
Website ..... website@oiaa.com
Membership ..... membership@oiaa.com
WP Magazine ..... wp@oiaa.com
Events ..... events@oiaa.com
Bursary ..... bursary@oiaa.com

ADVERTISERS' INDEX

OIAA 2024-2025 ONTARIO CHAPTER EXECUTIVE OFFICERS

CHAPTER NAME & POSITION	NAME	COMPANY
GEORGIAN BAY (BARRIE)		
President	JOE CUMMING, FCIP, CRM	The Co-operators, Barrie
Vice-President:	MARY CHARMAN	Crawford & Company (Canada) Inc., Barrie
Treasurer:	KAYLA GUY	The Co-operators, Barrie
Secretary:	KIM BARKER	Aviva Insurance
Director:	PATTI O'LEARY, CIP	The Co-operators, Barrie
Director:	CARRIE MACPHEE	Wawanesa Mutual Insurance
Director:	SHANNON WOLOCHATIUK	Wawanesa Mutual Insurance
Director:	BEN THOMSON	Thompson Insurance Adjusters, Orangeville
Past President:	GREG DOERR, CIP	Doerr Claims Services Inc., Barrie
Chapter Delegate:	SHERI TURNER	West Wawanosh Mutual Insurance Co.
Website:	www.oiaagb.com	
HAMILTON		
President	CHRISTINE ANDREWS	Sage Claims Solutions Inc., Hamilton
Vice-President:	NICOLE MITCHELL	Travelers
Treasurer:	ARMAINE SMITH	Manulife
Secretary:	MELISSA LONG	Trupanion
Director:	JENNIFER HAMU	ClaimsPro
Chapter Delegate:	JENNIFER HAMU	ClaimsPro
Website:	www.oiaahamilton.com	
KAWARTHA/DURHAM		
President	ALICIA HUGHES	QBE Canada | European Operations
Vice-President:	NADINE DIONNE, BA, CIP	ClaimsPro
Treasurer:	ALICIA HUGHES	QBE Canada | European Operations
Secretary:	ALEXANDRIA KNIGHT	Crawford & Company Canada
Director:	ANA BATISTA	ClaimsPro
Director:	DALLAS ADAMS	
Director:	MARGARET MARTINSON	Co-operators General Insurance Company
Past President:	JASON SAUCIER, CIP, ACS	QBE Canada | European Operations
Chapter Delegate:	NADINE DIONNE, BA, CIP	ClaimsPro
Website:	www.oiaakawarthadurham.com	
KITCHENER-WATERLOO		
President	JAIME RENNER, CIP	The Co-operators General Ins., Cambridge
Vice-President:	NATHAN BENTLEY	Gore Mutual Cambridge
Treasurer:	NATHAN BENTLEY	Gore Mutual Cambridge
Secretary:	KYLE BERGERON	Curo Claims Services Waterloo
Director:	CHRISTINE FIZELL	Trillium Mutual
Director:	LAURA KELLY	Heartland Farm Mutual
Past President:	CAROLINE MANSELL	Ayr Mutual
Chapter Delegate:	KAYLA HELMOND	Gore Mutual Cambridge
Website:	www.kw-oiaa.ca	
LONDON		
President	KELLY PECK-MCDONNELL, CIP	Kent & Essex Mutual Insurance Company
Past-President	KATE BOYLE, BA (HONS), CIP	MutualONE Insurance Company
Vice-President:	GEOFF EDGAR-STUBGEN	Octagon Insurance Services
Treasurer:	LINDA PEREIRA	Lambton Mutual Insurance Co. Watford
Secretary:	JORDAN HAMILTON	Definity Financial
Website Manager:	CORY BOYLE	Definity Financial
Bookkeeper:	WENDY BARBOUR, FCIP	
Chapter Delegate:	MICHELE FIELD, FCIP	Trillium Mutual Insurance Company
Website:	www.londonclaimsassociation.com	
NIAGARA		
President	BOB MCCORD, FCIP, CFEI, CRM	Leading Edge Claims Services Fonthill
Vice-President:	CHRIS JOLLIFFE, B.Sc.,CIP,CFEI	Leading Edge Claims Services Fonthill
Treasurer:	BRIAN HORNYAK	Portage Mutual Insurance
Secretary:	ERIC GRIFFI	Crawford & Company Canada Inc.
Director:	JEFF EDGE, CIP, CFEI	Leading Edge Claims Services Fonthill
Director:	CHAUSSIE LAWSON, FCIP, CRM	Portage Mutual Insurance
Director:	MIKE RAGONA	Sedgwick
Director:	AVERY EDGE	Leading Edge Claims Services
Chapter Delegate:	ROB FIORIDO, CIPm	Portage Mutual Insurance
Website:	www.oiaaniagara.com	

CHAPTER NAME & POSITION	NAME	COMPANY
NORTHERN		
President	BLAIR BOILARD, CIP, CFEI	Crawford & Company Canada Inc. Elliot Lake
Vice-President:	IAN JOHNSON	Claims Pro Inc.
Treasurer:	GREG MCAULEY	The Co-operators Sault Ste. Marie
Secretary:	TBD	
Director:	DAVID K. MARSHALL	Crawford & Company Canada Inc. Sault Ste. Marie
Director:	JESSE VERMETTE	Crawford & Company Canada Inc.
Director:	AMI LOWE	Claims Pro Inc. Sudbury
Director:	DAN ROSS	Northern Adjusters – Sudbury
Director	BOB PALANGIO B.ED. B.SC.	Optimum Insurance Company- North Bay
Chapter Delegate:	MIKE BOTTAN, CIP, CFEI	Crawford & Company Canada Inc. New Liskeard
OTTAWA		
President	CONAR MARCOUX, BA, FCIP, CFEI	Crawford & Company
Vice-President:	TBA	
Treasurer:	TBA	
Secretary:	TBA	
Director:	TBA	
Chapter Delegate:	MAYA PANCHMATIA	Definity Insurance
Website:	www.ovaa.ca	
THOUSAND ISLANDS		
President	DUNCAN SOUTHALL	PCA Adjusters
Vice-President:	TERRY DOHERTY	Aviva
Treasurer:	ALEX ROBINSON	L&A Mutual
Secretary:	ASHLEY McCARTHY	ClaimsPro
Director:	BEN BALDWIN	Travelers
Director:	SARAH TRENTADUE	Crawford & Company
Director:	MATT GROVES	Bay of Quinte Mutual
Director:	THOMAS ROURKE	PCA Adjusters
Director:	SIMONE CYBULSKI	Crawford & Company
Past President:	SHARI HAMILTON	PCA Adjusters
Chapter Delegate:	ERIN SHEARD	ClaimsPro
Website:	www.wearetiaa.com	
THUNDER BAY		
President	ALISA HAINRICH, CIP	Wawanesa Mutual Ins. Co.
Vice-President:	FRANK CASTALDO	Intact
Treasurer:	KIM LEPERE, CIP	ClaimsPro
Secretary:	KIM LEPERE, CIP	ClaimsPro
Director:	DAVID KIRYCHUK, BA,CFEI	Crawford & Company (Canada) Inc.
Director:	SANDRA FREEMAN	Intact Insurance
Chapter Delegate:	CLAIRE RICHARDSON, BA, CIP	Sedgwick
Website:	www.oiaatbay.ca	
WINDSOR		
President	WILLIAM HUMPHREY, BA, FCIP, CRM	Echelon Insurance
Vice-President:	PETER RIEDIGER, CIP	ClaimsPro Inc.
Treasurer:	ERNEST MASHINGADZIE MBA, CIP, ACS	ClaimsPro Inc.
Secretary:	TBD	
Director:	TBD	
Chapter Delegate:	PETER RIEDIGER, CIP	ClaimsPro Inc.
Website:	www.oiaawindsor.ca	