

# WIP

**Without Prejudice**

Official Journal of the Ontario Insurance Adjusters Association

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is in  
the air!*

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# THE WP RADIO

## PODCAST NETWORK

With 2020 on the horizon, and the world entering a new decade, the OIAA shouldn't be left behind, which is why this is the perfect time to launch new projects and ventures. One major addition to the OIAA in the last couple years is WP Radio, and it's still moving forward with new ideas.

WP Radio is being turned into a podcast network, which will host under one feed five separate shows, all with different topics, themes and engagements. The podcast in the last couple years has been a great opportunity for people in the industry share stories and ideas, and WP Radio continues to build on that and give people a larger platform to do so. The list of shows launching as part of the network are:

Out & About Presented by Genesis Rehab

The Case Law Show Co-Presented by Templeman LLP and Dye & Russell LLP

Audio Articles & Event Keynotes Presented by SCM Group of Companies

Chapter Check-in Presented by WINMAR Lanark

The OIAA Trivia Show Presented by Arcon Forensic Engineers

We are so excited to be working with these great companies, who support the OIAA and can't thank them enough for their support.

The next 12 months of the WP Radio Podcast Network will be filled with stories, engagement and interviews from people coming from all walks of life to give our listeners the best possible experience. That's why, as long as you've been listening, the OIAA Trivia Show will give you the opportunity to win tickets to your favourite sporting events, just for listening to all previous episodes. The more you know about each episode, the better chance you have of winning.

Thank you to all of our supporters and listeners of the WP Radio, and we look forward to kicking off the new year with all of you!

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**Leanne B. Hardman**  
President, OIAA

## ***President's Message***

*"Spring: a lovely reminder of how beautiful change can truly be"*

As far as winter's go, this one hasn't been too bad. No treacherous commutes into work, temperatures bearable, and so far, I've managed to stay upright and avoid my yearly wipeout on my driveway. Jacob's disappointment over the lack of snow days this winter has been replaced by his excitement over securing his G1 license.

Spring is just around the corner. If you have a dog, as I did for many years, spring may not be your favorite season. We have the spring "thaw" and the hours it takes to pick it all up, the wet ground and muddy lawns, the sand and dirt you have to wash off their wee legs before you find tiny footprints on your duvet. Walking the dog is truly a monumental effort in the spring. I was lucky to have Winston for 16 springs.

This spring on Wednesday April 8th at the Alt Hotel Toronto Airport, the OIAA and CIAA will be hosting their first joint educational seminar followed by the OIAA's Toronto Delegate Elections. Seminar topics include Interjurisdictional Claims Handling presented by Dan Strigberger, of Strigberger Brown Armstrong LLP and Kelly Peck-McDonnell, CIP, Senior Adjuster, Crawford & Company (Canada) Inc. and Liability and the Sharing Economy including AirBnB and Bullying and Exposure under Home Owners presented by Michael Blinick of Marta Watson LLP. We hope you will join us for this exciting educational opportunity open to Adjusters, Brokers and Vendors. Registration is now open but is limited. Please visit [www.oiaa.com](http://www.oiaa.com) to register. I look forward to seeing you there!

**Leanne B. Hardman**, BSc. Hons. CIP  
President, Ontario Insurance Adjusters Association

### ***NEXT MEETING***

***Wednesday, April 8, 2020***

**2020 April Seminar  
and Toronto  
Delegate Election**

Location: Alt Hotel  
Toronto Airport

See page 33 for details.

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*The Altima-te Price For A Privacy Breach (page 8)*

Laura Emmett is a lawyer at Strigberger Brown Armstrong LLP and works out of the London office. As Laura's career was taking off in the courtroom, she briefly explored a career flying Italian fighter jets. Realizing that fighter jet premiums were entirely too high, Laura decided to develop a diverse practice where she focuses on bodily injury claims, accident benefits, cyber liability, privacy law and drone liability.



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*The Top 10 Most Frequently Asked IRB Questions (page 14)*

Since 2006, Carolyn M. Bartley has provided professional accounting services with an exclusive focus in the field of forensic and investigative accounting. She has extensive experience in managing complex investigations and assessing damages in matters related to economic damage quantification in insurance and litigation matters.



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*Approaching the Future with a Sustainable Mindset (page 42)*

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*Ontario Court of Appeal Ruling Questions Default PJI on Non-Pecuniary Damages (page 50)*

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Golf Tournament .....	Matt Rienzo	John Slattery, Carrie Evans
September Kick Off .....	Rhu Sherrard	Matt Rienzo, Shawna Gillen John Slattery, Carrie Evans



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# The Altima-te Price For A



# Privacy Breach



Data breaches involving the theft of personal information coupled with a ransom demand are becoming commonplace. In some cases, the loss of privacy and actual harm sustained is significant; in other cases, it is slight. But in almost every case a class action is sure to follow.

*By Laura Emmett,  
Insurance lawyer,  
Strigberger Brown Armstrong LLP,  
London*

**As one of the largest industries in the country,  
it is not surprising that the automotive industry is the frequent target  
for cyber and privacy breaches.**

Automotive manufacturers and dealerships collect and handle an exorbitant amount of data about its customers. For instance, when purchasing or leasing a vehicle, a dealership will likely collect, among other things, names, addresses, income information, credit scores, and banking information. Some of this data is considered sensitive personal information. Regardless of the classification of the data, it is clear that businesses face a serious risk of a class action following a breach. The opening paragraph of the Court's recent decision in *Grossman v Nissan* illustrates this point.



In this case, the Court was faced with a motion for the class action certification arising from a data breach at Nissan Canada. The breach occurred in December 2017, when an unknown employee accessed the company’s database which contained the personal information of thousands of customers who leased or purchased their vehicle. The employee emailed a “sample” of stolen data to company executives and demanded a ransom payment.

The Court noted that the stolen data involved four categories of personal information. The first three – names and addresses, vehicle models and VINs, and lease or loan terms – could not be described as private information. The fourth category – the customer’s credit score – was considered private information.

The Court found that the five procedural requirements for class action certification were met and the action was certified. First, the Court concluded that there was a satisfactory cause of action. Assuming the facts as pleaded were true, each of the three main claims – vicarious liability (for intrusion), negligence, and breach of contract – were sufficiently pleaded and disclosed a cause of action.

Second, the Court found that there was sufficient evidence of an identifiable class of two or more persons. The class was defined as:

All persons resident in Canada, including their estates, executors or personal representatives but excluding persons resident in Quebec, who (1) provided personal information to one or more of the defendants (or any of their



*“First annoying day of spring.”*



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affiliates or subsidiaries) when financing a lease or purchase of a Nissan vehicle over the five years ending on December 11, 2017 and (2) received a notice letter from Nissan about the December 2017 data breach.

Third, the Court found that there were four issues to be certified as common issues – vicarious liability for intrusion upon seclusion, duty and standard of care, aggregate damages, and the entitlement to punitive damages.

Fourth, the Court held that a class action was a preferable procedure as it would allow both the vicarious liability and the aggregate damages issues to be decided “once and for all on a class-wide basis.” It was also preferable from an access to justice and judicial economy perspective.

Finally, the Court concluded that the proposed representative Plaintiffs were suitable.

Privacy and cyber breaches are here to stay. Companies need to be cognizant of the risks that result from breaches. These include negative press, lost revenue, damages payable to customers and significant

legal fees. In light of this, organizations must take proactive measures to limit their liability before a breach occurs. Most notably, businesses should restrict access to sensitive data; create policies and procedures restricting usage; and, enact a data retention policy. Finally, insurance plays a key role in minimizing an organization’s risk exposure.

See *Grossman v. Nissan Canada*, 2019 ONSC 6180 (CanLII).



*Laura Emmett is a lawyer at Strigberger Brown Armstrong LLP and works out of the London office. As Laura’s career was taking off in the courtroom, she briefly explored a career flying Italian fighter jets. Realizing that fighter jet premiums were entirely too high, Laura decided to develop a diverse practice where she focuses on bodily injury claims, accident benefits, cyber liability, privacy law and drone liability.*

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# The Top **10** Most Frequently



# Asked IRB Questions



As accountants experienced in accident benefits and through our ‘ask an expert’ program at BDO, we hear from clients everyday looking for answers to questions related to income replacement benefits (“IRBs”). We answer some of the most common questions on the next few pages. We invite you to test your knowledge and try to answer the questions yourself before reading our responses – see how you do!

*BY Carolyn M. Bartley, CPA, CMA, CFF,  
Senior Manager, Forensics, and  
Rhonda Macedo, CPA, CMA, CFF,  
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## **1 How is the \$185 applied to the IRB after the first 104 weeks of accident-related disability?**

Only the pre-accident number increases to \$185

A widespread misconception is that after the first 104 weeks of accident-related disability, any IRB less than \$185 automatically increases to this amount. However, after the first 104 weeks of disability, it is only 70% of the claimant's gross weekly pre-accident income that increases to \$185, pursuant to s.7(2)(1)(ii) of the SABS.

**We still make adjustments for post-accident income/losses and collateral benefits**

Then, from the \$185, deductions are made for any post-accident income, pursuant to s.7(3) of the SABS, and collateral benefits, pursuant to s.7(1)("A") of the SABS. In addition, 70% of any post-accident losses incurred as a result of the accident are added to the \$185, pursuant to s.7(2)(2) of the SABS.

**A couple of examples are as follows:**

70% of the claimant's gross weekly pre-accident income is \$100 per week and they are receiving collateral benefits of \$50 per week. After 104 weeks of disability, the IRB would be:

- $\$185 - \$50 = \$135$

70% of the claimant's gross weekly pre-accident income is \$75 per week and 70% of weekly self-employment losses incurred as a result of the accident are \$100. After 104 weeks of disability, the IRB would be:

- $\$185 + \$100 = \$285$

## **2 What is the IRB when factoring in payments for loss of income received as a result of the accident?**

A common question is whether the IRB should be \$nil if payments received for loss of income resulting from the accident - such as short-term, long-term ("STD" and "LTD") and Canada Pension Plan disability benefits - exceed a claimant's policy maximum. The answer is 'not necessarily' since it is all dependent on the ordering of the calculation.

Collateral benefits are deducted from 70% of gross weekly pre-accident income, after adding 70% of any post-accident losses from self-employment incurred as a result of the accident, pursuant to s.7 of the SABS. Therefore, the claimant may very well be entitled an IRB regardless of being in receipt of collateral benefits.

For example, if 70% of a claimant's gross weekly pre-accident income is \$700, 70% of a claimant's weekly post-accident losses is \$100, gross

weekly payment for loss of income received as a result of the accident is \$300, and policy maximum is \$400 per week, then the IRB is calculated as follows:

\$700	70% of gross weekly pre-accident income
+100	70% of weekly post-accident losses
<hr/>	
\$800	Weekly Base Amount
-300	Weekly Other Income Replacement Assistance
<hr/>	
\$500	Sub-total subject to the applicable policy maximum
<b>\$400</b>	<b>IRB to policy maximum</b>

### **3 If claimant is receiving disability benefits at the DOL for a pre-existing condition, how do these benefits factor into the IRB calculation?**

Temporary disability benefits are deducted from an IRB otherwise payable

Pursuant to s.47(1) of the SABS “temporary disability benefits” may be deducted from an IRB otherwise payable if the benefit is received after the accident due to an impairment that occurred before the accident.

#### **Examples of temporary disability benefits**

Some examples of temporary disability benefits as described in s.47(3) of the SABS include:

- IRBs and non-earner benefits paid for less than 104 weeks after the onset of disability
- caregiver benefits
- some workplace and safety insurance board benefits
- “any other periodic temporary benefit paid under an income continuation benefit plan”, with some exclusions, such as Employment Insurance (“EI”) benefits

Because temporary disability benefits are deducted from an IRB otherwise payable, the IRB will always be \$nil in the event that the amount exceeds the claimant’s policy maximum.

For example, if 70% of gross weekly pre-accident income is \$500 per week, 70% of gross weekly post-accident income is \$100, and net weekly



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temporary disability benefit is \$200 per week, then the IRB is calculated as follows:

\$400	70% of gross weekly pre-accident income of \$500, subject to policy maximum
- 100	70% gross weekly post-accident income
<hr/>	
\$300	IRB payable, before consideration of temporary disability benefits
- 200	Net weekly temporary disability benefits
<hr/>	
<b>\$100</b>	<b>IRB payable</b>

## 4 What should be done with vacation pay when calculating the IRB?

### Include vacation pay as earned, not as paid

The simple answer is that vacation pay should be included as it is earned in both the pre and post-accident periods of analysis. To do so, you need to understand how the vacation pay is accrued and paid. For example, if the employee accrues vacation at a rate of 4%, but is paid out vacation once a year, consideration should be given to remove the vacation pay the claimant *received* and replace it with 4% of the gross vacation pay *earned* in the pre and post-accident periods.

Consider a claimant who earned \$26,000, excluding vacation pay, in the 52-week period prior to the accident and accrued vacation pay at a rate of 4%, which was paid out after the accident as a lump sum payment for vacation of \$1,040. In this case:

- 4% vacation pay of \$1,040 ( $\$26,000 \times 4\% = \$1,040$ ) is added to pre-accident income to reflect that it was earned prior to the accident. Therefore, pre-accident income is \$27,040 ( $\$26,000 + \$1,040 = \$27,040$ );
- the \$1,040 of vacation pay received by the claimant after the accident is not deducted from the claimant's IRB.

### Possible exceptions

Of course, there are exceptions to this rule. For example, if an employed claimant was on vacation for three of the four weeks before the accident, the strict application of this rule in the calculation of gross employment income for the four-week period prior to the accident would yield an anomalous result and, as such, one needs to exercise judgment in the calculation of the IRB.

## **5** What should be done with retiring allowances when calculating the IRB?

The short answer? Nothing! Retiring allowances, as well as severance pay, are not included in the calculations of either pre or post-accident incomes from employment, pursuant to s.4(1) of the SABS.

### **Something to note!**

Severance pay is not the same as termination pay. Severance pay is compensation that may be received by an employee who has been 'severed' from their employment. It compensates an employee for losses that occur, such as loss of seniority, associated with the loss of their job.

Termination pay is given in place of the required statutory notice of termination of employment. Normally, an employee who is terminated without cause is entitled to either a statutory period of notice, during which they continue working and receiving pay and benefits or they are entitled to pay in place of said notice. Termination pay is considered when calculating gross weekly pre and post-accident incomes from employment.

## **6** If the claimant is on STD or LTD at the time of the accident, are they eligible for an IRB?

It depends. In order to be eligible for an IRB, pursuant to s.5(1) of the SABS, among other things, the claimant must be either:

- employed or self-employed at the time of the accident;
- employed for at least 26 during the 52 weeks preceding the accident; or
- in receipt of EI benefits at the time of the accident.

Generally, if a claimant was in receipt of STD benefits at the time of the accident, they are considered employed by their employer even though they are not actively working at the time of the accident.

If a claimant was in receipt of LTD benefits at the time of the accident, one would have to determine if and when the employee-employer relationship had been severed vis-a-vis the date of the accident in order to determine eligibility.



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## **7 How does the IRB calculation work if claimant first becomes entitled to receive an IRB on or after their 65th birthday?**

### **No reduction for post-accident income of any kind**

First, if a claimant is 65 years of age or over when they first became entitled to receive an IRB, no reduction is made in the quantification of their IRB for post-accident income from either employment or self-employment, pursuant to s.9(2) of the SABS.

### **Post-accident self-employment losses are considered**

However, in the event that a self-employed claimant incurs losses from self-employment as a result of the accident, their IRB is enhanced to include 70% of these losses, pursuant to s.7(2)(2) of the SABS, subject to the application of their Policy Maximum.

### **Payments for loss of income received as a result of the accident are deducted**

Payments for loss of income received as a result of the accident by a claimant who is 65 years of age or over when they first became entitled to receive an IRB are deducted in the calculation of their IRB, just as they are if the claimant had been less than 65 years of age.

### **Reductions to IRB after 51 weeks of payments**

Pursuant to s.9(1)(b) of the SABS, after 51 weeks of entitlement, the original benefit is reduced by:

- 20% for 52 weeks or more but less than 104 weeks;
- 40% for 104 weeks or more but less than 156 weeks; and
- 70% for 156 weeks or more but less than 208 weeks.

Further, after 208 weeks, the claimant ceases to be entitled to an IRB. As an aside, the IRB calculator in BDO's virtual office will automatically factor all of above into the calculation of an IRB. In addition, it will factor in the adjustment described in s.8(1) of the SABS, applicable on the later of the date a claimant who is receiving an IRB either attains 65 years of age, or the second anniversary of the day the person began receiving the IRB.



## What should be considered if the claimant is employed by their spouse’s business?

It is common for a claimant to be employed by their spouse’s business, especially in family-run businesses. However, it is important to confirm that the claimant is not a shareholder of the company, as further investigation would be required to confirm whether or not the claimant was actually self-employed at the time of the accident.

It is also important to obtain details of the claimant’s position with the business, including their average days and hours of work, their duties and responsibilities, and their wages and/or benefits received. Details of the claimant’s pay are necessary to confirm whether the wages are commensurate with their duties and responsibilities.

For example, if a claimant is employed on a part-time basis, in an administrative position and receives an annual salary of \$100,000, further investigation should be made to determine that the wages are commensurate with the duties of the position, as in our experience the aforementioned salary is significantly higher than the average pay for a typical part-time, administrative position.



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## **9 If at DOL claimant is the sole shareholder of their business, which operates as an incorporated company, can the IRB be based on their T4 slip from the company?**

It is common for a claimant to request that their IRB be predicated solely on the amounts they paid themselves from their corporation; however, this approach will not usually yield the correct IRB. A self-employed person who owns a business can draw money as either as a dividend, a salary and/or benefits. Ultimately, how they choose to pay themselves may be a matter of tax or financial planning and does not necessarily mirror the financial results of the business.

It is the gross income/losses of the company, before the deduction of shareholder remuneration, which we consider when calculating an IRB, not the amounts the business owner has chosen or not chosen to pay themselves from the company in the pre and post-accident periods of analysis. As such, the methodology of the IRB calculation is consistent with that of a self-employed claimant who operates their business as a sole proprietor or partnership.

## **10 The claimant is both employed and self-employed at the time of the accident. Can the calculation of the IRB be based on one, and not the other?**

In short, the answer to this question is no.

**Both sources of income must be considered pre and post-accident**

When calculating an IRB for a claimant who was both employed and self-employed at the time of the accident, s.7(2)(1)(i) of the SABS clearly stipulates that both sources of income must be considered regardless of the fact that the claimant may be indicating that the disability impacted only one. By doing so, any changes made by the claimant between the time they spend working at their employment as compared to their self-employment, as a consequence of the accident, are reflected in the determination of their IRB.

**If you would like to discuss any of these questions in more detail, please reach out to us. We would be happy to hear from you!**

*Since 2006, Carolyn M. Bartley has provided professional accounting services with an exclusive focus in the field of forensic and investigative accounting. She has extensive experience in managing complex investigations and assessing damages in matters related to economic damage quantification in insurance and litigation matters and has been involved in preparing thousands of income replacement benefit and income loss reports. Carolyn can be contacted at Tel: 416 233 5577 ext 4186, Toll Free: 1 866 233 5577 or cbartley@bdo.ca*



*Rhonda Macedo has over 11 years of experience providing professional accounting services with a focus on forensic and investigative accounting. Rhonda has extensive experience in managing complex investigations in insurance and litigation matters relating to accident benefit claims, economic loss and attendant care, financial dependency and personal injury. Rhonda can be contacted at Tel: 416 233 5577 ext 4191, Toll Free: 1 866 233 5577 or rmacedo@bdo.ca*



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# OIAA 2020 PROFESSIONAL DEVELOPMENT AND CLAIMS CONFERENCE

January 22, 2020, Metro Toronto Convention Centre







# OIAA 2020 PROFESSIONAL DEVELOPMENT AND CLAIMS CONFERENCE

January 22, 2020, Metro Toronto Convention Centre



See more photos of the 2020 OIAA Claims Conference in the next issue of WP

# 2020 Claims Conference - Student Career Fair





## TRADESHOW & PROFESSIONAL DEVELOPMENT SEMINARS THURSDAY, MARCH 26, 2020

**RBC PLACE** (LONDON CONVENTION CENTRE) 300 YORK STREET, LONDON, ONTARIO

**TIMES:** 3:00 – 4:00 PM - SEMINARS • 4:00 – 6:00 PM - TRADE SHOW

### PROFESSIONAL DEVELOPMENT:

*Each free session begins at 3:00 pm* (one hour), Trade Show opens at 4:00 pm

#### **From Judges to Adjudicators: A Review of Tort and Accident Benefits in 2019**

Presented by: Laura Emmett, Strigberger Brown Armstrong LLP  
Beth Belanszky, McCall Dawson, LLP

#### **Dealing with Difficult People: Seven Simple Steps to Success!**

Presented by: Michael Lewis, Michael Lewis Training, Motivation and Development

**PLEASE DON'T FORGET TO REGISTER FOR THE DINNER (6:30 PM) –**

<https://www.londonclaimsassociation.com/events/>

## *New Members*

### **The following were approved as active new members in December 2019**

NAME	COMPANY	CITY	CHAPTER
EGBERT, Shaun	Desjardins	Mississauga	Toronto

### **The following were approved as active new members in January 2020**

LABERGE, Mike	Context Claims Inc.	Ottawa	Ottawa
DANCE, Wendy	Gallagher	London	London
WILLIAMS, Tanner	ClaimsPro	Toronto	Toronto
WINDRIM, Samantha	CAA Insurance	Thornhill	Toronto
ADETOYE, Peter	Crawford & Company (Canada) Inc.	Whitby	Toronto
THOMAS, Lydia	Crawford & Company (Canada) Inc.	Mississauga	Toronto



# 2020 PROFESSIONAL DEVELOPMENT & CLAIMS CONFERENCE

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# OIAA TORONTO DELEGATE Election 2020

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

We are seeking nominations for the following:

Two Toronto Delegate positions each for a 2-year term commencing August 1, 2020 – July 31, 2022.

One possible Toronto Delegate position for a 1-year term commencing August 1, 2020 – July 31, 2021.

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

If you are an OIAA member or know of an OIAA member interested in running for this position, please contact **Michael McLeod** at [michael.mcleod@crawco.ca](mailto:michael.mcleod@crawco.ca).

Elections will be held on **April 8, 2020** at the Alt Hotel Toronto Airport in Mississauga. Go to [oiaa.com](http://oiaa.com) for details.



**Joint Educational Event presented by the OIAA and CIAA**

# **April Seminar and Toronto Delegate Elections**

**Wednesday, April 8, 2020**

**Location: Alt Hotel Toronto Airport, 6080 Viscount Road, Mississauga, ON**



- Agenda:**
- Interjurisdictional Claims Handling presented by Dan Strigberger, of Strigberger Brown Armstrong LLP and Kelly Peck-McDonnell, CIP, Senior Adjuster, Crawford & Company (Canada) Inc.
  - Liability and the Sharing Economy including AirBnB and Bullying and Exposure under Home Owners presented by Michael Blinick of Marta Watson LLP

**Time:** Lunch - 12:30 pm  
Seminar - 1:00 – 5:00 pm

**Cost:** \$45 + HST members and \$60 + HST non-members

**Toronto Delegate Elections will take place after the seminar.**

Please join us to cast your vote for the next Toronto Delegates.

---

***For more information and registration  
go to [www.oiaa.com](http://www.oiaa.com)***

# The OIAA OPEN Annual Golf Tournament

Friday, June 5, 2020



**The OIAA will be hosting the tournament at  
Cardinal Golf Club this year.**

**Registration starts at 12:00 noon, casual BBQ lunch at 12:30 p.m.**

**Shotgun start at 2:30 p.m. Dinner to be served at 6 p.m.**

**Dinner-only reservations will be available for non-golfers.**


## **CALL "FORE" SPONSORS!**

Corporate sponsors are needed for our annual golf tournament this year, and your support is greatly appreciated. All corporate sponsors are guaranteed an opportunity to purchase one foursome. Sponsorship is available in the form of:

### **Hole Sponsorship**

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Tournament continues, Rain or Shine! We again look forward and thank you in advance for your continued generous support.

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For information on Cardinal Golf Club, visit their website at [www.cardinalgolfclub.com](http://www.cardinalgolfclub.com)

## OIAA Calendar of Events around the Province

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
<b>MARCH</b> 2	3	4	5	6
9	10	11	12	13
16	17	18	19	20
23	24	25 Niagara Chapter, Dinner Meeting at Coppola's, St. Catharines Windsor Chapter, Joint Bowling event 1pm at Revs Rose Bowl	26 Kitchener/Waterloo Chapter, Education Meeting at Golf's Steakhouse, Kitchener London Chapter, Trade Show at the London Convention Centre	27
30	31	<b>April Seminar and Toronto Delegate Elections, April 8, 2020</b> Register online at: <a href="http://www.oiaa.com" style="color: white;">www.oiaa.com</a>		

### Upcoming Chapter Events around the Province

**April 23, 2020**

Kitchener-Waterloo Chapter, Battle of the Bands at Maxwells Concerts and Events.

**April 23, 2020**

Windsor Chapter, Gala Evening at the Caboto Club.

**April 28, 2020**

Hamilton Chapter, Joint Conference with Hamilton Law Association.

**April 29, 2020**

Niagara Chapter, Lunch Meeting, Johnny Rocco's in St. Catharines.

## UPCOMING OIAA EVENTS

Mark these dates down on your calendar

### DON'T MISS THEM!

- April 8, 2020 OIAA APRIL SEMINAR AND TORONTO DELEGATE ELECTIONS  
 – Alt Hotel Toronto Airport  
 6080 Viscount Road, Mississauga
- June 5, 2020 OIAA ANNUAL GOLF TOURNAMENT  
 – Cardinal Golf Club - 2740 Davis Drive West, Newmarket.

All events are listed in our *WP* magazine. Each event will have registration on our website prior to the event – please watch for the details on our website [www.oiaa.com](http://www.oiaa.com) or in the *WP* magazine for more details.

**WE HOPE YOU CAN JOIN US!**

Please visit [www.oiaa.com](http://www.oiaa.com) for more upcoming chapter events



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The OIAA's vision for the future is bright and prosperous. We want to make sure the organization is growing and everyone continues to benefit from what's to come!



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# Get to know your Chapter

## OIAA London Chapter

It is my pleasure to be in my second year as the President of the London Claims Association chapter of the OIAA. I'm so very proud of our Chapter and our industry partners. There is a strong sense of commitment to our industry in this region and our events draw attendees from across South Western Ontario.

Our 2019/2020 executive board is comprised of: Kate Boyle (President), Vice President & Treasurer (Linda Pereira), Secretary (Pamala Cecchin), Kelly Peck-McDonnell (Provincial Delegate), Amanda Gaudet (Director), Michele Field (Director), Heidi Bronnenhuber (Director), Mackenna Frank (Director), and Jordan Tremblay (Director). Our Social Directors are: Sara Marziali, Jodie Snyder, and Jeff Timmermans. Our chapter bookkeeper is Wendy Barbour. I would like to thank all of our board members for the time and effort they devote to this Chapter. This is a volunteer position and our events are only successful because of their collected efforts and continued support.

We continue to support the London Food Bank as our charity of choice. To date, we have raised \$1,800.00 in addition to non-perishable food donations. We encourage you to bring non-perishable food items or monetary contributions to each and every one of our events. We are extremely proud to be making a difference within our community.

We've had a busy and successful year so far. In September, we partnered for the second time with the Southwestern Ontario Chapter of the Insurance Institute, the London Insurance Brokers Association and the London Field Representatives' Association for Meet the Industry Night. We realize that our industry is evolving and the value of relationships remains critical to our continued success. The tradeshow and mix & mingle reception brought London's insurance industry together and was well attended by Brokers, Underwriters, Adjusters, Business Development, Vendors and others. In October, we hosted our Kick-Off event at Powerhouse Brewing Company, which was an evening full of magic and networking. Our annual Holiday Party was held at the Lamplighter Inn on November 21, 2019. We opted for more of a casual event this year and encouraged our guests to wear

ugly Christmas sweaters, suites and dresses. Santa even made an appearance and handed out gifts to our members. Our annual Chili Cook-Off and Trivia Night was held in January and despite a water event the weekend before and a snow storm on the day of, we had a great evening with 8 delicious chilli's submitted to taste. Thank you to those that braved the roads and made it out to this event.

Looking ahead, our Curling Funspiel is scheduled for February 26, 2020 at the Highlands Country Club. The LCA Trade Show is March 26, 2020 at the RBC Convention Centre. This year, we have two seminars planned before the Trade Show, scheduled to start at 3:00pm. We are pleased to have Laura Emmett of Strigberger Brown Armstrong LLP and Beth Belansky of McCall Dawson, LLP present "From Judges to Adjudicators: A Review of Tort and Accident Benefits in 2019" and Michael Lewis, Managing Director of Michael Lewis Training speaking about "Dealing with Difficult People: Seven Simple Steps to Success!" A reminder that the Trade Show floor is **FREE** to all insurance adjusters, so please come out to support your local chapter! The Elections Night and Education Seminar will be taking place on April 23, 2020 at the Lamplighter Inn. We are looking for new members to join our Chapter for the 2020/2021 term. Please contact anyone on the executive if you are interested in joining our amazing team. Our annual golf tournament is scheduled for August 13, 2020 at Fanshawe Golf Course in London.

As always, we encourage all adjusters to attend as many LCA events as possible. We would like to thank our members and our vendor partners for your ongoing support throughout the year. None of this could happen without your continued participation and support!

Please visit our website at [www.londonclaimsassociation.com](http://www.londonclaimsassociation.com) for further details regarding all of our upcoming events. I look forward to seeing many of you throughout the remainder of this year!

**Kate Boyle**

President, London Claims Association



# Get to know your Chapter

## OIAA Windsor Chapter

The Windsor Chapter of the OIAA is excited for the new decade and all that it might bring.

But first we'd like to announce that during the 2018-2019 year our chapter raised \$10,772.40 for four very deserving charities/organizations and two non-profit insurance organizations. This shows the true level of goodwill and generous spirit we have here in the southern tip of Canada. Giving to charity has always been at the forefront of our chapter's mission. We are very pleased with these results. Of course, this would not have been possible without terrific adjuster members and amazing industry partners that come out to support our events time and time again. This is the perfect time to say "Thank You". We would not be successful in our mission to educate and give back to our community without each and every one of you. With thanks in mind, it's time to extend gratitude to our board members who spend countless hours making this well-oiled machine run. Our executive has seen some changes in the past year and our transition has been a truly inspiring thing to see. So BIG THANKS to: Past President and our favourite MC Rob Queen, Treasurer and Chapter Delegate (ya, I don't know how she does it either) Tena Allen, Secretary Melissa Robb, Executive Directors Chris Renaud and Jennifer Olson. As for me, I was Vice President and am now Acting President and am in charge of Social Media and Web Development. In a small chapter everyone pitches in as needed.

I would like to take this time to say a special thank you to former President, Mike Hoffman. He has been on the Windsor Chapter board for more than 15 years, including serving as Delegate. He has worked so hard

to make the Windsor Chapter a viable and successful part of the OIAA. Our chapter would not be where it is today had it not been for this leadership, mentoring, tenacity, passion, care and love. We cannot thank him enough and we hope we will make him proud as we carry on with the great work he has initiated.

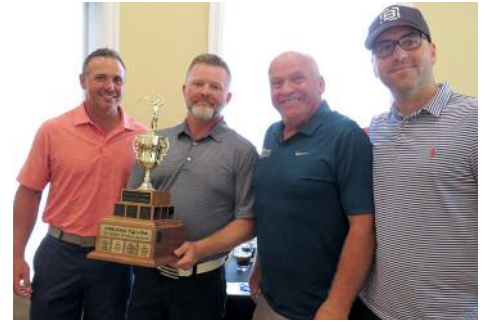
This year's events have included: an Educational Seminar in the Fall of 2019 on the very current topic of Cannabis; December had us singing carols and eating turkey at our Christmas Lunch; in January we had our annual Windsor adjusters vs. industry partners hockey match-up at the WFCU and February had our adjuster/industry partner "chefs" cooking up their special secret recipes for our annual Chili Cook-Off. Coming up on March 25 we'll be putting on those funny shoes and participating in our 2nd Annual Bowling Tournament co-sponsored with the Windsor Essex County Brokers Association with proceeds going to Hospice of Windsor. Please save the date: April 23 for our Gala Evening, this year in honour of Maryvale. On May 27th we will be back in the classroom for our Spring Educational Seminar. And we will wrap up the 2019-2020 year with the 7th Annual Debbie Tremblay Memorial Golf Tournament, being held at Ambassador Golf Club on July 23.

Our executive will continue to provide our chapter members and industry partners a great experience at each event. If you have any suggestions/comments, please don't hesitate to contact me. We also hope you'll visit our website: [OIAAWindsor.ca](http://OIAAWindsor.ca).

### Greg Steed

Acting President – Windsor Chapter





See more photos from the Windsor chapter on page 58.

# Approaching the Future with





# a Sustainable Mindset

**Humanity may only have 10 short years to stabilize the warming trend that the earth has been on since the last ice age: 11,700 years ago. Whether we can agree on the causation or not, there is a great deal of evidence to give us concern.**

*To view "Timelapse Temperature Anomalies Since 1880." go to:  
<https://youtu.be/PhbdyNnUliM>.*

*By Jeremy Brown,  
Content Evaluation Specialist,  
Contents Processing Centre (CPC)*

## **There are many theories on the best way to sequester the greenhouse gases currently influencing atmospheric temperatures.**

Revitalization of the natural world is a promising solution and will include transitioning land back to its natural state; condensing the footprint of our cities, homes, farming, and manufacturing; possibly developing or implementing existing technologies to terraform dryer regions into viable habitats to sequester greenhouse gases.



To support the theory of revitalization, there is disturbing and soul crushing evidence that the colonization of the America's contributed to the cooling of the Earth's climate during the 16th century, as the land once cultivated by indigenous civilizations would have fallen into disuse; 56 million hectares returned to nature drawing down the CO<sub>2</sub> in the atmosphere between 7-10 ppm. Certainly there were other factors contributing to this cooling period such as a population reduction between 10-15% in Scotland and Volcanic Activity early in the 14th century.

Ultimately the Earth will seek to restore balance and exist with or without us. Hopefully human beings will be part of it's calculus.

**Personal Circle of Influence**

Our household is working diligently to decrease and eventually eliminate our use of plastics by replacing them with silicon, wax, glass containers and technology. In the coming year we are hoping to take advantage of the renewed solar grants in Ontario to support the power grid and reduce our carbon footprint. We are being conscious of our food waste, avoiding unnecessary purchases and renovations. We are maintaining our land without pesticides and letting nature have some additional room to support itself. Change is not overwhelming if you do just a little bit at a time.



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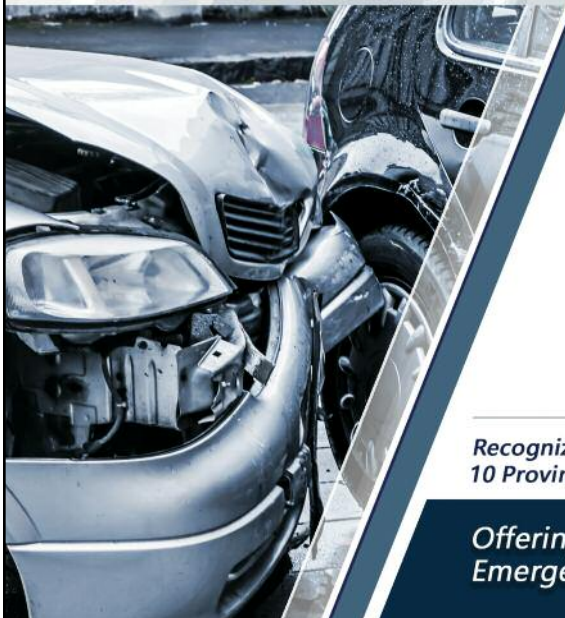
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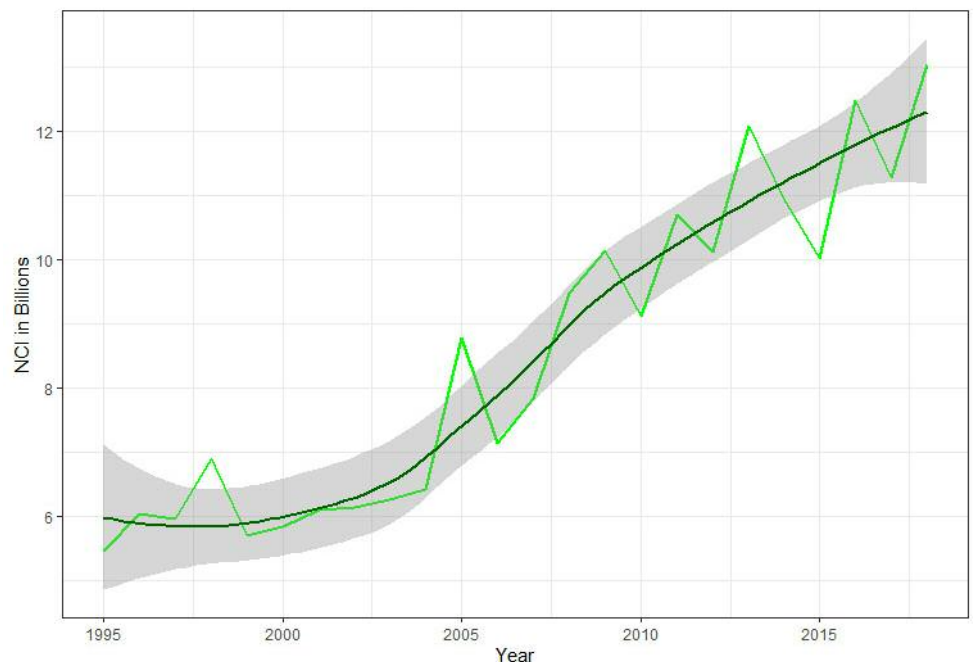
**Insurance Trends**

Adjusted for inflation, Net personal and commercial property claims incurred have increased from \$5,488 Billion in 1995 to \$13,025 Billion dollars in 2018. Increasing rates to cover the expenses is only a short term solution and contrary to the global trend of updating and implementing sustainable strategies. Data from IBC Canada

**Underwriting**

Underwriting on its own will naturally reduce the risk for insurers by weighing available coverages in areas of concern with the potential for damage. The increasing frequency and severity of weather events and catastrophic flooding will eventually move populations out of high risk zones. Unfortunately leaving things alone to their natural process is not currently an option if our industry is to contribute to the 2030 Global Goals. Studying these patterns, reassessing coverages and moving risks away from areas that have the potential or are currently in damage rebuild feedback loops would be an honest approach to the crisis we are facing.

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*Jeremy Brown has 25 years' experience working in the insurance restoration industry and specializes in the development and implementation of quality system controls and process. A certified green risk professional and data analyst. Proud to have recently developed Contents Processing Centre's ISO:9001 quality management system. A lifelong passionate and outspoken environmentalist, currently working towards understanding the earth through data science.*

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# Ontario Court of Appeal Ruling



# Questions Default PJI on non-pecuniary damages

In *MacLeod v. Marshall*, the Court of Appeal recently confirmed that Ontario Courts have discretion when setting the prejudgment interest (PJI) rates for non-pecuniary damages arising from personal injury actions, except in motor vehicle accidents. In doing so, the Court of Appeal has signaled a possible shift away from the default rule of five per cent PJI for non-pecuniary damages as contemplated by Rule 53.

*By Jonathan Thoburn, Senior Associate  
and Natalie Kolos, Partner,  
Borden Ladner Gervais LLP*

## Following the plaintiff's successful jury verdict at trial, the defendant, The Basilian Fathers of Toronto (the Basilians), launched an appeal on three separate grounds:

1. The trial judge erred by failing to properly instruct the jury on the burden of proof for claims for past loss of income for sexual abuse;
2. The award of punitive damages was excessive; and
3. The trial judge erred in setting the rate of prejudgment interest at 5% for non-pecuniary damages.

This article will focus on the third ground of appeal. Specifically, the Basilians questioned whether the trial judge exercised his discretion and considered changes in market interest rates pursuant to section

130(2)(a) of the *Court of Justice Act (CJA)*, which states:

130 (1) The court may, where it considers it just to do so, in respect of the whole or any part of the amount on which interest is payable under section 128 or 129,

(a) disallow interest under either section;

(b) allow interest at a rate higher or lower than that provided in either section;

(c) allow interest for a period other than that provided in either section.

(2) For the purpose of subsection (1), the court shall take into account, [among other things]

(a) changes in market interest rates...

Section 128(2) of the *CJA* reads "the rate of interest on damages for non-pecuniary loss in an action for personal injury shall be the rate determined by the rules of court." The rule referred to is Rule 53.10 of the *Rules of Civil Procedure*, which provides that PJI for non-pecuniary damages in an action for personal injury is five per cent per year.

At the lower court, the Basilians argued that s. 258.3(8.1) of the *Insurance Act* changed the rate of PJI to be consistent with the bank rate for non-pecuniary damages. This section was amended in 2014 such that the five per cent PJI rate no longer applied in the context of motor vehicle accidents. The Court of Appeal agreed with the lower



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Court's ruling that this provision did not apply in the circumstances, as the claim did not arise out of a motor vehicle accident. However, the Court questioned the trial judge's conclusion that because s. 258.3(8.1) did not apply, the default PJI rate should be utilized.

The Court of Appeal found that in the circumstances, the trial judge should have utilized the discretion provided by s. 130 of the CJA. In particular, the Court of Appeal stated that there ought to have been an appreciation for current market rates for interest as compared to the default five per cent provided by the *Rules of Civil Procedure*. Had such an analysis been conducted, the lower Court would have noted the interest rates during the material time were rather low, and the default rule may act to overcom-

pensate the plaintiff. In the end, the Court of Appeal used its discretion and set the PJI on non-pecuniary damages at 1.3 per cent instead of the default five per cent. As the Jury's award for non-pecuniary damages was close to the cap on such damages, this ruling by the Court of Appeal represents a substantial decrease in the amount awarded for PJI.

Moving forward, this ruling will likely have a widespread effect on personal injury claims. The Court of Appeal has added significant weight to the discretionary function prescribed by s. 130 of the CJA. One can anticipate future requests by defence counsel for courts to utilize their discretion in order to minimize the risk of over-compensating a plaintiff in a personal injury action.



*Jonathan Thoburn is a Senior Associate at Borden Ladner Gervais LLP. His practice includes insurance law, municipal and police liability, occupiers' liability and class actions.*



*Natalie Kolos is Partner in the Toronto office of Borden Ladner Gervais LLP. She specializes in resolving disputes of all forms and has a broad insurance defence practice ranging from municipal and police liability to defamation and occupiers' liability.*

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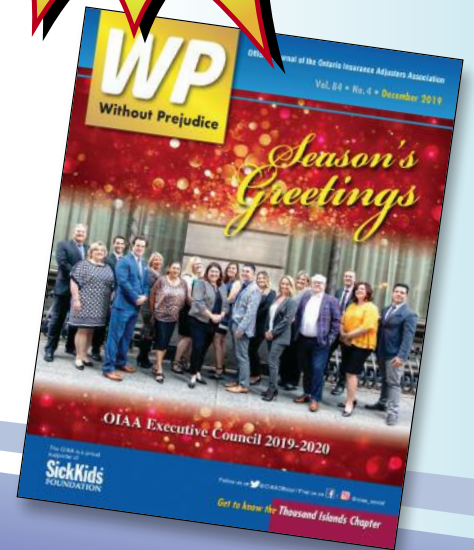
  

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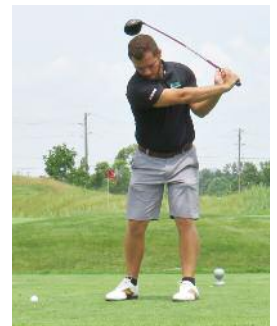
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# Final Report

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*Tena Allen, CIP, Windsor Chapter – Delegate and Treasurer*

I'm pleased to present my first WP Final Report.

I've been the Windsor Chapter Delegate for a year now. In meeting so many more adjusters and industry partners, I have been surprised by the number of people who have mentioned a connection to Windsor, my hometown. Their connections range from relatives living in the area, to having gone to school here, to completing a work assignment, to passing through on the way to the U.S.A.. The most common comments have been: "Don't you have a casino down there?" (Yes we do!) and "I haven't been there in years". So I thought I would provide a bit of an update on the "Rose City", "the Automotive Capital of Canada", the "Sun Parlour" of Ontario, "South Detroit".

Windsor-Essex County is definitely an area that has undergone and continues to undergo positive change. Windsor's population is approximately 215,000 with another 180,000, approximately, in Essex County. We're considered one of the fastest growing communities in Ontario. Windsor-Essex County is also considered one of the most culturally diverse areas in Canada with over 100 cultures represented. Windsor is proud of its LGB-TIQ2S community. Windsor-Essex County boast generally moderate temperatures year-round. The housing market is still affordable. The University of Windsor and St. Clair College have both undergone huge expansions to their campuses and also their programs. Windsor/Essex County has a rich history: from the War of 1812, to Prohibition and the Rum Runners to the Underground Railroad.

If anyone tells you there is nothing to do in Windsor-Essex County they simply aren't open to all the area has to offer. Every season provides fun, engaging events in the area.

From the beginning of June until Labour Day, there are fairs, festivals, parades, art shows, car shows, night markets and concerts every weekend throughout the area. We co-host the International Freedom Festival around Canada Day/4th of July which includes one of North America's largest fireworks displays, entertaining the million or so people who line the banks of the Detroit River.

The Windsor Riverfront provides a perfect setting for taking a leisurely walk, playing at one of the many children's jungle gyms, taking in the art pieces at the Sculpture Garden, marveling at our giant (60' x 30') Maple Leaf flag or photographing the Detroit skyline. Don't forget to take a moment and honour our fallen military at one of the war memorials.

A definite hidden gem is our Wine Trail. Essex County lies along the same latitude as Napa Valley, California and the Mediterranean. While you

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*Fireworks at the Windsor-Detroit International Freedom Festival*

wander from winery to winery (there are currently 17 to choose from) along the Lake Erie Shore, don't forget to stop and pick up some fresh fruits and vegetables from the local road-side farmers' stands. If craft beer or whiskey is more your style, there are currently 15 breweries/distilleries in the area to choose from.

Windsor-Essex County is also not short on excellent restaurants. Whether you're looking for Italian, Asian, Indian, Mediterranean, Seafood, Sushi, Steak, Burgers and Fries, Vegetarian/Vegan or Plant-Based, something high-end or simple pizza (we're famous for our pizza), you won't be disappointed.

If you love movies and can make it in the Fall, plan to come when the Windsor International Film Festival is on. In 2019 they celebrated their 15th anniversary.

And if you're into major league sports, don't forget the Detroit Red Wings, Tigers, Lions and Pistons are just a 15 minute drive away. Detroit, Michigan is also undergoing revitalization. Great restaurants, concerts, tours and theatre await. Don't forget your passport!

I could go on and on. I guess I may have found my retirement job: local tour guide.

I hope you'll make a point of coming to Windsor-Essex County with a side trip to Detroit sometime in the near future. I'm sure you'll be pleasantly surprised.

**WP**

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## WP MAGAZINE GOES DIGITAL

**WP Magazine is going digital, and we want everyone to have a copy!**

**Starting this year, the magazine will have all ten issues online, available to **everyone**. This is going to completely expand the reach of the articles published, and the advertisements!**

**We want everyone to have access to education and information about the industry, and in turn grow the organization as a whole!**

**The OIAA is looking forward to another great year and we hope to see you all soon!**