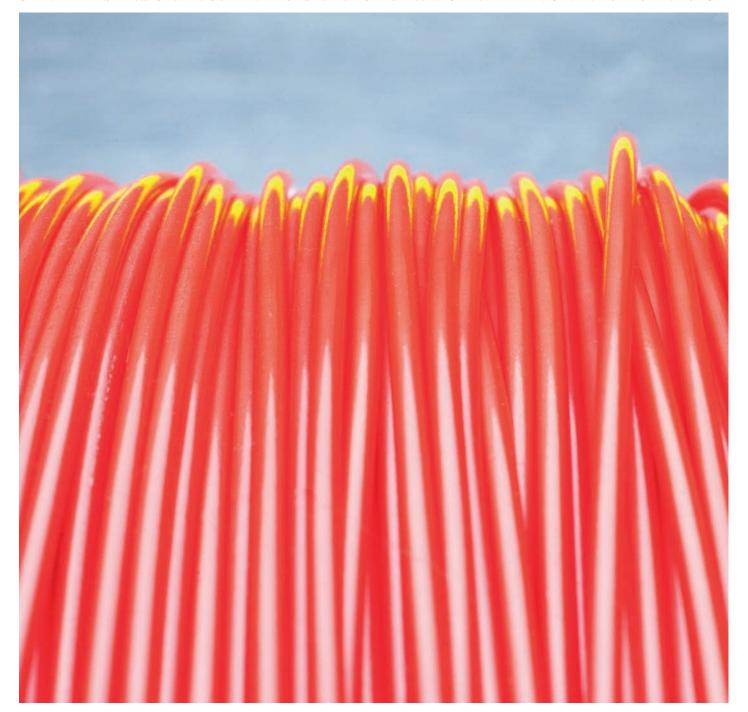
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Possibilities in 3D

BY ANGELA STELMAKOWICH

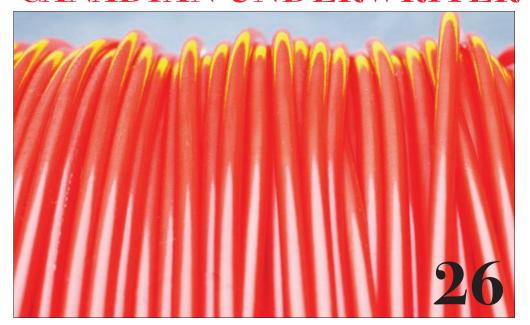
Time to Innovate
BY ANDREW LO

Filling the Gap

BY VERONICA SCOTTI



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COVER STORY

Possibilities in 3D

Although not new, 3D printing's recent rapid development and seemingly endless potential uses has freshened interest in the technology. Enhanced access, lower costs and new applications, though, bring with them risks and coverage issues with which property and casualty insurers need to be aware. BY ANGELA STELMAKOWICH

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Cyberbullying Law

It was not a surprise a Nova Scotia court found the Cybersafety Act unconstitutional, in light of the overbroad definition of cyberbullying. BY JENNIE PICK & KEITH LEHWALD



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Drones offer the promise of bringing loss assessment and customer service to new heights. But doing so could be thwarted by Canada's legislative framework. BY JIM ESO



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A new report of more than 1,000 corporate lawyers shows Canadian respondents fell behind those elsewhere in a number of areas. BY PHILIP YANNELLA & KIM PHAN



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Connect the Dots



Accenture reported last year that a survey of 400-plus insurers globally found 45% of respondents believe connected devices will be a driver of revenue growth in the next three years.

Angela Stelmakowich Editor Canadian Underwriter astelmakowich@ canadianunderwriter.ca

Remember, it is not just the Internet of Things (IoT); it is the Internet of Everything.

Despite the dazzling possibilities — seducing individuals and businesses alike with talk of convenience and new revenue sources, respectively — these possibilities do not come without risks.

Yet, that has not stopped things from moving along.

Gartner, Inc. reported earlier this year that more than half of major new business processes and systems will incorporate some element of IoT by 2020. The effect on the lives of consumers and business models is rising as the cost of "instrumenting" physical things with sensors and connecting them to other things — devices, systems and people — falls, it noted.

Late last year, the company predicted the number of installed IoT units by 2020 would be more than five times the number in 2014. It forecast installed units would number 4.9 billion in 2015, 6.4 billion in 2016 and 20.8 billion in 2020.

Examples of IoT include everything from connected cars to HVAC systems, building management systems and specialized equipment. While consumer uses are expected to account for the greatest number of connected things, enterprises will account for the largest spending.

But all this change brings with it risk. Attendees of a recent claims conference in Toronto heard that one of the insurance industry's biggest challenges on the underwriting side is how to effectively and profitably transfer cyber risk with respect to machineto-machine technology.

"I really can't overestimate how significant the risks associated with machineto-machine technology are, despite the tremendous benefits that the Internet of Things will confer," said Brian Rosenbaum of Aon Risk Solutions. "The underwriting community is not ready for this. We don't really appreciate how vulnerable we are to cyber terrorism, extortion, systems breakdown and just plain mischief."

Still, a survey last year from Tata Consulting Services noted global insurance firms will be spending an average of US\$77.7 million in 2015 on IoT, increasing to US\$102.9 million in 2018.

The survey of 795 executives from large multi-national companies in 13 industries, including insurance, found more than 80% of firms had increased their revenue by investing in IoT, with an average revenue hike from IoT initiatives being 15.6%.

Accenture reported in 2015 that a survey of 400-plus insurers globally found 45% of respondents believe connected devices will be a driver of revenue growth in the next three years. Overall, about four in 10 respondents reported that their companies have piloted or launched a connected home/buildings offering, a health/fitness offering or other wearables.

"Insurers are using customer data obtained from

IoT-connected devices and applying analytics to make insight-driven decisions on how to better engage with customers and offer more relevant products and services aligned with their needs," Erik Sandquist of Accenture said at the time.

Accenture pointed out 52% of the insurers responding to its survey said they expect to have a wholly digital sales process within the next three.

Strategy Meets Action predicted last fall that IoT, drones, new payment technologies and wearables will transform the property and casualty industry over the next three years in three major ways: new/changing risks will provide opportunities for new products and coverages; emerging technologies will enable operational improvements; and there is an expectation of major implications for the customer experience.

But as use of IoT devices grows, Gartner noted, so will the unique requirements of IoT architecture, design and implementation over multiple industry segments and scenarios. SMA advised that "emerging tech should be considered during business strategy development, including explicit assessments of which technologies are likely to have the most effect on your company and when, over the next few years, experimentation and investment should begin."

Now may be the time to make connections — but just safely and thoughtfully.



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Technology

OTTAWA, MANITOBA **EXPANDING NETWORK OF** WEATHER STATIONS

The federal and Manitoba governments are expanding the province's network of automated weather stations to provide farmers with more accurate information on rain and snowfall distribution.

"Data from these weather stations will also be used to enhance flood and drought forecasting, precipitation maps and monitoring severe weather," reports Agriculture and Agri-Food Canada.

"Better information enables a more accurate prediction of the amount and timing of run-off and improves flood forecasting during the spring melt," says Steve Ashton, Manitoba's infrastructure and transportation minister, responsible for emergency measures.

The governments installed 17 new stations last year; by 2018, the program will expand to 84 stations.

CYBER EXPOSURE DATA STANDARD RELEASED

The insurance industry now has a global cyber exposure data standard, meant to help create a uniform method for data transfer across the insurance value chain.

Risk Management Solutions, Inc. reports that the Cyber Exposure Data Schema, developed in collaboration with the Centre for Risk Studies at Cambridge University and with support from some insurance and

reinsurance companies, "provides firms with a standardized approach to identifying, quantifying and reporting cyber insurance exposure." The schema is both model-agnostic and compatible with any exposure management system.

The ability to analyze cyber risk accurately requires a full understanding of the cyber exposure data, Verisk notes in a separate statement.

"It is imperative that companies capture this data in a common format that can be used by organizations across the insurance value chain," the company adds. "It is also crucial the exposure data standard used today and in the future be robust enough for organizations to grow into."

FORD, UNIVERSITY TEST **AUTONOMOUS VEHICLES IN** WINTRY CONDITIONS

Ford Motor Company and the University of Michigan noted in January that they have done what is believed to be the first tests of autonomous vehicles in wintry conditions.

The automaker notes typical autonomous vehicle sensors are useless on snow-covered roads. "It's one thing for a car to drive itself in perfect weather. It's quite another to do the same thing when its sensors cannot sense the road through snow, or when visibility is limited by falling precipitation," says Jim McBride, Ford's technical leader for autonomous vehicles.

Ford and the university are working on high-resolution 3D maps — complete with

information about the road and what is above it, such as road markings, signs, geography, landmarks and topography — with which test vehicles are equipped.

The maps allow the car to "localize even with a blanket of snow covering the ground," says Ryan Eustice, an associate professor at the university.

Canadian Market

AVIVA CANADA ACQUIRES RBC GENERAL INSURANCE

Aviva Canada is acquiring **RBC** General Insurance Company for \$582 million.

"Through this agreement, Aviva Canada will provide policy administration and claims services, and RBC Insurance customers will be able to access Aviva Canada's full suite of p&c products," the insurer notes.

RBC Insurance will continue to market and sell the products under its brand.

The transaction is expected to close in 2016 Q3, subject to customary closing conditions.

"A net after-tax gain on the transaction is currently estimated at \$200 million," RBC Insurance reports.

With the acquisition, Aviva Canada's gross written premiums in Canada. which were \$3,959 million in 2015, are expected to increase by \$800 million.

"This partnership is a fantastic addition to Aviva Canada, diversifying our distribution alongside our highly valued 1,500 independent brokers," says Aviva Canada chief executive officer Greg Somerville.

For RBC Insurance, the move allows it to "focus on and invest in areas where we see the greatest potential for growth, including our life, health and wealth insurance offerings," says Neil Skelding, president and chief executive officer of RBC Insurance.

ACE COMPLETES CHUBB ACQUISITION

ACE Limited completed its acquisition of The Chubb Corporation in early 2016, creating the world's largest publicly traded property and casualty insurance company.

ACE paid approximately US\$29.5 billion in the aggregate in cash and stock, based on the most recent closing price of ACE Limited shares and the number of outstanding shares of The Chubb Corporation common stock at the time of closing.

Effective immediately, ACE is adopting the Chubb name.

Chubb now has market capitalization of about US\$51.2 billion on a pro forma basis, and annual gross written premiums of US\$37 billion.

CAA MANITOBA, CAA **SOUTH CENTRAL** ONTARIO TO MERGE

The Manitoba and South Central Ontario (SCO) branches of the Canadian Automobile Association (CAA) have announced their formal intention to merge, expected September 20,

2016, subject to member and regulatory approvals.

"By bringing together two successful CAA clubs, both are better-positioned to offer an even higher-caliber array of products and services that are essential to our members' safety and peace of mind," says Mike Mager, president and chief executive officer of CAA Manitoba.

"The combination of resources and expertise will deliver greater capabilities, innovations and advocacy expertise to keep our members and their loved ones safe," adds Jay Woo, CAA SCO's president and chief executive officer.

COMMERCIAL DRONE INSURANCE LAUNCHED

Intact Insurance has announced the availability of drone insurance for its small and medium-sized commercial lines customers.

The unmanned air vehicle coverage "caters specifically to small and medium-sized businesses that currently use or plan to use drones to complement their business operations," Intact reports.

"The number of businesses using drones is increasing due to improving technology, lower price points, and expanded uses within commercial operations," says Alain Lessard, senior vice president of commercial lines for Intact Insurance.

"Broker feedback and survey insights identified a growing customer demand and gap in non-specialty markets for this type of coverage," Lessard adds.

Regulation

GORE MUTUAL OPTS TO STAY A MUTUAL COMPANY

Despite the regulatory means now available for federally regulated mutual property and casualty insurers to demutualize, 176-year-old Gore Mutual Insurance Company is opting to remain as is.

"The Board of Directors of Gore Mutual has completed its review and has determined that it is in the best interests of the company, having regard to the interests of all of its stakeholders, to remain a mutual company and to continue with its current strategic plan."

Among other things, Gore Mutual notes that it does not need access to capital given its current financial strength and strategic plan.

The first eligible company to pursue demutualization is Economical Insurance. In December, the insurer's mutual policyholders voted in favour of continuing to the next stage of the process.

MANITOBA CHANGES **BUILDING, FIRE CODES**

Manitoba has made changes to the province's building and fire codes, including requiring sprinklers in new and existing care facilities.

Changes mean automatic sprinkler systems must be installed in all hospitals, licensed personal care homes and residential care facilities by January 1, 2026. Smaller residential care facilities of four clients or less may be

exempt, depending on the results of a risk assessment.

The requirements are in line with recommendations made by members of the Fire Safety Task Force, formed in 2014 after a fire at a seniors residence in L'Isle-Verte, Que.

Risk

BUSINESS INTERRUPTION, CYBER AMONG TOP RISKS

Asked to name up to three risks they see as the most important business risks for 2016, 57% of Canadian respondents to Allianz Global Corporate & Specialty SE's 5th annual risk barometer identified cyber incidents, up from 33% last year.

While cyber topped the list in 2016 for Canadian respondents, in second spot was business interruption (cited by 37%), which ranked first in 2015. Three risks were tied in third place, with 23% of respondents each identifying changes in legislation (ranked seventh in 2015), loss of reputation or brand value (ranked third in 2015), and natural catastrophes (ranked fifth in 2015).

Other risks in the Top 10 risks for 2016 include fire/explosion, macroeconomic developments and market developments (tied for sixth), and environmental risks (pollution) and human error ranked ninth and 10th.

CANADA GETS HIGH SCORE ON NUCLEAR SECURITY

Canada received high scores on cyber security and other

criteria for nuclear security conditions, notes the Nuclear Threat Initiative (NTI) Nuclear Security Index 2016.

Of the 24 nations with weapons-usable nuclear material, nine, including Canada, received the maximum score for cyber security; seven nations scored zero.

On a scale of 0 to 100, Canada scored 79 for risk environment, and 100 each in, among other things, on-site physical protection, response capabilities, international legal commitments, voluntary commitments, domestic nuclear legislation, and pervasiveness of corruption.

Reinsurance

FINAL TOUCHES DONE FOR **BRIDGE'S SEISMIC RETROFIT**

British Columbia reports that a \$21 million seismic safety retrofit to the Mission Bridge crossing of the Fraser River on Highway 11 is complete.

"We continue to upgrade our infrastructure to protect British Columbians in the event of a major earthquake," says transportation and infrastructure minister Todd Stone. "Given that we live in a seismically active region, it is important to invest in infrastructure designed to withstand the impacts possible with catastrophic earthquakes," adds Naomi Yamamoto, minister of state for emergency preparedness.

B.C. plans to conduct its first-ever, full-scale major earthquake and tsunami response exercise in 2016.

Emerging Analytics

Greg Meckbach

Associate Editor

Bryan Bedford, 2015 recipient of the CIP Society Emerging Leader Award, suggests that advances in data analytics technology could help insurance providers sell more services.

As advances in technology help improve vehicle safety, insurance carriers could face a drastic drop in auto insurance premiums. One way to offset that lost revenue could be through additional services made possible by data analytics, suggests Bryan Bedford, a self-taught computer consultant who now works for an Ontario mutual insurer.

Recently inducted into the Chartered Insurance Professionals (CIP) Society Leadership Circle, joining 31 previous established leaders and emerging leaders, Bedford is the 2015 recipient of the Emerging Leader Award from CIP Society, a division of the Insurance Institute of Canada.

"I was never a fan of the 'big data' term," says the manager of strategic projects and privacy officer for Brampton, Ontario-based Peel Mutual Insurance Company, a member of the Ontario Mutual Insurance Association (OMIA). "It is definitely a catch-all. When I talk about big data, it's more focused on the more advanced analytics," he says.

Computer databases are nothing new, Bedford notes, but adds "there is more data being produced now than there has been, historically, with multitudes of sensors and various other things out there connecting everything."

That opens the door for an insurer to take advantage of data analytics by sending information to customers in an effort to prevent losses, he suggests.

In many cases, says Bedford, insurers only interact with policyholders when they pay their premiums or submit claims. That being the case, "there is certainly opportunity, if there are more things that are connected — more sensors involved — to know if something may happen, to push out some information to try to mitigate that before [a loss] happens," he believes.

For example, an insurer could be notified that a homeowner's furnace is not working and the policyholder is not at home. That insurer could then send a message to the policyholder notifying him or her the temperature is dropping in the home and that "someone should go take a look or something, to avoid pipes freezing, and

things like that," Bedford says.

With data analytics, he further suggests insurance providers could glean information about weather patterns and warn customers. Upon learning of an impending hailstorm, for example, a provider could advise policyholders to move their vehicles under cover.

The possibility of using technology to provide more services is something that

"Identifying potential new forms of revenue is important because auto premiums are going to decrease as insurers reduce claims costs through telematics and self-driving cars are introduced."

senior executives at Peel Mutual have been discussing, he reports. "Obviously, there might be more of an opportunity to charge a fee for some of those things."

Identifying potential new forms of revenue is important because auto premiums are going to decrease as insurers reduce claims costs through telematics and self-driving cars are introduced, Bedford notes, pointing out that auto insurance is likely close to 50% or more of most companies' written premium on the

property and casualty side.

"I have seen some studies that say as much as 50% to 60% of auto premium could disappear within 15 years, so companies will be looking for other opportunities," he reports.

One technology already being implemented at Peel Mutual is eDocs, a standard overseen by the Centre for the Study of Insurance Operations (CSIO). The standard is intended to let brokers download policy documents directly from a carrier's computer system to a broker management system (BMS), and to store those documents in a BMS without manual intervention.

"If you are sitting in a broker's office and you are discussing your insurance... the broker has the ability to get up-to-date, real-time information from our systems, present that to the customer, make changes and present the customer with premium changes, in real time," Bedford says of his company's eDocs application.

ROAD TO INSURANCE

Like many professionals in the industry, Bedford says that he "fell into" insurance as a career.

Born in Ottawa, he moved to Mississauga, Ontario when he was five years old. During the 1990s, he earned a Bachelor of Science degree in applied geography and biology at Brock University

PROFILE

in nearby St. Catharines and, after graduating, he and his wife went into business for themselves in information technology consulting.

"We weren't doing multimillion projects," but the work included web design, computer programming and databases, Bedford says of his consulting days. "It was more small- and mediumsized businesses," he notes.

"We sort of rode the tail end of the Internet wave at the end of the '90s," he says.

Bedford, who is self-taught, notes that a trial-and-error approach is "the way I teach myself to do a lot of things. You just start playing around and do it."

But as his family grew, he and his wife "figured one of us needed a real job with benefits," recounts Bedford, who now has three children.

So in 2005, he joined York Fire & Casualty Insurance Company in Mississauga.

At the time, the company's parent firm was Kingsway Financial Services Inc. In 2008, Kingsway Financial sold York Fire & Casualty to La Capital General Insurance and then in 2011, York Fire & Casualty changed its name to Unica Insurance Inc.

In 2012, Bedford joined Peel Mutual and has served in his current role as manager of strategic projects and privacy officer for a little more than one year.

Over the course of his time in insurance, Bedford has



hoto: Peter T

attained the Fellow Certified Insurance Professional (FCIP) designation and the Canadian Risk Management (CRM) certification.

Bedford has also taken part in working groups for CSIO, OMIA and the Organization of Real-time Brokers Implementing Technology (ORBiT), notes a statement from CIP Society. In addition, he has presented at industry events such as ORBiT Canada Education Day and the Insurance-Canada Technology Conference.

FOLLOWING THE CUSTOMER'S LEAD

One thing Bedford has noticed, after 13 years in the insurance industry, is that insurance providers "can be a little behind the curve" in technology. "A lot of the change is driven by... the consumer or the customer,"

he observes, suggesting that some customers are looking for an "omni-channel" experience — that is, having a choice of doing business by cellphone, landline or the Internet.

"If you are doing online banking through your phone, that's the sort of experience that you would expect to have working with your insurance company. Or if you are buying your Starbucks with a mobile payment... all these types of things that are happening now, you are expecting everywhere you go."

But that type of customer experience is "not available in most places in the insurance world," Bedford maintains, adding that it can be a "struggle" for insurance providers to pay for and implement such systems.

"The problem that everyone falls back on is legacy

systems — old technology, trying to slap something on the front of that to make it work or replace it entirely," Bedford observes. "I think we are starting to see the end of some of those [legacy] projects, which is allowing companies to do things that are much more responsive to what customers want."

At Peel Mutual, for example, he notes different farm clients have different preferences. "We have both extremes," he says of farm policyholders, pointing out that some would like to do business over the Internet or through mobile devices.

Still, there are others who "are very content in what they have been doing in the last 20 or 30 years, and don't see any need to change," he says. "They stroll into town one day and see their broker face to face."





Jennie Pick Lawyer, Burchells LLP



Keith Lehwald Articled Clerk, Burchells LLP

Burchells LLP is a member of The ARC Group of Canada, a network of independent insurance law firms across Canada.

It came as no surprise that the Supreme Court of Nova Scotia recently declared the *Cyber-safety Act* to be unconstitutional, given the act's overbroad definition of cyberbullying. Combating all cyberbullying is a worthy and valid objective, but demands that provincial legislatures meet that goal through more restricted means.

In 2013, Nova Scotia introduced the Cyber-safety Act (CSA). The legislation was unique for two key reasons.

Firstly, it expanded the definition of "cyberbullying" far beyond the schoolyard, including within the definition of any electronic communication either intended or reasonably expected to cause "fear, intimidation, humiliation, distress or other damage or harm to another person's health, emotional well-being, self-esteem or reputation." The CSA made no distinctions based on age or status, meaning both children and adults could be cyber-bullies or victims of cyberbullying.

Secondly, the CSA introduced a wide variety of novel remedies to curtail cyberbullying. It provided for protection orders to be obtained against cyberbullies, with the possible content of such orders ranging from refraining from specific conduct to effectively banning a "cyber-bully" from receiving Internet service. Violating a protection order could lead, in turn, to fines or imprisonment.

In addition, the CSA created a tort of cyberbullying and provided mechanisms to hold parents accountable when their children engaged in the behaviour.

Despite the CSA's well-placed intentions to address a social harm, it became apparent to many lawyers in Nova Scotia — even before the CSA had passed into law — that the broad net it cast over cyber-bullies could violate constitutional principles. So, the December 10, 2015 decision of the Supreme Court of Nova Scotia declaring the CSA to be unconstitutional in its entirety came as no surprise.

In its decision, known as Crouch v. Snell, Justice Glen McDougall held that the CSA violated the Canadian Charter of Rights and Freedoms, specifically the right to freedom of expression under Section 2(b) and the right to life, liberty and security of the person under Section 7. Justice McDougall also held that these infringements could not be defended as reasonable limits on Charter rights pursuant to Section 1.

His decision came shortly after the decision of Justice Gerald Moir, Self v. Baha'i, which also cast aspersions on the CSA's definition of cyberbullying.

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THE DECISION

two former business partners. Giles Crouch claimed that Robert Snell had engaged in a "smear campaign" against him through email and social media following the breakdown of their business relationship. On this basis, Crouch obtained a protection order under the CSA against Snell that, among other things, restricted Snell from communicating with or about Crouch. Snell sought to have the order revoked, and challenged the CSA's constitutionality in the courts.

Justice McDougall had no difficulty in finding the CSA violated the right to freedom of expression and could not be justified by Section 1 of the Charter.

He was primarily concerned with the potentially arbitrary application of the CSA. Although it did not allow a protection order to be granted unless there were reasonable grounds to believe that the cyberbullying would continue, it did not provide any direction on how to determine if such grounds existed.

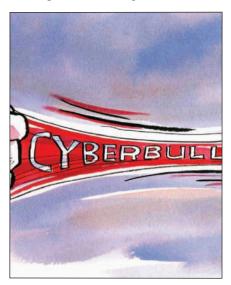
Justice McDougall also found that the CSA was simply far too broad in that it restricted both public and private communications, provided no defences and did not require any proof of harm.

Allowed to stand, the CSA would do more harm than good, as he found it did not achieve the appropriate balance between an individual's right to free speech and society's interests in providing greater access to justice to victims of cyberbullying.

Justice McDougall also held that the right to liberty was infringed. He noted that the CSA allowed a victim to seek and obtain a protection order without notifying the perpetrator or allowing him or Justice McDougall approved of the CSA her to state a defence, even where the identity of the cyber-bully was known. Once a protection order was in place, any violation of it risked prison time.

Justice McDougall held this system to be procedurally unfair and arbitrary in terms of how it might apply, and further found the definition of cyberbullying to be overbroad. In all these respects, the CSA was held to violate principles of fundamental justice in an unjustifiable manner.

Justice McDougall considered the pos-Crouch v. Snell involved a dispute between sibility of striking out only parts of the CSA, or suspending the CSA and giving Nova Scotia's provincial legislature time to fix it. However, he decided that the CSA was so fundamentally flawed that it could not be saved, calling it a "colossal failure" in terms of addressing the harms of cyberbullying without unduly limiting freedom of expression.



The one manner in which **Justice McDougall approved** of the CSA was with respect to its objectives, which he held to be pressing and substantial.

With this decision, Nova Scotia must completely reconsider its approach to cyberbullying.

Importantly, the one manner in which was with respect to its objectives, which he held to be pressing and substantial. He identified those objectives as creating efficient and cost-effective administrative and court processes to address cyberbullying and protect Nova Scotians from undue harm to their reputation and mental well-being.

His recognition that combating cyberbullying is a worthy objective illustrates that future legislative attempts to address cyberbullying are likely to occur. However, in light of the decision, any such attempt will have to be carefully considered and constructed.

CYBERBULLYING LEGISLATION IN OTHER PROVINCES

Nova Scotia may be inclined to look to other provinces for guidance. Five other provinces have specific legislative regimes targeted at addressing bullying and cyberbullying, but all of them take a decidedly different and less problematic approach.

Alberta, Manitoba, New Brunswick, Ontario and Quebec have chosen to address cyberbullying as part of the general anti-bullying strategies in each province's existing Education Act (or the equivalent) rather than through standalone legislation. The remaining provinces do not have specific anti-bullying provisions in their legislation, although Newfoundland and Labrador gives the provincial education minister the right to issue policy directives on the subject.

These five provinces differ in the exact strategies they use to discourage bullying and cyberbullying.

- New Brunswick calls bullying "serious misconduct" and mandates an annual report to the provincial legislature from the education minister;
- · Ontario and Quebec require school staff to have plans and policies in place to inform school staff and support victims;
- Alberta uniquely requires students to report bullying if they witness it, and reserves suspension and expulsion as possible consequences for students who do not; and
- Manitoba imposes reporting duties on school staff and principals, the latter of whom must inform a child's parents. Manitoba is also the only province apart from Nova Scotia to introduce a functional distinction between bullying and cyberbullying; bullying only triggers the reporting requirements when it is particularly serious, whereas cyberbullying always triggers them.

The only aspect of the Nova Scotia decision that might be directly relevant to these other regimes is Justice McDougall's analysis of the definition of "cyberbullying."

One of his biggest concerns was that the definition of "cyberbullying" in the CSA does not require intent or proof of harm, and is far too broad.

Of the provinces with anti-bullying provisions in their statutes, only Alberta requires "bullying" to be intentional, and only Quebec requires that there be actual harm.

At the opposite end of the scale, New Brunswick does not define "bullying" or "cyberbullying" at all, despite using the terminology in its Education Act.

However, this broadness is unlikely to be problematic. In these other regimes, the entire concept of "bullying" is limited by virtue of being defined in the province's Education Act or equivalent rather than a standalone statute. The definition is, therefore, understood to apply within the context of a school or a school-related activity, even when not explicitly defined as such.

Furthermore, these statutes primarily deal with bullying through reporting requirements, education and support programs; where direct punishment is contemplated, the remedies are generally confined to school-related discipline like suspension and expulsion. As a result, the potential violation of freedom of expression and liberty is vastly limited compared to Nova Scotia's allencompassing definition.

LOOKING FORWARD

Although Nova Scotia is the only province that will immediately feel the effect of Justice McDougall's decision, it is sure to influence the future development of anti-bullying efforts across the country. The result of the ruling may be that efforts to combat cyberbullying will continue to focus on school-based programs, such as raising awareness among students and parents and providing training for teachers and school staff.

The decision should also allow adults,

including businesspeople and professionals, to breathe a bit easier. The *Cyber-safety* Act greatly expanded the range of communications that could have exposed a person to legal actions, and equally expanded the range of consequences that could result.

With the CSA now invalid, any disputes among adults will once again be limited to more traditional crimes and torts, such as harassment and defamation.

But, as in Justice McDougall's eyes, combating cyberbullying in all age groups remains a worthy and valid objective. If legislatures choose to follow such a course, it is clear everyone should contemplate that legislation monitoring adult behaviour will be reconsidered in Nova Scotia and, possibly, elsewhere, especially with the pervasiveness of blogs, social media, texting and email. It simply must be carried out through more restricted means than the CSA created.

Justice McDougall's decision is a valuable guide in that respect. ≡



Opinion/Analysis

Get in the Game

Those in the insurance industry would be well-advised to take some advice: pay attention. Innovation and disruptive technologies are unfolding quickly — changes that could have a significant and lasting impact on insurance products — but is the insurance industry even in the game?



Andrew Lo Chief Marketing Officer/Chief Strategy Officer, Kanetix Ltd.

The launch of new products and technologies are having — and will continue to have — a big impact on daily life. From health care to financial services, electronic manufacturers, automakers and software developers are participating in these new innovations.

But where is the insurance industry?

Connectivity, mobility and data intelligence were key themes at the recent CES, formerly the Consumer Electronics Show, which has evolved from an electronics science fair to a consumer technology conference where, increasingly, disruptive technologies such as 3D televisions, driverless cars, personal fitness trackers, drones and the sharing economy are being launched.

With little insurance representation at the conference, this could be a missed opportunity, since those themes could certainly disrupt the insurance industry. The disruptive technologies now unfolding will have a huge impact on both insurance products and consumers' expectations for their personal coverage.

CONNECTIVITY

There are billions of connected products today: televisions, thermostats, smoke detectors, light bulbs, automobiles and refrigerators are all devices

that can be connected. The immediate value to consumers is to make life more efficient with anytime, anywhere access to the devices.

Consider just a few current possibilities:

- a person can use a smartphone to turn up the heat on a connected thermostat before getting home so that the temperature is just right upon arrival;
- a connected smoke detector can alert both a homeowner and the fire department to an issue, even when the person is not home;
- a connected car can send an alert to a smartphone if there is a mechanical issue or the battery is running low; and
- from one's car, which is connected to one's home, a delayed driver can use voice command to access the house intercom to greet visitors and open the door remotely to let them inside, while the car's autopilot plots the optimal route to avoid traffic and get home quickly.

Connectivity is a game changer in insurance. Insurance companies largely evaluate risk of the policyholder using statistics. Connectivity is paving the way for usage-based insurance (UBI) for cars, where insurers build a product and price it based on actual utilization and driving behaviour, something that makes more sense for consumers.

Now with billions of devices connected and working together, risk and the monetary value of mitigating that risk can be computed in real time. A connected smoke and carbon monoxide detector — working together with a fitness activity tracker with heart monitor — can provide vital data to the fire department and ambulance before help arrives. This type of access can decrease response time of emergency medical services and save lives.

From an insurer's perspective, accessing data to test that the process is working and using this data post-incident, coupled with the fact that broader access to vital medical data saves lives, should reduce the number of claims and the magnitude of loss.

MOBILITY

Mobility is rapidly becoming a global challenge to solve. Rapid urbanization and growth of the middle class has contributed to 1.2 billion people worldwide spending an average of 50 minutes a day driving. Faced with the challenges related to air quality, moving more people more quickly and changing consumers' transportation expectations, several areas of disruption are happening and are about to happen: the sharing economy and the electric autonomous car.

Sharing economy

The rise of the sharing economy is providing an unused resource (for example, a parked car) that is in demand for a much lower price. With regard to ridesharing, it offers the potential for efficiencies and enhanced safety.

In California, for example, MADD has recently reported ride-sharing services have reduced crashes caused by drinking and driving by 60 incidents per month for drivers under the age of 30.

The sharing economy has moved ahead of insurance. Drivers started making money on ride-sharing without any special licence or insurance, sparking considerable debate and review of current rules, and insurance companies are only now catching up. Recognizing they cannot stop the speed of technological advance-

ments disrupting insurance, some insurance companies are moving forward and creating new products to answer the demonstrated customer need.

Drones

Activity is also escalating with respect to the use of drones. In the United States, for example, the Consumer Technology Association estimated that more than 400,000 personal-use drones were sold over the holidays this past year.

Commercial uses range from deliveries to search and rescue operations, with proponents maintaining that the former can reduce congestion and traffic in urban areas while the latter can help save lives.

Though there are some products that support commercial-use drone insurance,

Automakers are looking very closely at ride-sharing platforms. Some have even made large investments to promote their development and respond to the belief that ride-sharing could be the largest customer of the driverless car.

drones for personal use is something that insurers should not overlook. In Canada, some insurers have personal drone coverage products under development.

Driverless car

How open are Canadians to driverless cars? A recent Kanetix.ca survey revealed that one in four respondents are looking forward to the driverless cars, with 51% reporting they believe these vehicles will be safer and 61% saying they think the vehicles will reduce speeding and drinking and driving.

The race is now on among automakers, software developers and electronics manufacturers to build the technology. The product offers promise: addressing the air quality issue by being fully elec-

tric; mitigating crash risk by being smart and connected; and being accessible to all, regardless of age or ability.

Automakers are looking very closely at ride-sharing platforms. Some have even made large investments to promote their development and respond to the belief that ride-sharing could be the largest customer of the driverless car.

How will the insurance industry play a role in the development of the driverless car platform?

INTELLIGENT DATA ANALYTICS

Intelligent data analytics is the glue for connectivity and mobility. With billions of devices connected together, and billions of users, the wealth of data being collected is enormous. Experts in data analytics suggest the data being collected in real time can be used to build cognitive machines that can learn. These machines can be used for both scientific discovery and to make better decisions.

The insurance industry in Canada is just starting to understand how data collected can be used to determine premium and risk.

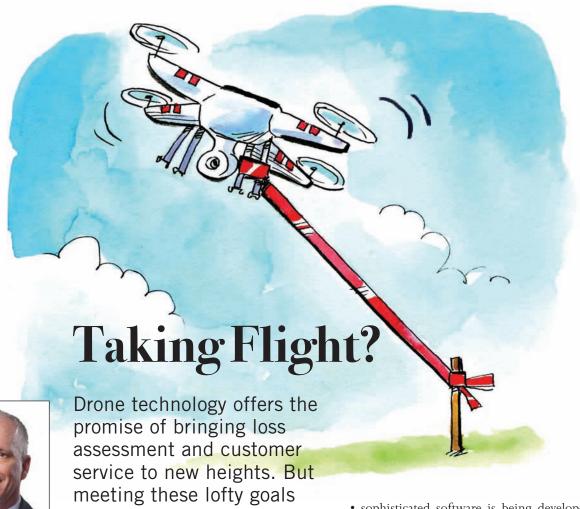
Starting with UBI, the insurance industry has been providing incentives to drivers with premium discounts. This will, no doubt, evolve to real-time underwriting and premium rating.

MEETING EXPECTATIONS

Connectivity, mobility for everyone and intelligent data analytics will rapidly change consumer expectations. New technologies will not only disrupt current business models, they will help make lives more efficient, healthier and safer. Changes are imminent and consumers are driving this change.

The insurance industry needs to participate and provide thought leadership as new technologies are developed.

That means industry must team up with driverless automakers and work with regulators to commercialize the new technology. They must also continue to build insurance products that are relevant and meet the needs of rapidly changing consumer expectations fuelled by advancements in technology.



Jim Eso Senior Vice President, Property and Casualty, Crawford & Company (Canada) Inc.

Drone technology offers the promise of bringing loss assessment and customer service to new heights. But meeting these lofty goals requires down-to-earth considerations, including Canada's existing legislative framework for unmanned aerial vehicles, which presents some challenges for developing an effective use strategy.

Drone technology promises to be a progressive, useful and intriguing technological advancement for the property and casualty insurance industry. From carriers to independent adjusting firms and software companies, developments are taking place in many ways:

- unmanned aerial vehicles (UAVs)/drone insurance coverage is emerging;
- UAVs are being implemented in the claimshandling cycle; and

 sophisticated software is being developed to integrate with drone technology and feeding the information captured into existing or newly created systems pertaining to aerial, video, data and imaging.

With the seemingly endless potential benefits presented by drone technology, some within the insurance industry are already trying to implement drone technology within their current business models. However, operating within the current legislative framework for commercial use of UAVs poses challenges to efficiently and effectively implementing this technology within the insurance industry.

The interest surrounding the use of UAVs within insurance and the claims-handling cycle has generated considerable dialogue within the industry and has even prompted some organizations, including Crawford & Company (Canada), to purchase a UAV for commercial use.

The company has made progress in addressing the requirements associated with using a UAV



Calvin Newman, President, Newman Insurance

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for commercial purposes by laying the groundwork for its future use.

Efforts are currently under way in charting out various claims scenarios that would benefit greatly from the use of a UAV.

Mock scenarios are being mapped out, several staff members are being enrolled in UAV flight operation training, detailed flight operation best practices and parameters are being established in line with declared regulations, and the company will be working alongside the necessary regulatory bodies to ensure compliance with requirements.

Organizations seeking to incorporate UAVs from a commercial standpoint need to take the necessary steps to map out an appropriate framework to effectively address regulatory requirements and ensure future success on this front.

UAV BENEFITS IN A LOSS SCENARIO Safety and access

Using UAVs in place of human beings to access remote locations or unsafe and hazardous loss sites, and then feeding the necessary information to claims professionals to prepare initial reports, could prove invaluable.

In the event of a catastrophic event, a UAV can be deployed to scope out affected areas and pinpoint locations with the highest severity of loss.

Able to survey large areas and multiple properties in a single flight — a process that could otherwise take days or even weeks — the value of UAVs to adjusters is the ability to deploy rapidly and collect visual evidence from loss sites.

Information sharing

The information gathered provides adjusters with the necessary intelligence to determine areas on which to focus their initial attention, based on extent of damage, the level of accessibility and how many additional adjusters should be deployed. A pre-surveillance of the affected area can be fed back to carriers, thereby providing them with a preliminary report and recommendations on the appropriate course of action given the

number and extent of insured policies they have within the affected area(s).

As an aid to the catastrophe adjuster doing site inspection, UAVs can take aerial high-resolution pictures of the loss site, helping the adjuster determine scope of damage and preliminary estimates.

The technology can also make the inspection process far safer and more efficient. For example, rather than having someone climb a roof to assess poten-



tial, a UAV can be flown over the loss site and collect the necessary information.

With the assistance of UAVs, loss reports can be generated more quickly and submitted electronically to carriers.

The instant access to site inspections, scope of loss reports and other pertinent details assists with determining coverage and estimating damages promptly and communicating that information to the insured.

Customer service

Faster claims adjustment will promote greater workflow efficiency and reduced costs, an important concern for carriers. Insureds who receive superior customer service through prompt claims resolution have been shown to have higher satisfaction ratings from insureds, something

that may boost retention rates for brokers and insurers alike.

With advantages like ease of accessibility, efficient capturing and transmission of pertinent data, reduction in claims cycle time leading to cost savings, and an increase in insureds' satisfaction, why is there little mention of UAV use in the claims-handling cycle?

The answer to that question may lie, in part, in Canada's current regulatory framework for the commercial use of UAVs in a loss scenario.

LEGISLATIVE FRAMEWORK

As unmanned air vehicles are considered to be an "aircraft," they fall under the regulations of the federal Aeronautics Act. The federal government, through Transport Canada, has primary jurisdiction over the regulation of UAVs in Canada, with responsibility for approving Special Flight Operations Certificates (SFOCs) assigned to inspectors in the regional and national offices, including the responsibility to declare the conditions to be contained in the certificates.

Section 602.41 of the Canadian Aviation Regulations notes that no person shall operate a UAV in flight except in accordance with an SFOC or an air operator certificate.

Organizations may qualify for an exemption, but these exemptions include only UAVs weighing less than two kilograms, and UAVs weighing between two and 25 kilograms.

Among the conditions of the exemption are that UAVs can only be operated at least five nautical miles from a built-up area, which essentially includes any town, village or group of houses/buildings. Also, the pilot shall operate a UAV at a lateral distance of at least 100 feet from any building, structure, vehicle, vessel or animal not associated with the operation, and at least 100 feet from any person.

In the event that an organization is unable to meet the conditions in the UAV exemptions, or if the UAV weighs more than 25 kilograms, it is necessary to apply for an SFOC. A separate SFOC must be obtained for each flight operation.

A successful application resulting in

the issuance of the SFOC document effectively and clearly defines the parameters within which the operation may be performed. The typical application entails a detailed description of the operation, UAV and related flight/control systems, flight location and dates/times, operating personnel and their experience and roles, and operational and emergency procedures.

INCORPORATING UAVS INTO BUSINESS PRACTICES

The advancement of drone technology within the insurance industry and claims-handling practice will evolve as organizations develop a stronger understanding of the regulations governing the use of UAVs, and implement a business framework that is both effective and compliant.

This continues to be a challenge within the insurance industry, but there are certain key components to take into account to overcome the legislative hurdles associated with the commercial operation of UAVs.

First and foremost, it is necessary to have a qualified professional operating the UAV. Although UAV operators do not need to be licensed fixed or rotary wing pilots, they must have adequate knowledge and training of UAV operations, achievable by enrolling in a commercial UAV operator school or program in Canada or through self-learning.

Transport Canada also stipulates that the operator be at least 18 years of age, cannot be impaired by drugs or alcohol, must be within line-of-sight of the UAV being operated, must be medically fit to operate a UAV, and must operate a UAV during daylight hours.

Accounting for the human factor and adopting safe operational procedures is a critical component to any UAV strategy. Operators need to be knowledgeable of, and steer clear of, restricted flight areas as specified by Transport Canada.

The maintenance of pre-flight checklists, logbooks and standard operating procedures serve as part of a well-defined safety management system and an organization's overall framework for implementing a UAV within its business practice.

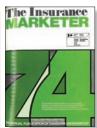
In addition, with the capabilities of UAVs to take high-resolution images and video record footage, organizations and UAV operators need to be mindful and respectful of others. Commercial UAV operators must maintain a safe distance from people, obtain permission before entering private property and exer-

cise caution when capturing images and data, as well as recording conversations.

The progression and advancement of drone technology within the insurance industry and claims scenarios are reliant on an organization's ability to grasp a strong understanding of the legislative requirements and implement a UAV business model that overcomes and addresses key legislative challenges.

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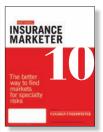


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Stop the Gap _ Measures

The cost of disasters relative to insured assets is continuing to increase in Canada, tripling since 1970. Closing the gap between the amount of insurance in place and the cost of recovery demands public/private collaboration where each participant knows its role.



Veronica Scotti President and Chief Executive Officer, Swiss Re Canada

If someone was approached with an investment opportunity requiring an outlay of \$60, but promising a return of \$30,000, should that person take it? Such a proposition, while hypothetical, has relevance in the real world.

Manitoba's Red River Floodway cost \$60 million to build and, to date, has prevented \$30 billion in flood damage. Granted, there are several more zeros and a whole host of risks in the real-life example, but it shows the pay-off for prevention.

Protection of assets and lives requires foresight and planning, and demands everyone pulling together to keep the national resilient.

THE PROBLEM

Disaster cost relative to insured assets

The protection gap illustrates what happens when the amount of insurance in force is inadequate to completely fund recovery and resilience. Defined as the difference between economic losses and insured losses, at approximately \$2.9 billion, Canada's protection gap ranks 11th in the world.

Some of the country's most expensive natural catastrophes recently — the southern Alberta floods and the southern Ontario flash flood, both in 2013 — are clear examples of how big the protection gap can be. Specifically, about one-third of the more than \$6 billion of economic losses from the Alberta floods and \$1 billion of the almost \$1.5 billion in total loss from the

Ontario flood was covered by insurance.

Uninsured natural catastrophe risk, which has been rising steadily over the past several decades, makes up much of the protection gap. In Canada, disaster cost relative to insured assets has tripled since 1970, with 55% of weather-related losses being uninsured during the 1980 to 2013 period.

The typical culprits are earthquakes, floods and windstorms, particularly in densely populated areas with higher concentrations of property value. Bush fires, however, are also becoming a growing threat to economic resilience in Canada, notes Fueling resilience: Climate and Wildfire Risk in the United States, released last year by Swiss Re and prepared by students of Johns Hopkins University, School of Advanced International Studies.

Who pays?

When insurers do not have sufficient skin in the game to assist in recovery, the remainder of the burden falls on governments, individuals and local communities.

Average annual Disaster Financial Assistance Arrangements (DFAA) spending has ballooned from \$36 million in 1970 to more than \$1 billion in this decade. As government programs grow, citizens may be asked to pay higher taxes and communities may also feel the pinch when there simply is not enough money in their coffers to rebuild infrastructure.

Appointment Notice

Philipp Wassenberg, President and Chief Executive Officer of Munich Reinsurance Company of Canada and Temple Insurance Company is pleased to announce the following appointments to the Boards of Directors of both companies.



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Taking it seriously

In the case of flood, for example, industry stakeholders continue to accept the status quo and pray the rain will stop soon. Catastrophe risks still are not being taken seriously enough and there are two fundamental reasons why:

1. "It is not that bad" — This is faulty and ill-informed risk perception. It is difficult to convince someone to take precautionary measures or pay a premium for an uncertain return when the sun is shining and the horizon is free of storm clouds. When average citizens hear the words "1-in-100 year flood," they simply do not believe the event will occur in their lifetimes.

The (re)insurance industry, as a whole, has a responsibility to practise effective communication and understand its audience. Customers are not risk managers, so industry stakeholders need to make sure to use language that is more relevant and understandable when describing perils and their consequences.

Even experts sometimes fail to understand the underlying risks and accumulation scenarios — a deficiency that is being addressed by more sophisticated maps and models. That said, even with the most contemporary models, underinsurance occurs when risk managers undervalue their assets.

A recent sampling of 630,000 property units in the United States and Canada revealed that properties with limits below US\$20 million were undervalued by an average 26%, indicates Swiss Re's 2015 sigma report, Underinsurance of property risks: closing the gap.

2. "It is not my responsibility" — Society is often hampered by a reluctance or unwillingness to accept ownership of risk. A homeowner may believe there is no need for insurance because the government will bail him or her out even if the home's foundation cracks from an earthquake. But governments should not be expected to serve as the funder of last resort.

Unfortunately, there is no correlation between disasters and the state of the economy. While the Alberta government was able to respond to the 2013 floods because the economy was in relatively good shape, it cannot be assumed that the government will always be in top fiscal shape when, say, oil prices plummet (they recently fell to 50% of the 2013 values).

Respect the risk

Closing the protection gap starts with a healthy appreciation of floods, earthquakes and other perils. A few statistics underscore their gravity.

As the only G7 country without a mature insurance market for flood — and where the majority of flood risk is uninsured — overland flood exclusions and low sub-limits on residential sewer back-up often leave most property owners with too little to adequately recover and rebuild.

By 2100, the 20-year, single-day rain event will potentially occur once every five years. For a person who lives 80 years, that is 16 times in one lifetime.

Despite flooding being the most frequent natural disaster in Canada, awareness of the risk it brings is typically low. As the only G7 country without a mature insurance market for flood — and where the majority of flood risk is uninsured — overland flood exclusions and low sub-limits on residential sewer back-up often leave most property owners with too little to adequately recover and rebuild.

Add to that an inconsistent perception across Canada. This is dramatically evident in the case of earthquake risk: about 60% of Vancouver residential dwellings are insured against quake compared to just 4% of dwellings in Montreal.

The economic consequences, however, do not mirror that disparity: a

2013 study conducted by AIR Worldwide for Insurance Bureau of Canada estimates a 500-year insured loss scenario for a Vancouver Island quake at \$20.4 billion and \$12.2 billion for a quake northeast of Quebec City. Economic losses can be much higher when low insurance penetration is factored in, particularly in eastern Canada.

A magnitude 9.0 Cascadian quake would be comparable to the 2011 Tohoku quake, yet AIR Worldwide notes the western scenario would result in total direct and indirect loss of \$74.7 billion, and total insured loss of \$20.4 billion.

THE SOLUTION Communal resilience

The solution is communal resilience: collaboration among key stakeholders to assess and share the risk and execute pre-event mitigation strategies.

In November, officials from emergency management, public safety, research and finance gathered in Calgary for the 6th Annual National Roundtable on Disaster Risk Reduction to discuss how to construct a "whole of society" approach to managing risks and consequences of disasters

Swiss Re Canada's view is that the optimal framework should be based on the fundamentals of the insurance model, where everyone's interests are aligned and transparency clearly demonstrates where one's risk begins and others' ends.

Stakeholders must recognize the three pillars of resilience and play their respective role in upholding those pillars:

- physical including things such as risk mitigation, building codes and infrastructure investment;
- social ensuring vulnerable populations are appropriately cared for, as well as an acculturation of sorts, where citizens take responsibility for and invest in the soundness of their properties and personal safety; and
- *economic* where physical resilience ends, financial resilience must begin.

Progress to date

With regard to the "physical" pillar, substantive steps are being taken in the stew-

ardship of Canada's natural resources.

Influential organizations such as the Institute for Catastrophic Loss Reduction — which recently held a workshop in which collaborative watershed management was explored — must continue to advocate for flood plain management to properly manage development in vulnerable areas.

In terms of the "social" pillar, DFAAs have historically paid for all losses. But as overland flood insurance becomes more widely available in Canada, it is expected that the scope of DFAA will change.

Regardless of its future state, however, insurers and emergency management authorities must remain focused on improving building codes and educating citizens on risk prevention and mitigation measures.

And, last, the "economic" pillar requires that governments respond swiftly in the wake of disasters, when infrastructure is compromised and roads and bridges are washed out.

Pre-disaster financing is a viable solution because it makes funds immediately available to not only rebuild, but to activate emergency responders such as firefighters and paramedics.

Currently, provinces may need to wait months or years before they can collect from the federal government funds that they have advanced to their population through pre-paid cards.

Without market-level, pre-disaster financing solutions, the cost of recovery is inevitably borne by the taxpayer to make up revenue shortfalls and other critical services are often reduced or eliminated from the budget.

Those are the roles for government and individuals, but what about insurers? Flood recovery has always been a thorny issue, which is understandable since few carriers offer coverage specific

That, however, looks to be changing. More than two years since the waters receded in Alberta and Ontario, there is good news to report: risk awareness and assessment capabilities have greatly improved; Canadian underwriters are

using flood zones widely and floodmodelling tools are being rolled out to better assess the accumulation risk.

These advancements are laying the foundation of a private market for residential flood insurance in Canada: several carriers are offering overland water endorsements in selected areas, complete with ways to help policyholders manage their premiums and discounts for customers who take preventive measures.

Ultimately, public/private collaboration is key to closing Canada's property protection gap. No single entity or organization can act alone.

As a society, everyone needs to understand it is a case of when — and not if — the next disaster will strike. It is everybody's responsibility to make sure society, as a whole, is prepared.

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Possibilities in 3D

3D printing is hardly new, but recent rapid development and seemingly endless potential uses has freshened consideration of the technology. Enhanced access and broadened applications, though, bring with them talk of additional risks and whether or not existing property and casualty insurance policies are sufficient to address how 3D printing technology could evolve in future.

ANGELA STELMAKOWICH





Injecting new promise into the life of the manufacturing sector, producing a frighteningly realistic gun south of the border and helping to make accessible medical devices everywhere, so-called 3D printing — often now referred to as additive manufacturing — has already made its mark.

Depending on one's point of view, the influence that 3D printing could have in future on insurance coverage, emerging risks, product accessibility and affordability, intellectual property (IP), supply chain and business interruption, and liability varies widely. Some regard the technology as a game changer for many industries, opening these to more positives than negatives; others regard 3D printing as a promising development that has shown progress in a number of industries, but is unlikely to become entrenched as broadly as some may think, at least not for some time to come.

What are the known risks and is it possible to know what issues could develop? What type of insurance questions will be raised as use of the technology expands? Can insurance and its providers keep pace with the fast-changing technology, or does experience with other technologies afford all the guidance that is needed?

As it stands, views on 3D printing run the gamut: ranging from current expectations that existing insurance policies can cover off related losses to what commercial applications are truly practical, stakeholder understanding of associated risks and whether or not sufficient risk information exists to properly underwrite the technology both now and in the future.

With acceptance, use and cost catching up to the speed of the technology's advance, where do property and casualty insurers and their insureds now stand?

Whether one regards 3D printing as some type of leveller — one that provides affordable and helpful access to many — or sees the technology as a positive, but ultimately niche, tool, only time, loss, risk and experience will tell.

3D TECHNOLOGY

Over the years, "3D printing" has gone by many names as the technology has developed and grown. These descriptors range from "rapid prototyping" — in which models, prototypes and patterns were the usual goals — to optical fabrication and additive manufacturing, so-called because the process involves adding layer upon layer of material, rather than subtractive, say when an item is cut, derived or molded from some raw material, explains a recent white paper from the Insurance Institute of Canada.

"The 3D printing process begins with software that models the object by basically digitally slicing it up," the paper notes. "A computer program then directs the device to 'print' each slice as a thin layer, starting from the bottom and working its way up. The layers are basically extruded from a printer head that is heated to melt the material. The layers are cured, for example using ultraviolet laser light in the case of photopolymers, as they are added," it continues.

3D REACH

The possibilities of 3D printing appear endless, depending on one's view. It may be more a fact that the possibilities still have practical limits.

"The industry started talking about 3D printing some time ago. However, more recently it has caught everyone's attention as a rapidly developing and exciting technology that could have wide-ranging impacts on business and insurance," says Robert Weireter, senior treaty underwriter for Swiss Re.

"The use of this technology is likely to become more entrenched in industrial and personal use in the future," suggests Tim Woods, AVP of engineering/risk management for Aviva Canada.

Cindy Slubowski, Zurich North America's vice president of manufacturing, would likely agree. "Additive manufacturing is radically changing how products are being made in virtually all industries — architecture, consumer products, construction, industrial design, automotive, aerospace, food, engineering, biotechnology and fashion," Slubowski reports.

Citing a 2015 report from Wohlers Associates — which found the overall global market for additive manufacturing grew to US\$4.1 billion in 2014 — she says the report shows that "there has been strong growth in the use of industrial metal additive manufacturing systems for demanding production applications in the aerospace and medical



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North America's
Cindy Slubowski.

markets." Traditional "reductive" manufacturing processes in the industries are very expensive because of the cost of the materials used, she reports.

"Originally, most 3D printing was used for designs and prototypes, but, increasingly, it is used for actual product manufacturing," says Derrick Hughes, vice president of the Boiler Inspection and Insurance Company of Canada.

"Just a decade ago, 3D printing was relegated to rapid production of coarse prototypes and other plastic trinkets. Since then, however, the technology has evolved to include precision laser printing of various metal alloys, now making it suitable for automotive, aerospace and other significant industries," says Matt Pearson, Ernst & Young's national high technology sector leader, business tax incentives. "Today, for example, 3D printing can be used to create new apparel, food, medical devices and even human organs using specialized 3D bioprinters that use living cells instead of plastic," he says. "The opportunities created through 3D printing appear limitless, and the number of industries will continue to expand as 3D printer capabilities increase and costs decrease."

Duncan Stewart, director of technology, media and telecommunications research at Deloitte, notes that about 70% or so of what comes out of enterprise 3D printers is still used for prototyping, with another 20% to 25% being used for intermediate part manufacture, including things like tools, moulds and casts.

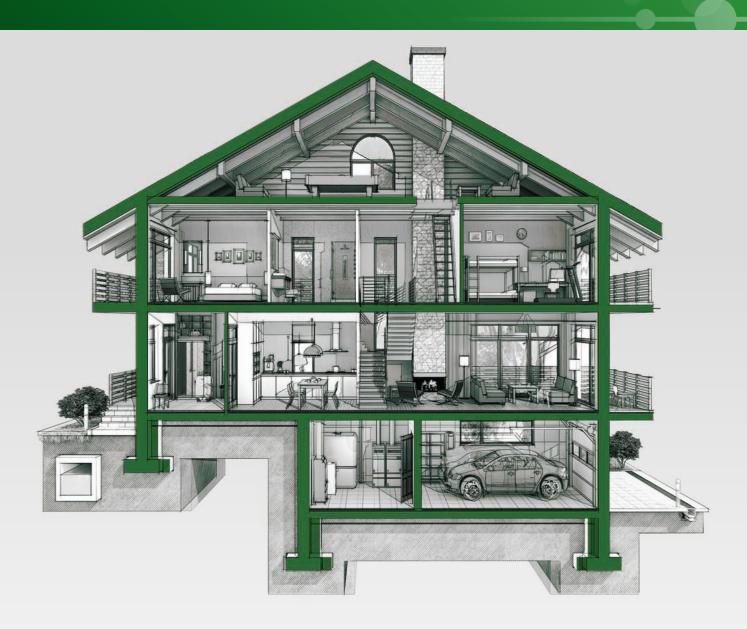
"The idea that 3D printers would disintermediate the traditional retailer, wholesaler supply chain warehouse" has not yet come to pass, Stewart says.

"What we have seen is that 3D-printed parts can be lighter, stronger and substantially cheaper to make than conventionally manufactured parts," says Weireter.

For things made from 3D metal printers, Stewart suggests the time needed for post-processing, which could amount to hours per part, must be taken into account. In addition, he says, it is important to determine if a final part, in fact, offers the materials properties that would have been achieved through traditional manufacturing techniques.

"The industry consensus is that 3D printing has evolved beyond the hype, prototype and novelty stage and must be recognized as a mainstream technology," says Weireter. He notes that "whole commercial ecosystems are forming around 3D printing and the insurance industry needs to understand the implications of this technology."

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3D BENEFITS... AND RISKS

In the best of circumstances, 3D printing affords a whole host of benefits: among others, mitigation of business interruption exposures by making parts on site; ability to more rapidly retool production lines; ability to bring new products to market more quickly; make available short-run production of products; create more complex shapes than are now possible with other manufacturing techniques; and ability to refine or modify designs as needed.

Those positives, nonetheless, offer pause. "One problem that could evolve would be the quality of products produced by this additive layering process, which, depending on the process environment and material used, could result in hidden defects produced by lamination (weakness in material layers) or inclusions (foreign material between layers)," Woods cautions.

"A key exposure is the fact that the manufacturing process can be relatively slow compared to other techniques. If a large and complex part takes 10 hours to produce, a five-minute power outage at any point during that process could ruin a day's worth of work," says Hughes.

"3D printers making things layer by layer is always going to be slower and more expensive than stamping them, casting them, milling them," suggests Stewart. As it stands today, "3D printing is exceptionally good for items that are extremely expensive with long supply chains, incredibly high value, at extremely high prices, where speed is not relevant," he points out.

"On the risk side of the equation, a vast majority of the current digital soft-ware recipes are unpatented, allowing them to be copied and sold by anyone," Slubowski cautions. But perhaps most concerning is the lack of regulatory oversight for 3D printing, "since much of it will take place outside of a traditional mass production factory, and not subject to inspection from regulatory agencies that govern those facilities," she says.

Hughes's take is 3D printing technology increases some insurance risks and decreases others. "The equipment is valu-

able and subject to mechanical, electrical and cyber hazards, as well as hazards associated with the materials used in manufacturing, some of which can be toxic or volatile," he says.



"The equipment is valuable and subject to mechanical, electrical and cyber hazards, as well as hazards associated with the materials used in manufacturing, some of which can be toxic or volatile," suggests Derrick Hughes of the Boiler Inspection and Insurance Company of Canada.

"Is a 3D-printed house as safe and sturdy as a standard one? Is a car that has 3D-printed parts as strong and safe as a classically built car? Is a plane with 3D-printed wings as safe?" asks Craig Beattie, senior analyst with Celent's Insurance Practice.

"Standard testing procedures should account for this, but we're seeing new materials and new techniques coming in as part of this process that need watching," Beattie advises.

"Just as the 3D process itself is a multiple layering of materials, there is also the potential for a multiple layering of risks," Slubowski suggests.

The risks, she says, include those below:

- business interruption 3D printing technology requires more energy than is required in traditional manufacturing, and a manufacturer's supply chain could be an added risk if it has not been assessed thoroughly;
- contractual risk the process requires a multitude of participants and a defective product could result in any participant being held accountable;
- intellectual property current intellectual property law does not explicitly regulate 3D printing;
- manufacturing materials contaminated, defective or incorrect materials may result in a faulty product, perhaps creating an overall greater potential liability exposure than those presented by the 3D printer itself;
- product liability 3D printer makers sell printers and supplies for a range of applications, unlike a traditional industrial machine manufacturer that may produce machines for just one application;
- security and privacy being a digital manufacturing process, meaning there is a higher risk for hackers to steal information or sabotage the process; and
- risk to workers new materials in the 3D printing process, for example, could present exposures to workers.

"With the sophisticated type of software used for 3D printing, the piece of complementary hardware may require constant 24/7 attention, especially with the constant threat of hackers seeking to steal the digital recipe," says Slubowski.

"As the hardware 'host' of the software, a manufacturer now may need to consider risk transfer techniques more typical of a software manufacturer, such as security and privacy to cover intellectual property theft, errors and omissions (E&O) to handle any software malfunctions that result in problems with the printer function, and business interruption if enough energy is not available to run the equipment for any significant length of time," she explains.

3D INSURANCE ISSUES

What p&c insurance issues may result because of 3D printing? "Risk assessment



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Anthony Lacavera

Founder, WIND Mobile and Founder and Chairman, Globalive Holdings

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LUNCH KEYNOTE SPEAKER
Veronica Scotti

President & CEO Swiss Re Canada

Veronica Scotti joined Swiss Re in 1999 in London, UK, with considerable global banking experience. Since then, she has built her experience in strategy, risk management and product roles, moving with Swiss Re to Switzerland and New York. Now based in Toronto, Veronica is responsible for the company's p&c and life & health reinsurance operations in Canada.

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Possibilities in 3D

is key, so pricing is paramount to that assessment," says Jennifer Soper, director of casualty corporate underwriting for Northbridge Insurance.

"From a casualty perspective, one of the key questions is the use of the endproduct. Is it a prototype only? Or is the product incorporated into, or actually a finished-use product?" Soper asks, noting that "how that product is used becomes very material."

Hughes suggests that 3D technology raises some interesting challenges for insurers. "We may find that some commercial insureds in non-manufacturing classes of business may start to do some manufacturing using this technology," he says. "For example, a store may start to manufacture some of the merchandise that it sells. It's still a store, but now it's also a manufacturing location. How should it be coded and rated?" he asks.

"Something similar to the disruption of the music business by IP piracy could be repeated in the world of manufacturing," Pearson predicts. "In additive manufacturing, there is a question of who owns a product's IP — the designer, the software engineer who translates the design into a printable file, and the business printing the final product, each has a potential claim on the ownership of the IP, and the potential liability in the event of a failure," he explains.

"Product liability may be impacted as traditional methods of manufacturing change, bringing to light testing, durability, product life cycle and the possibility of a multiplet manufacturing process from design, to distribution, to end-use," Soper suggests.

"Just as the advent of modern photocopying machines made it harder (but not impossible) to enforce copyrights of text material, so the advent of 3D printing will make it harder (but not impossible) to enforce IP rights regarding product designs. Product liability will be found in locations and occupancies unexpected by insurers," Hughes says.

"Product liability is normally covered by a general liability (GL) policy and design services by a professional liability policy, so it does not seem that we require a new type of coverage," Weireter comments. "3D printing does, however, blur the lines between what used to be clearly separated as design work from production or manufacturing. In insurance terms, this creates some grey area between a professional liability and a general liability policy," he suggests.



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suggests Robert
Weireter of Swiss Re.

Beattie also does not believe there will be a need for a new type of coverage when it comes to 3D printing. "It's more likely this will have some influence over classic policies over time. I don't see any need for specific cover," he says. "It's likely they (losses related to 3D printing) are covered and that the set of currently common manufacturing processes are not enumerated in the policy. It may well be insureds are on cover for this without the insurer/broker/agent realizing."

Soper, too, does not think 3D printing is likely to require an entirely new suite of products. That said, "it may bring

other coverages into the forefront, like product recall, errors and omissions, cyber, intellectual property, and directors and officers insurance," she says.

"3D printers would be considered under a policy wording as any other piece of equipment on an all-risks form would be," Woods offers, but points out that there is currently no specific SIC (Standard Industrial Classification) code for 3D printers. "Underwriters will have to be made aware of the fact that such equipment is present on the premises so that the proper policy, pricing and conditions are put in place," he says.

"The real unknown surrounding 3D printing stems from the fact that there's no case law on the books at this point, making it difficult to tell where/how fault (liability) will be assigned," he adds.

"The issues can be understanding the risks in a business," Hughes believes. "For example, a machine shop may well have a \$2 million 3D printer where the underwriter only believes there is a \$200,000 CNC machine," he says.

"The legal issues can become greyer if there is a multiple channel in the production of a product," Soper suggests.

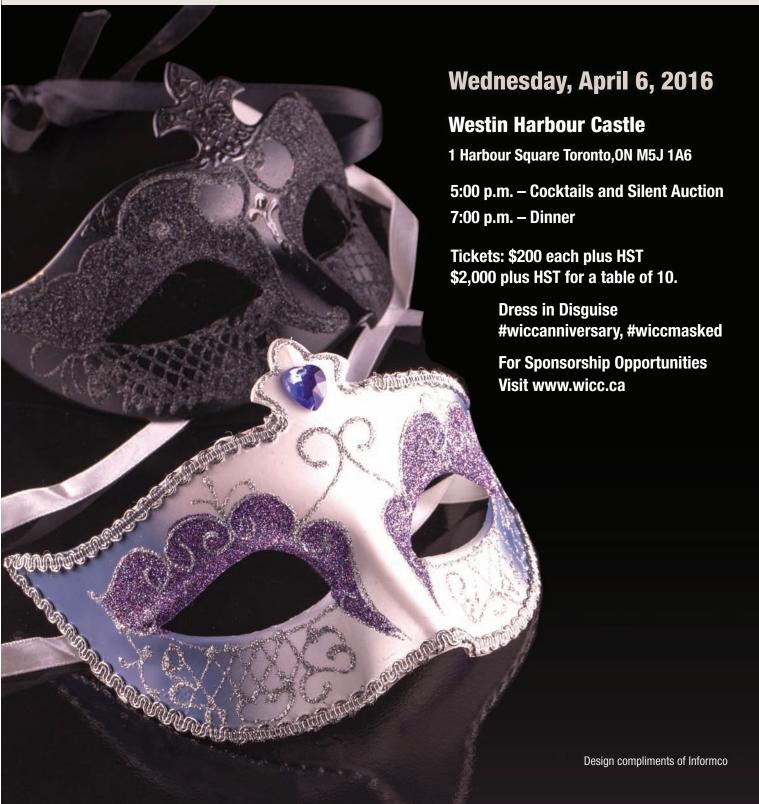
"If the product is a component that ends up as part of a final product, the question becomes who produces that component for the final product?" she asks. "Contractual agreements for all parties involved in any phase of a prototype or end-product requires diligence to ensure that there is a clear understanding of the role of each party; and what responsibilities each party has," she says.

"Regardless if parts are produced via traditional or non-traditional methods, firms should always have written contracts with suppliers which contain adequate risk transfer language, including hold harmless agreements," advises Peter Dion, line of business director, product liability for Zurich North America.

"One insurance issue that could be affected is contingent business interruption (CBI) coverage," suggests Hughes. "Some manufacturers purchase CBI coverage for either upstream exposures (suppliers) or downstream exposures (receivers). Adoption of 3D printing could, for



Masked – 20 Years Uncovering a Cure





"The real unknown surrounding 3D printing stems from the fact that there's no case law on the books at this point, making it difficult to tell where/how fault (liability) will be assigned," says Tim Woods of Aviva Canada.

example, potentially change a supplier contingency into a receiver contingency," he explains.

"The supply chain in an additive manufacturing environment is blurred by digital design files that are as integral to the process as the metal or plastic used in the manufacturing," Pearson says.

With regard to supply chain challenges, Slubowski says "the purchase of different types of materials is likely necessary, requiring manufacturers to perform the appropriate due diligence on new suppliers and in-house testing of materials."

Soper says the expanding methods and materials available to the manufacturing sector afford many different options to explore product development possibilities. "For the insurance industry, it means understanding the process, contractual responsibilities, who owns the design, is it a finished product, component product or a prototype, how is the product tested to ensure it performs as desired in a live environment and how testing records are stored and/or shared."

For Pearson, a primary consideration in the manufacturing sector is liability not just for failures of the end-product, but also for environmental, physical and economical damages resulting from incidents during the shipment of products via boats, trains, or airplanes.

"The law is trying to catch up with this technology, and the insurance implications will then have to catch up with the law," Hughes suggests. "Anyone can now manufacture products normally outside their coverage. The classic example would be firearms manufacture is possible with a \$500 machine," he says.

"We currently see 3D market participants attempting to narrow the scope of potential liability through disclaimers and carefully worded representations and wordings," Weireter says. "We see a lot of interesting limited liability language, but we need to be careful not to rely on it too much, at least until we get some legal clarity on these liability issues."

3D LEGAL TAKE

"3D printing will revolutionize legal theory as to product liability, as it blurs the traditional divisions between manufacturers, suppliers, distributors and consumers," says Heather Sanderson of Sanderson Law.

"Liability for the failure of a 3D-printed product will be highly fact-dependent and influenced by the indemnity and hold harmless clauses (should they exist) between the players," Sanderson suggests. "The liability analysis could develop another layer of complication in the case where a 3D-printed part fails, causing damage to the entity in which it was installed," she explains.

Placed into this environment, Sanderson says that traditional liability insurance coverage will be sorely tested. "In this environment, it is unlikely the traditional CGL product exclusion will apply solely to the printer of the product."

Per occurrence and aggregate limits "will have to be carefully monitored and assessed by both the insureds and underwriters as the ability to quickly and efficiently produce 3D-printed parts and objects increases the likelihood that more than one failure can occur during a given policy period," she advises.

"As these products enter the stream of commerce and there are multiple 'touch points' on an individual product," says Weireter, "there is clearly the risk of potential accumulation, especially in light of the difficulties associated with clearly identifying and establishing liability."

3D FUTURE

"As the systems become cheaper, the cost of entry into markets should decline, allowing highly niche businesses to develop," Slubowski expects. "Because of the customization benefit of 3D technology, companies will focus on customer-centred design and feedback, making their products more desirable in the market-place," she points out.

"The reliability/quality/durability of 3D printed parts was highly questionable even less than a decade ago," says Pearson. "But significant strides have been made in these areas in recent years, particularly in the development of 3D printing of metal alloys," he notes.

"However, the sort of holy grail of 3D printing, which is the mass manufacture of final parts, of printing out an actual thing that I then go and use and then do another 10 of them, almost never happens," Stewart suggests.

"So the final part manufacture is small and is likely to stay small for at least the next few years," he predicts.

"New technologies rarely move in straight lines, but we are clearly moving forward," Weireter contends. "Products made with 3D printers are certainly subject to various types of testing, but only time will tell how well they will perform in real-life applications."

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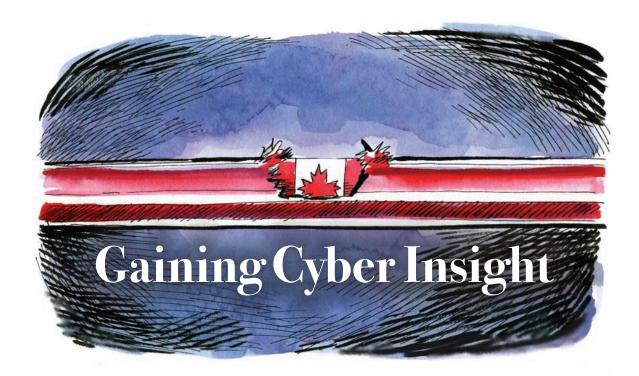
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Philip Yannella Partner, Ballard Spahr LLP



Kim Phan Of Counsel, Ballard Spahr LLP

A new report reflecting input from more than 1,000 corporate lawyers around the world offers insights on cyber security that can be used by in-house lawyers to assess whether or not their companies are devoting appropriate time and resources to cyber security. But findings also show Canadian respondents fell behind those elsewhere in a number of key areas, including having related policies in place.

In December, the Association of Corporate Counsel (ACC) Foundation released The State of Cybersecurity report, underwritten by Ballard Spahr, the largest study of its kind ever conducted among in-house counsel. The report provides valuable

insights on cyber security issues from more than 1,000 corporate lawyers, most of whom hold the position of general counsel or chief legal officer, at 887 organizations worldwide.

Generally, findings suggest companies should be assessing the extent to which their own cyber security practices are reasonable when compared with other companies of similar size in the insurance industry, in addition to complying with applicable laws and regulation.

"Even companies with established cyber security preparedness programs continue to increase their spending in order to minimize ever-present risk," says Veta Richardson, ACC's president and chief executive officer. "Unfortunately, no sector or region is immune. Our findings indicate that general counsel expect cyber security risk to only increase in the upcoming year," Richardson adds.

Key findings from the report include the following:

- *employee risks*: 24% of reported data breaches were caused by employee error;
- policies and procedures: only 57% of companies surveyed have policies and procedures in place to govern identity and access management;
- data maps: just 18% of polled companies have prepared an internal data map;

- *encryption*: 57% of respondent companies reported the information that was compromised during the breach was not encrypted;
- data breaches: one-third of in-house counsel have experienced a data breach, with breaches being more than twice as likely to occur at large companies;
- data breach concerns: worldwide, in-house counsel report that reputational damage is their greatest concern relating to a potential breach, followed by loss of proprietary information and economic damage; and
- data breach assistance: few companies are proactively establishing third-party relationships that could assist in the event of a data breach, as only 33% of respondents reported that they have retained outside counsel and just 24% have retained an outside forensics firm to provide support following a data breach or other cyber security incident.

CYBER INSURANCE

As data breaches become more common, so do cyber security insurance plans. Almost half of the companies surveyed reported having cyber security insurance, and 25% of companies expect that their cyber insurance coverage will increase in the coming year.

The percentage of respondents with cyber insurance may be even higher than reported, with 20% noting that they were not sure whether or not their company had cyber insurance.

Although the prevalence of cyber insurance is increasing, it appears coverage may not give companies a high level of confidence. Of the companies reporting a cyber insurance plan, two-thirds had coverage of US\$1 million or more; however only 13% of companies with cyber insurance were "extremely confident" in the amount of coverage they have in case of a breach.

For those companies that had experienced a data breach, only 19% had cyber security insurance policies that fully covered the related damages.

DATA BREACHES

The top nine causes of breaches, listed from most to least likely, were as follows:

- employee error (24%);
- inside job (15%);
- phishing (12%);
- access through a third party (12%);
- a lost laptop or device (9%);
- application vulnerability (7%);

- malware (7%);
- ransomware (1%); and
- operating system vulnerabilities (less than 1%).

Interestingly, six of these causes — employee error, inside job, phishing, access through a third party, a lost laptop or device, and application vulnerability — account for almost 80% of reported



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breaches and are completely or mostly preventable by companies.

Companies can and should address the other potential causes of cyber incidents through employee training and robust information security policies.

The leading cause of data breaches was employee error, and the percentage of breaches caused by employee error was the highest in Canada, at 29%, and lowest in the Asia Pacific region, with 15% of breaches resulting from employee error. Although many companies are focusing on raising employee awareness through mandatory training, there is a lack of follow-up to make sure that employees remember and understand what they have learned.

FOCUS ON CANADA

Unfortunately, Canadian respondents fell behind respondents from the rest of the world in three key areas: employee preparation, engaging help after a data breach response, and having cyberrelated policies in place.

Employee preparation

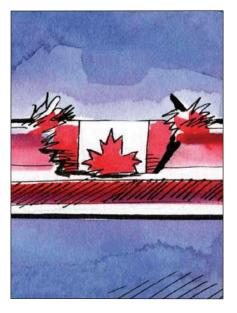
Canadian respondents were less likely to adequately prepare their employees in the area of cyber security. With employee error responsible for 29% of the breaches reported by Canadian companies, this is higher than the 25% of breaches caused by employee error in the United States and the 15% in the Asia Pacific region.

However, the survey found that compared with the global average, Canadian respondents were 14% less likely to have mandatory cyber security training for all employees.

Furthermore, the percentage of Canadian companies that had never tested employee preparedness or knowledge of cyber safety practices or data policies was higher than the percentage of companies from the rest of the world.

Breach response assistance

Canadian respondents were less likely to engage third-party help in the event of a cyber incident than respondents from the rest of the world. Depending on the



The percentage of Canadian companies that had never tested employee preparedness or knowledge of cyber safety practices or data policies was higher than the percentage of companies from the rest of the world.

nature of the incident, an experienced cyber forensic investigator can be essential to identifying and understanding what happened and helping with remediation and recovery.

Outside legal counsel can also provide needed support in the event of a cyber incident by leading an investigation, assisting with communications with law enforcement, and navigating complicated breach notification requirements.

Despite the potential benefits that a forensic company and outside counsel can provide if an incident should occur, a lower percentage of Canadian companies reported retaining either.

Cyber-related policies

Although Canadian respondents were more likely to have identity and access management policies in place than companies from the rest of the world, they were less likely to have other essential policies in place.

Employees are often a weak link when it comes to cyber security, but policies that carefully detail best cyber practices can help eliminate employee habits and mistakes that may lead to incidents. Companies should have in place a social media policy to govern employee social media use, an Internet privacy policy, a "bring your own device" policy to guide employees on how they can store and use company assets on their devices, a password policy to make sure employees follow best practices when choosing passwords, and a policy requiring staff to accept the company's other policies.

Companies should also maintain a data map and a document retention policy to identify what information is being stored, where it is stored, and for how long. This can help prevent an inadvertent loss of forgotten or unneeded data.

Furthermore, companies should share their privacy and information security practices with consumers through a website privacy policy.

Canadian respondents were less likely to have all of these policies in place.

SENSE OF COMPLACENCY

Despite Canadian respondents falling behind respondents from the rest of the world in these three key areas, the data indicated a sense of complacency among those Canadian companies when it came to taking other actions that would mitigate cyber security risks.

Canadian respondents were more likely to report they were not confident that their third-party affiliates or vendors could protect them from cyber security risks, but less likely to have terminated a pending merger, acquisition or contractual relationship because of cyber security risks.

Canadian respondents were also less likely than U.S. companies to have in place cyber insurance and more Canadian respondents reported they expected that the role of their legal departments would stay the same or decrease over the next year.

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CANADIAN UNDERWRITER



Recasting Title Coverage

A new ruling by the Court of Appeal for Ontario could lead to most, if not all, major Canadian title insurers having to recast policy language. In expanding the interpretation of the "unmarketability of title" concept, the court has forced a round peg into a square hole.



Simon Crawford Partner, Bennett Jones LLP

MacDonald v. Chicago Title Insurance Company of Canada, 2015, released in early December by the Court of Appeal for Ontario, may impact claims management under existing title policies and will, most certainly, lead to the recasting of policy language by most, if not all, major Canadian title insurers.

Like so many such cases, the claim of the insured in MacDonald was of relatively little monetary value, but the resulting judgment may be very costly industry-wide, providing a reminder that claims management must always have one eye open to not creating new prejudicial legal precedent.

Briefly, the MacDonalds purchased a home and obtained a standard owner's title insurance policy from Chicago Title. Some time later, in anticipation of renovations, they discovered that the seller had done substantial renovations to the main floor, including removal of load-bearing walls, without the required municipal building permits. A municipal notice was issued to the MacDonalds requiring that temporary remedial work be done. Incurring approximately \$75,000 in costs, they made a claim under their title policy to Chicago Title, but it was denied.

The title policy contained two coverage provisions of particular importance to this discussion:

16. You are forced to remove your existing

structure — other than a boundary wall or fence — because any portion of it was built without obtaining a building permit from the proper government office or agency; and 11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.

At the trial level, Ontario's Superior Court of Justice accepted Chicago Title's assertion that Section 16 (non-permit coverage) of the policy was inapplicable to the facts because, although the underlying cause of the issue was that a portion of the building was built without obtaining a permit, the MacDonalds had not been forced to remove their existing structure.

Technically, the insurer's position was correct, but standing back from the technical argument (and with the benefit of hindsight), arguably it was a position that was inconsistent with the spirit and intention of Section 16.

Some Canadian title insurers have slightly broader policy language dealing with such non-permitted work, that provides coverage where the insured has been forced to remove or remedy the existing structure, recognizing that the nature of the forced remedial action is less important than the root cause of the defect

(the lack of building permit).

On appeal, the MacDonalds reiterated their position that coverage should be allowed on a number of fronts, including pursuant to Sections 11 and 16 of the policy.

The Court of Appeal determined that Section 11 (unmarketability coverage) was the only coverage provision that needed to be considered.

The court decided the lower court had adopted "an unduly restrictive interpretation of the coverage provisions in the Title Policy" and reiterated that the following principles of interpretation for insurance contracts are "well-settled in Canadian Law":

- (a) the Court must search for an interpretation from the whole of the contract and any relevant surrounding circumstances that promotes the true intent and reasonable expectations of the parties at the time of the entry into the contract;
- (b) where words are capable of two or more meanings, the meaning that is more reasonable in promoting the intention of the parties will be selected;
- (c) ambiguities will be construed against the insurer having regard to the reasonable expectations of the parties;
- (d) an interpretation that will result in either a windfall to the insurer or an unanticipated recovery to the insured is to be avoided;
- (e) coverage provisions are to be construed broadly, while exclusion clauses are to be construed narrowly;
- (f) the contract of insurance should be interpreted to promote a reasonable commercial result; and
- (g) a clause should not be given effect if to do so would nullify the coverage provided by the policy.

The court then directed its attention to the policy's title marketability coverage provision and determined that the insured's title was unmarketable, and that the cause of the deficiency was that the prior owner had done work without a building permit.

IMPACT OF DECISION

While the economic result of the decision is not surprising, the use by the court of the marketability coverage in Section 11 (and not the no-permit coverage in Section 16) to award coverage is problematic for Canadian title insurers, generally.

Despite their common name, title insurance policies insure against more than

just title issues. They have evolved into policies that insure over a number of transactional and property-related risks that do not necessarily relate to the owner's legal title to the property.

In the course of that evolution, specific coverage provisions have been included in the standard form policies, sometimes consistently across the industry and sometimes not. But to the



extent that title policies have reached beyond the scope of title-proper, they have, as a general matter, been cautiously drafted so as to clearly circumscribe the scope of coverage. The no-permit coverage provision in Section 16 is a fair example of this.

Accordingly, one might reasonably speculate that the Court of Appeal, being bound by facts that did not fit within Section 16 squarely, and, perhaps, influenced by an overall view that the equities were in favour of the insured, forced a round peg into a square hole by expanding the interpretation of the "unmarketability of title" concept.

While the possible implications of the case have yet to be seen, it is reasonable to suggest the following are the most immediate concerns facing Canadian title insurers:

(a) "unmarketability of title" is generally understood to mean there is a defect in the title to the property that inhibits the owner's ability to sell, lease or refinance it. There is a difference between the unmarketability of title and the unmarketability of property, the latter being more often associated with ancillary building or land defects (work orders, zoning compliance, deficiency notices and the like). The court's decision has effectively blended the two concepts. A door has been opened through which unexpected claims may be brought, including claims for outstanding work orders, latent defects and negligently granted building permits, so long as by analogy they can be said to affect the marketability of title in the same manner as the absence of a building permit; (b) title insurers who believe they

(b) title insurers who believe they have ring-fenced coverage for non-title issues are exposed to the risk that their policy language is not sufficient. In this case, the court was faced with a claim that was in the wheelhouse of the intentions of Section 16, and being frustrated on the facts, the court shoehorned it into Section 11 as though it were

a basket coverage clause; and

(c) the insured received an award for the recovery of fairly modest costs associated with the remedial of a defect that, but for one word ("remove") in the no-permit policy coverage, was otherwise within the spirit of the provision. However, now that there is an appeal court decision confirming that lack of a building permit (and analogous non-title defects) may be covered by the breadth of Section 11, commercial title policies (which customarily do not generally cover non-title issues such as zoning, permits and off-title search enquiries) are potentially in question. If the comparable coverage in commercial policies is challenged for similar issues, the unintended exposure to Canadian title insurers could be significant.

Title insurance policies insure against more than just title issues. They have evolved into policies that insure over a number of transactional and property-related risks that do not necessarily relate to the owner's legal title to the property.

NEXT STEPS

What to do? For now, title insurers should be reviewing their existing claims with this case in mind, and should be revisiting their standard form title policies, both residential and commercial.

The contractual fixes are not difficult to implement, although given the ongoing challenge that title insurers have of educating the real estate legal community on title insurance and how it works, any policy changes will have to be well-drafted, communicated and marketed.

Those with the editing pen in their hands would be wise to keep as their mantra the seven "well-settled" principles in Canadian law of the interpretation of insurance policies — the aforementioned items (a) to (g) — keeping in mind that title insurance is a relatively new product in Canada, and that there is very little jurisprudence in Canada on title insurance policy interpretation.

Things that title insurers may want to consider when revisiting their title policies include the following:

- (a) Be clear and specific as to what constitutes title and what does not. The more that title policies cover risks other than title without clear dividing lines, the more they risk an expansive interpretation of coverage and that everything in the policy is blended as title.
- (b) In MacDonald, the Court of Appeal found no direct exclusions that would rebut the marketability of title coverage. Knowing that the court has a predisposition towards reading policy exclusions restrictively, they should be clear and precise. It would seem that many title policies in existence today have been drafted on the misapprehension that because a risk has been insured in one provision, a court will not find that it is also (even if redundantly or more broadly) insured in an unrelated provision.

With the benefit of hindsight, there is a litigation lesson in this case for all insurers when assessing the impact of claim defence or settlement: beware of creating unintended precedent.

MacDonald is still being digested by the legal and insurance communities. The challenge is that leave to appeal to the Supreme Court of Canada on an issue such as this may be difficult to obtain for Chicago Title.

Should that effort be initiated and fail, then this decision will pose a threat to title insurers until such time, if any, as another test case can be brought forward in which MacDonald can be distinguished on these issues as being either wrong at law or unique to its facts and not useful for general legal application.



Events and Seminars Calendar

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Ottawa – Shining the Light on the Solar Industry	March 8
Burnaby – Inaugural Symposium 2016	March 15
London – Hockey Game: London Knights vs Erie Otters	March 18
Victoria – Reefer Madness:	
The Underwriting & Claims Implications of Marijuana Grow Ops	April 21
Toronto – Symposium 2016	April 21
London – Shining the Light on the Solar Industry	April 21
Hamilton – Shining the Light on the Solar Industry	April 27

ADVANTAGE LIVE Webinars:

The Internet of Things	March 10
Overland Flooding	Week of April 4
Disaster and Emergency Planning	Week of May 2
Demographic Influences on Ins. Products	Week of June 6

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Christopher Gonzales National Product Leader, Professional Liability, Burns & Wilcox Canada

Home inspectors can be the source of general liability and errors and omissions claims, especially if they fail to detect a potential issue when a client buys a home.

Claims and litigation against home inspectors can give rise to losses under general liability (GL) and errors and omissions (E&O) policies.

One issue is that home inspectors do not always detect problems that could be costly to a real estate buyer. While inspectors require detailed knowledge of components of homes, most provinces do not have licensing requirements and training standards vary.

Canada's hot housing market has been a boon to the home inspection industry, but inspectors may find themselves at considerable risk.

Many have entered the profession with the promise of steady work brought on by the high volume of property transactions. For some inspectors, it is a second or third career with the benefit of flexible hours and control over their

own schedules. For others, it is a first act in what may be a long and broad career in real estate or property management.

To be successful, home inspectors require basic construction knowledge. They also need to understand how extended use- and age-related deterioration of components can impact a home's systems. Inspectors require detailed knowledge of electrical and plumbing systems, heating and cooling systems, roofing and attic structures, as well as interior components and structures. In addition, a working knowledge of components that are obsolete yet still in service in older homes is required.

In part, it comes down to experience to be able to recognize a condition or defect that may become a future problem in a home.

The growth of the home inspection industry is expected to continue, as national home sales are projected to reach 498,600 in 2016, reports the Canadian Real Estate Association.

BUYER BEWARE

Despite its growth and popularity, the home inspection industry remains fairly unregulated. For consumers, it is "buyer beware" when it comes



to selecting an inspector. Consider that in British Columbia and Alberta, home inspectors must be licensed, and that Ontario does not have mandatory training or technical requirements for home inspectors, although Consumer Protection Ontario is reported to be considering changes.

In the absence of regulation, standards among inspectors may vary. Several industry associations (including the Canadian Association of Home and Property Inspectors and the Ontario Association of Home Inspectors) have emerged to promote continued education among inspection professionals and advocate on behalf of the industry.

EXCITEMENT AND EMOTION

When an offer to purchase depends on the results of an inspection report, inspectors find themselves playing a critical role in a real estate transaction.

They also face considerable GL and E&O risk simply by carrying out their jobs. Inspectors frequently find themselves facing clients who expect them to be able to detect every potential issue within a home. However, it is not always realistic to expect an inspector to detect every potential issue.

Many conditions and situations limit the ability of the home inspector to perform up to the client's expectations, and when the client's expectations are not met, claims and litigation can ensue. When a successful purchase or sale hangs on the result of a home inspection, the inspector frequently finds himself or herself in the centre of an emotionally charged situation.

With so much in the balance, it is critical that inspectors have adequate protection against financial losses from a range of scenarios, such as an injury that results from a ladder left against a house after a roof inspection or water damage that was overlooked in an inspection report.

A good home inspection policy will likely consist of at least two separate coverages: GL to protect against claims related to running a business, and E&O to protect against claims of unsatisfac-

Inspectors frequently find themselves facing clients who expect them to be able to detect every potential issue within a home.

tory service or frivolous claims from a client. Examples of incidents that could give rise to a claim from a home inspector include the following:

• During a winter home inspection, an inspector shuts off the power to the home's furnace to inspect the furnace. After completing the inspection, the inspector neglects to turn back on the furnace's power. The property owner returns to the home a few days later to find the furnace off and the water pipes frozen. The pipes burst as a result of freezing and cause thousands of dollars in damage. With a policy that includes E&O, the inspector will be protected against related damages that might otherwise have ended his business.

- A home inspection company in Alberta or British Columbia is growing quickly. The firm hires an individual who is believed to be a licensed home inspector. The licence, however, is revoked shortly after accepting the job. A claim is subsequently filed against the home inspection company as a result of the inspector's alleged negligence. A mere oversight in hiring could have cost the home inspection company significantly, but for its E&O insurance.
- During the roof assessment portion of a full-home inspection, a home inspector fails to notice that a chimney is in need of repair. After deciding to purchase the home based on the inspector's assessment and final report, the new owner is required to repair the chimney. The new owner holds the inspector responsible for the cost or the repairs. In this case, the inspector is covered under an E&O policy.
- A home inspector was sued for punitive and compensatory damages for failing to detect mould and visible evidence of moisture. The costs related to defending the lawsuit were extensive and could have put the business in jeopardy. With E&O insurance, the inspector was responsible for only the policy's deductible.

The property-buying process can be emotionally charged and fast-paced, while homes are increasing in both value and complexity. A mistake on the part of a home inspector, or a failure to notice an issue, could give rise to a claim under a liability or E&O policy.

Change of Tack



Jeff Purdy Senior Vice President of International Operations, Applied Systems

Managing technology change demands considering the who, what, when and why. But the benefits of a modern, scalable platform that can change with both staff and client needs outweigh the challenges of change.

Human beings, by nature, are creatures of habit. They embrace routine and make habits out of daily tasks. So when it comes to making large-scale changes — whether personally or professionally — even if for the better, it can be difficult to accept and adapt.

Today's independent brokerage is currently facing a number of changes in the industry: increasing consolidation, the evolving workforce and changing consumer demands. The blurring of the physical and digital worlds is demanding higher levels of integration, connectivity and enhanced digital interaction among key industry stakeholders.

Leading brokerages are reviewing their digital strategies to ensure that systems are advanced and flexible enough to respond quickly to new market opportunities. When evaluating if it is the right time to make a technology change — whether adopting a new self-service software or switching brokerage management systems (BMSs) — it is important to clearly define the business goals and closely manage and monitor the project's progress to ensure a successful and positive implementation.

PROVIDE STAFF COMPELLING BUSINESS REASONS

As brokerage leaders continue to evaluate their growth strategy — organic and by acquisition — they are in tandem assessing their internal infrastructure to ensure it can support expansion. To support growth goals and continue to attract and retain new clients and employees, brokerages require integrated software that delivers consistent workflows, standardized data and a modern architecture that is scalable for growth.

 consistent workflows provide universal procedures across locations and regional branches, as well as simplify employee on-boarding and training;

- standardized data provides a single view into a brokerage's book of business, enabling staff to better service their clients and identify opportunities to cross/up-sell; and
- as technology continues to become even more embedded across all enterprise functions, today's brokerages are looking to leverage software best built to integrate additional technologies, like rating services, that will further drive business efficiencies and support superior client servicing.

GET EVERYONE ON BOARD

In any organization, change management requires well-defined business benefits, objectives and structured steps to be successful. Adopting new software is no different.

Strong executive leadership, along with clearly communicating why change is needed and the benefits of implementing new software across the business to all stakeholders in the transition, helps to build buy-in from the start. Teams need to foster a partnership approach, examining strategic areas of the brokerage's business to make operational, process and training improvements based on insurance technology best practices.

Throughout the entire implementation process, brokerage teams discover new methods and insights that optimize business operations and service practices, increasing return on investment. Change is never easy, but by setting expectations and preparing staff thoroughly, brokerages can quickly derive benefits from their investments.

AVOID BUMPS IN THE ROAD

Key focal points in the transition are centred on data, workflows, staff education and business continuity, ensuring that brokerages maintain daily business operations to continue supporting clients and prospects.

When beginning any software conversion, brokerages should consider what data needs to be transitioned.

When evaluating moving BMSs, look at the process as being similar to moving to a new home: a buyer takes the time to consider what to move into his or her new home and what is no longer needed; no one moves everything from an existing home to the new one.

When making the transition to a new management system, data quality is critical to a brokerage's success.

Secondly, focusing on workflow development can be critical in driving overall efficiency and reducing time spent on-boarding employees to a new system. For instance, as the implementation of a new BMS can take as long as several months, it is critical to involve employees consistently throughout the process.

In doing so, leaders obtain critical insight on how their technology has been used to date, as well as identify opportunities to better leverage their technology investment.

When evaluating if it is the right time to make a technology change, it is important to clearly define the business goals and closely manage and monitor the project's progress to ensure a successful and positive implementation.

Additionally, employees then feel more involved in the decision-making process and are motivated to support adoption of the new management system within the organization. Brokerages should identify "champions" early in the transition process, and involve them in every step along the way.

A FIRST-HAND LOOK

Since 1963, Brokers Trust Insurance Group has been delivering expertise in a full range of commercial and personal products and services through traditional distribution channels.

But with change unfolding, the independent brokerage renewed its commitment to innovation and adopted an enhanced digital strategy to better align itself with the external demands of the market, as well as the rapidly evolving service requirements of its client base.

The company's digital strategy involved the selection, implementation and adoption of various new technologies to reinvent the methods used to interact with its customers, including a new state-ofthe-art management system.

The brokerage designed a goal-oriented strategy to enable brokerage teams to focus their activities on specific business results. The bottom-up approach employed, allowing all staff members an opportunity to participate in the project's design and roll-out, proved an important factor to the project's success.

"It was a tough year, no doubt. Managing change might be one of the most difficult things we've ever had to do. Nothing makes wide-scale change easy, especially when it relates to a brokerage's main management system — proper support, preparation and a structured plan makes it manageable," comments Dave Bertolin, director of IT and finance, and deputy principal broker, of Brokers Trust Insurance.

"We learned a lot very quickly about people and the quirks adopting new technology can have, but with the dust settling and benefits being realized, we can say confidently that we would repeat the process," Bertolin says. "Would we change some things? Of course, but there is no substitute for creating a culture that embraces change if you strive for success and longevity in such a highly competitive marketplace."

MEANS JUSTIFY THE ENDS

Many brokerages have been on the same systems for well over a decade, and their users are comfortable with the status quo. However, the benefits of a modern, scalable platform outweigh the challenges of change.

Flexible, advanced, integrated technology enables brokerages to customize and automate operations, further improving staff productivity and allowing them to focus more time on selling and servising customers.

UPCOMING EVENTS: FOR A COMPLETE LIST VISIT

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As of January 4, John Bowey [1a] has replaced Gerry Hooper [1b] as chairman of Economical Insurance, a position Hooper held since 2005. He had also been chair of the Board of Directors' (BoD) special committee on demutualization, but will continue as a member of both the BoD "until the expiry of his current term in 2018" and of the special committee. Among other positions, Bowey has served as chairman of Deloitte Canada and is a former partner at what is now KPMG. The special committee's new chair is David Wilson [1c], who was a senior member of the advisory group assisting Manulife Financial with its demutualization process while working for the Bank of Nova Scotia. On Economical Insurance's BoD since 2012, Wilson is a past chair of the Ontario Securities Commission and the Bank of Nova Scotia.

Joseph El-Sayegh assumed the role of chief executive officer of SCOR's Canadian subsidiary January 1, bringing his 25 years of experience in the insurance/reinsurance market to the position. An electrical engineer, El-Sayegh also holds Canadian Risk Manager and Chartered Insurance Professional designations. His prior responsibilities at SCOR include serving

as property and casualty chief underwriting officer for Canada, underwriting manager for the Quebec market and risk manager for SCOR Canada. Also at SCOR, Neil Ringrose has been named chief agent for the SCOR U.K. branch in Canada. Ringrose most recently co-lead the SCOR U.K. Company initiative to establish SCOR Insurance -Canadian Branch as a licensed insurance company in Canada. Henry Klecan will now serve as a non-executive director for SCOR U.S. companies, SCOR Canada, SCOR Global Life Americas and SCOR Global Life USA.

Willis Towers Watson Public Limited Company, the result of the merger of Willis Group Holdings and Towers Watson, began operating in January. As announced earlier, John Haley [3a], previously chairman and chief executive officer of Towers Watson, has assumed the role of chief executive officer of the merged company, while Dominic Casserley [3b], previously CEO of Willis, is the new deputy CEO for Willis Towers Watson, In addition, members of the company's executive team with responsibility for North America are Carl Hess [3c] and Todd Jones [3d], both co-heads, North America.







Aviva Canada's longstanding partner in the Quebec market, Leclerc Insurance and Financial Services, has been appointed managing general agent in Quebec for the insurer's specialty personal lines business underwritten





by Elite Insurance Company of Canada. The appointment of Leclerc Insurance — which distributes products to 600-plus brokers in Quebec — takes effect April 1.

Leclerc Insurance will be the official distributor of Aviva Canada's recreational insurance products. NautiMax will continue to manage Aviva Canada's watercraft program, which brokers can access through their contracts with Leclerc Insurance.

Julie Pemberton [6], director of enterprise risk and insurance management for Outerwall Inc., will lead RIMS, the risk management society, as president for the 2016 term. The 16-year member of RIMS has served on its Board

MOVES & VIEWS

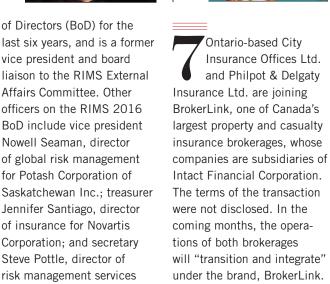












South Western Insurance Group Limited has welcomed Doreen Teoh [8] as senior underwriter. In her new role at the wholesale insurance intermediary/managing general agent (MGA), Teoh will



join the company's specialty casualty team, supporting the Canadian hospitality and leisure marketplace. She has spent most of her more than 25-year career in various underwriting and leadership capacities in the MGA space.

H.W. Kaufman Financial Group has acquired Toronto-based loss control inspection and consulting firm Technical Risk Services (TRS), TRS will continue to operate under the TRS name as part of Canadian Reports, a Canadian provider of audits, loss control inspections and risk management services. Gilles Proulx, TRS's former executive vice president, client services, will become president of Canadian Reports.



McDougall Insurance and - Financial is merging with Upper Canada Commercial Insurance Group (UCC). The merger will enhance McDougall Insurance's commercial lines expertise and introduce its personal lines strength into UCC offices. All 40 UCC staff will remain with UCC, and all branch locations will continue.



vice president and board liaison to the RIMS External Affairs Committee. Other officers on the RIMS 2016 BoD include vice president Nowell Seaman, director of global risk management for Potash Corporation of Saskatchewan Inc.; treasurer Jennifer Santiago, director of insurance for Novartis Corporation; and secretary Steve Pottle, director of risk management services at York University. The new board members are Emily Cummins, Barry Dillard and Laura Langone, while the incumbent members are Gordon Adams, Gloria Brosius, Robert Cartwright, Jr., Richard Roberts, Jr.,

Janet Stein and Robert Zhang.

APPOINTMENT



Luke Lichty Assistant Vice President, Casualty

AXIS Insurance is pleased to announce that Luke Lichty has accepted the position of Assistant Vice President – Casualty, effective January 11, 2016.

In his role Luke will assume management responsibility for our team of experienced casualty underwriters. Together with his team, Luke will be responsible for servicing our existing casualty clients and for growing this important book of business across Canada.

Luke graduated from Queen's University with a bachelor's degree in Commerce. Prior to accepting this position, he worked as a Senior Underwriter at Chubb Insurance. Luke brings experience, expertise, and a proven track record of innovative thinking and customer service to our team at AXIS.

Luke will work out of our Toronto office and you can contact him at: luke.lichty@axiscapital.com; 416-361-7217 (office); 647-987-2694 (cell).



www.axiscapital.com

GALLERY





Allianz Global Assistance, joined by more than 100 of its valued partners, celebrated a successful rebranding after its merger with TIC Travel Insurance with a dinner event at the Shangri-La hotel in Toronto on November 26. At the event, Daniel Wichels, CEO of Allianz Global Assistance, said, "The relationships we have with our partners are very important. We can only be successful with you; and our intention is to help you grow."











Indemnipro (the name for ClaimsPro in Quebec) welcomed about 140 clients and partners from across the insurance and claims industries on November 27 at the Hotel Gault in Old Montreal for a festive and friendly event – its 2nd annual holiday client cocktail – to ring in the holiday season.





ORIMS (Ontario Chapter of RIMS) held its **Christmas Luncheon** on December 10 at the Westin Harbour Castle in Toronto. With more than 700 guests in attendance, ORIMS continued with the spirit of giving by raising funds for The Daily Bread Food Bank. In all, \$10,000, more than 230 pounds of non-perishable food and gift cards were collected to help the food bank in its fight to eliminate hunger in and around Toronto.

































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For more information, please contact **Hayley Press at hayley.press@starlightcanada.org**

ACE and Chubb are now one.

On January 14, 2016, ACE Limited acquired The Chubb Corporation, creating a global insurance leader operating in 54 countries under the renowned Chubb name.

The new company combines Chubb's 130 years of underwriting insights and devotion to customer service with ACE's three decades of technical underwriting excellence, broad risk appetite and global presence. Our goal is to provide the very best insurance coverage and service to individuals and families and businesses of all sizes – from small and medium-sized companies to the largest multinational corporations – all across the globe.

As the world's largest publicly traded property and casualty insurer, the new Chubb has the balance sheet strength and financial security of an AA rating from Standard & Poor's and an A++ rating from A.M. Best.

As craftsmen of insurance, we are devoted to meticulously conceiving, crafting and delivering extraordinary coverage to meet the needs of the modern world – a world that is epic in scale but by nature both personal and connected.

To find out more, go to new.chubb.com.

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