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Commercial
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Trends

BESPOKE INSURANCE

Every broker should be a
tailor. Here's why and how.

CANADIAN UNDERWRITER

JUNE 2018

PM#40063170

Sports insurers look for a big win

BY DAVID DIAS

Why insurers reject one-page appraisals

BY KELLY JUHASZ AND DARLENE WONG

Claims innovation goes nuclear

BY DAVID GAMBRILL

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Thanks to flooding throughout Canada this spring, another \$1-billion year in cat damage is virtually guaranteed. For how much longer can P&C insurers absorb these kinds of losses?

David Gambrill
Editor-in-Chief
Canadian Underwriter
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Water damage is flooding the news cycle this spring. Based on what's happened thus far, I guarantee the industry will pay out more than \$1 billion in catastrophe claims in 2018.

As I type these very words, Canadian Press has filed three stories about flooding events across Canada:

- projected "historic" flooding of the Saint John River in Fredericton, New Brunswick
- floods and mudslides causing evacuation of hundreds of properties in several parts of B.C.
- flooding due to heavy rainfall in different parts of Quebec.

Ontario has borne the brunt of the storm damage this spring. In Ontario alone, insurers have paid out more than \$600 million in insured damage from weather-related events this year, according to Catastrophe Indices and Quantification Inc. (CatIQ). This includes a preliminary estimate of more than \$190 million for an ice storm in mid-April that resulted in 15,000 insurance claims (encompassing 1,800 car collisions).

Meanwhile, in New Brunswick, the province's Emergency Measures Organization predicts between 2,000 and 3,000 people will be displaced by historic flooding in the area in early May.

So another \$1-billion-plus in catastrophe damage is highly likely this year. If this is indeed the "new normal," can Canadian property and casualty insurers continue to absorb these kinds of losses?

Not without substantial infrastructure improvements so that cities are "better equipped to support a higher level of water," Louis Gagnon, president of Canadian operations at Intact Insurance, told *Canadian Underwriter* in March.

Now that home insurance rates are increasing in response to elevated claims counts, the time has come for Canadians to help mitigate the risk of overland flood. They can start by educating themselves about flood risk.

Given all the water damage sustained in these storms over the past decade, it is baffling how Canadians remain oblivious to flood risk. A University of Waterloo study published in April 2017, *Canadian Voices on Changing Flood Risk*, suggests the public still doesn't get it. In a national study of 2,300 people across the country, 74 per cent of respondents did not think they were vulnerable to flooding, despite living in areas designated as high-risk by the federal government. Only six per cent of homeowners were aware they lived in a designated flood risk area.

Not only are Canadians unaware of their flood exposure,

they don't know if their insurance policies cover the risk. Almost 45% of Canadian homeowners with ground-level homes think they have flood insurance as part of their regular home insurance policies, according to a recent IBC poll. (Overland flood coverage is commonly offered as an endorsement, for which you pay extra). Twenty-six per cent simply have no clue if they are covered for overland flooding. Only 37% are confident they know what is covered in their home insurance policies.

This lack of awareness needs to change. To this end, insurers have recently kicked off a new consumer flood education campaign that will take place this spring and summer in communities in British Columbia, Alberta and Ontario.

Federal and provincial governments need to be more visible with their public awareness campaigns. This is a collective problem, and everyone needs to chip in.

Aside from offering education, governments need to start spending on infrastructure improvements to upgrade stormwater and wastewater pipes to account for increased water flow, particularly in vulnerable areas. And they need to stop people from building in flood plains.

Otherwise, forget flood insurance, Canada will need to build an ark. ■■■

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HOW INSURANCE RESPONDS WHEN VEHICLES ARE USED AS WEAPONS

If a rental vehicle is used as a murder weapon, the insurer could be on the hook if neither the driver nor the person renting the vehicle has auto insurance.

Ten pedestrians died in Toronto in April after a rental van was allegedly driven on sidewalks on Yonge Street near Finch Avenue, the Canadian Press reported. The attack killed 10 people and injured 14.

Many liability insurance policies exclude intentional and criminal acts, but standard auto liability policies in Ontario do not automatically exclude criminal acts.

Section 258 (4) of the *Insurance Act* states that a person's right



to "have insurance money applied" to a judgement is "not prejudiced" by a criminal act. Section 118 of the *Insurance Act* stipulates that breaking the law "does not, by that fact alone,

render unenforceable a claim for indemnity" under an insurance contract.

Sections 118 and 258 of the Ontario *Insurance Act* "operate so that the insurer of the driver would have to respond to any claims" in an incident such as the tragedy in Toronto, said David Contant, an Ottawa-based lawyer for Nelligan O'Brien Payne, in an interview with *Canadian Underwriter*. "The insurer of a rental vehicle is responsible for indemnifying a claimant, but only if the lessee and driver are not insured."

CANADA MAY SOON SEE LIABILITY FOR TEXTERS WHO CAUSE CRASHES

Look for Canadian case law to impose secondary liability on texters who distract drivers with their email messages, akin to social host liability, a senior claims executive at Travelers predicts.



"If I text someone while driving, and they get into an accident, I could be responsible for part of that," said Jordan Solway, group general counsel and vice president of claims at Travelers. "Beyond that...if you are driving a vehicle, your employer has vicarious liability for damage caused [by you as a driver] to a third party."

Solway remarked on the secondary liability of texters while speaking at EverySecondMatters, a panel discussion held in Toronto Monday. The event was hosted by Travelers and its public policy division, the Travelers Institute.

Case law already exists in Canada that imposes a secondary liability on employers who increase the risk of a crash by sending

text messages out to their employees, knowing that they are driving and will respond right away. For this reason, it's important for employers to create and enforce strong workplace policies around texting employees who are known to be on the road.

But the secondary liability could extend to texters who are not employers, Solway said.

For example, a U.S. case in New Jersey suggests that parents sending texts to children while they are driving could also be found partially at fault for a crash.

ONE THEORY WHY LLOYD'S WRITES SO MUCH BUSINESS IN CANADA

Insurance professionals fresh to Canada's property and casualty insurance market from Europe may notice how much of Canada's commercial business is underwritten by Lloyd's of London.

"Lloyd's (as a market) is again the largest commercial writer in Canada [in 2017], taking that crown from Intact back in 2015," MSA Research noted in its most recent Q4 report.

Its presence in Canada is getting bigger. According to MSA Research, Lloyd's saw an 8.5% increase in direct premiums written in 2017.

It's a common quip among Canadian P&C brokers that if all else fails, the European-based market will likely find a way to underwrite the business. So, how did Lloyd's acquire this fearless reputation?

The New Jersey case Solway referred to in his presentation is *Kubert v. Best*, issued in 2013. In that case, The Superior Court of New Jersey, Appellate Division did find that "the sender of a text message can potentially be held liable if an accident is caused by texting, but only if the sender knew or had special reason to know, the recipient will view the text by driving."

Examples of a "special relationship" that would give the sender a reason to believe that a driver would immediately answer a text include an "employer-employee" or a "parent-child" relationship, the court found.

Here's one theory: the Lloyd's market benefits from the European tradition of selling insurance face-to-face on a handshake, after a tough negotiation with a broker, rather than underwriting by computer.

"Lloyd's underwriters don't write by computer," says Gary Hirst, president and CEO of CHES Special Risk Inc. "It's literally face-to-face negotiation. I find that that is a big difference between the Lloyds market and the North American market."



WORD ON THE STREET:

GUESS WHO'S ACCEPTING ELECTRONIC PINK SLIPS?

Only one province in Canada officially accepts electronic proof of auto insurance at press time, but industry scuttlebutt suggests police are already accepting them in some quarters, and Ontario will soon be in line to accept



the electronic slips.

“Word on the street” is that some police officers in Ontario are already accepting electronic proof of auto insurance, Bill Redford, vice president of product development at Keal Technology, told

Canadian Underwriter. In other words, an officer will not write a ticket if the motorist does not have a paper pink slip, as required by law, but can show an electronic copy of the pink slip instead.

“At the moment, only Nova Scotia has taken steps to allow drivers the convenience of an electronic pink slip,” Insurance Bureau of Canada (IBC) CEO Don Forgeron said in a prepared text delivered by David McGown, IBC senior vice president of strategic initiatives, at the association’s 2018 annual general meeting Thursday. “We’re hopeful that Ontario will follow suit shortly.”

HOW A CANADIAN CAN COLLECT ACCIDENT BENEFITS FOR A FATAL CRASH IN THE PHILIPPINES

The SEF 44 Family Protection Endorsement in Alberta’s standard auto policy provides accident benefits coverage for accidents that happen outside Canada, the Court of Queen’s Bench of Alberta has ruled.

In *Wage v. Canadian Direct Insurance*, Leizle Wage was struck and killed by a motorcycle while vacationing in the Philippines. She and her husband had a standard auto policy with Canadian Direct Insurance in Alberta that includes the SEF 44 Family Protection Endorsement.

The estate for Leizle Wage argued in court that the territorial limit in Alberta’s standard auto policy did not exclude coverage under the SEF 44 endorsement. Canadian Direct Insurance applied to the court to deny the claim, saying the endorsement coverage did not apply to accidents that happen in the Philippines.

The SEF 44 endorsement speaks about the “jurisdiction, or place where the accident occurred,” without any express limitation, except for the province of Quebec.

The territorial limit in the standard policy essentially mirrors the language in the province’s *Insurance Act*: “This Policy applies only while the automobile is being operated, used, stored or parked within Canada, the United States of America or upon a vessel plying between ports of those countries.”

Alberta’s Court of the Queen’s Bench ruled that the territorial exclusion in Alberta’s standard auto policy referred to a vehicle owner’s insurance for liability to a third party arising out of the ownership or operation of an automobile. It did not apply to accident benefits.



WHY MUTUALS DON'T WANT BANKS SHARING CUSTOMER DATA WITH FINTECHS



The Canadian Association of Mutual Insurance Companies (CAMIC) has called on Parliament to withdraw two sections from proposed Bill 74 that would allow chartered banks to share their customers’ banking data with fintechs.

CAMIC and its 76 member companies are concerned that these provisions will undermine the current regulatory framework that prohibits banks from using their banking data for insurance purposes. The *Bank Act* currently prohibits banks from sharing information with insurance companies, including their subsidiaries. This is to prevent banks from pressuring consumers to buy the bank’s insurance at point of sale.

Sections 316 and 317 of Bill 74 “threaten that regime and its consumer protection measures,” CAMIC said in a release Wednesday. “These two sections should be thoroughly studied under the rubric of ‘open banking,’ already initiated by the Department of Finance.”

The mutual association told *Canadian Underwriter* in early April that nothing in the proposed legislation prevents banks from sharing their information with fintechs; and nothing prevents fintechs from sharing that information with a bank’s insurance subsidiary.

“What we see is that these two sections will allow in two steps something that is prohibited in one step,” CAMIC president Normand Lafreniere said of Sections 316 and 317. “The Department of Finance has already announced they will be conducting a fulsome and thorough study into the concept of open banking, and we believe these two provisions should fall under this study.”

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SLIP-AND-FALL IN SUPERMARKET NETS \$750,000 IN COMPENSATION

A woman who fell in a North Vancouver supermarket after slipping in a puddle of spilled laundry soap is no longer employable and is entitled to \$375,000 in compensation for loss of future capacity, a Supreme Court of British Columbia judge has ruled.

The defendant, Loblaws Inc., had a detailed risk management plan at the Real Canadian Superstore in North Vancouver. But court records indicate the manager

on duty March 25, 2012 failed to follow several steps in the incident response plan.

On that morning Lori Lee Harrison “unknowingly stepped in a large pool of liquid laundry detergent,” while shopping at the supermarket, Justice Bill Basran of the B.C. Supreme Court wrote in *Harrison v. Loblaws, Inc.* (Real Canadian Superstore), released in April.

Harrison slid, fell, and hit the back of her head on the floor. She had to be taken to the hospital by ambulance.

She sued and was awarded a total of about \$750,000, of which \$195,000 was for loss of past income and \$175,000 was for pain and suffering. Harrison has mild traumatic brain injury and suffers from headaches, dizziness, imbalance, concentration and memory problems, Justice Basran wrote. She was described by a doctor as “no longer competitively employable.”

The issues before the court were liability, damages and contributory negligence.

Harrison had sued Loblaws under the *Occupiers’ Liability Act*. Defendants can argue they have a “reasonable system of inspection and maintenance in place” and that they are following their system at the time of the accident.

Justice Basran found there was no evidence to show Harrison was contributorily negligent.

Loblaws policy stipulates that in case of accident, management must fill out a report that includes a copy of the “sweep log,” which documents hourly inspections of floors. Accident reports must also include the staff schedule that day, photographs of the scene, a drawing of the scene and detailed statements from all staff before they leave the store.

The manager on duty that day “did almost none of the things required by the policy,” wrote Justice Basran. “He did not take a copy of the relevant sweep log as it appeared at the time of the accident. The only sweep log that was put into evidence was the completed sweep log for the week that began on November 25.”

BRONCOS’ BROKERAGE OFFERS SUPPORT IN HUMBOLDT



The brokerage for the Humboldt Broncos hockey team is still supporting staff whose children knew some of the players fatally injured in the team’s bus crash in April.

The junior hockey team was on the way to a playoff game in northeastern Saskatchewan. The team bus collided with a semi-truck that was hauling peat moss, killing 16 people. Ten of those killed were players and another 13 were injured.

Tracy Rogoza, chief operating officer of Knight Archer Insurance, said thankfully none of the brokerage’s staff had any familial connections to the team. But three staff members have teenagers who went to school with players from the Humboldt Broncos hockey team and were friends.

“Finding ways to support our staff and their families with the loss they have experienced, the ongoing funerals and assisting with any community activities, has been a real focus,” Rogoza said.

Rogoza says Knight Archer Insurance has been supporting people through the claims process involving various entities such as Saskatchewan Government Insurance’s (SGI) Autofund, the provincial workers compensation board, Hockey Canada, and SGI Canada.

The first-ever Saskatchewan Summit of Young Insurance Professionals raised \$1,240 for victims and families of the Humboldt bus crash.



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HOTTEST COMMERCIAL TRENDS

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BESPOKE INSURANCE

Customized commercial policies are vital for increasing
your standing as a trusted advisor.
Here are the hottest areas for going tailor-made.

BY DAVID GAMBRILL



With the onset of digital transformation in Canada's commercial insurance marketplace, brokers are advised to focus their attention on providing clients with tailor-made, customized advice in the areas of cyber insurance, tech start-ups, liability, and employee benefits.

Each of these areas, even if some may prove to be more challenging to insure than others, provide brokers an opportunity to help their clients by making the most of their advice-based value proposition.

The promise of digital transformation in commercial lines is that it can automate and improve the flow of a large proportion of commercial business policies valued at a premium of \$5,000 or less. This category of business, estimated to be about 30 per cent of Canada's commercial insurance market, would include consultants working from home, or simple premises exposure, as opposed to factory or plant type of exposures.

Although digitization may help brokers handle a large volume of small business, automation does make it harder for a broker to stand out in the crowd when commercial products become commoditized. Hence the need for brokers to offer more customized, tailor-made insurance packages to Canadian businesses.

Gary Hirst, president and CEO of CHES Special Risk Inc., says many opportunities exist for brokers to offer "bespoke" insurance packages geared toward their clients' specific needs. Too often, he says, emailed inquiries from a broker come in on a blank .cc line, indicating that the message has been shot out to 12 different people without a lot of thought.

"You will see a lot of business as a broker just because [clients] are out there seeing if there is a best deal," says Hirst. "But I think if brokers are a lot more focused on meeting the needs of the insured, understanding their insured's business, and then taking it to the market...that allows you to find these angles to sell an insured's policy to an insurer far easier."

Hirst suspects many commercial brokers are limiting themselves by negotiating solely with their go-to markets. "They tend to go to an insurer or underwriter, and if their go-to guy says no, then it's a no," he said. "But it's not necessarily no if you go somewhere else. It might just be a different price."



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CANADA'S HOTTEST MARKET

Nowhere is the value of tailor-made insurance more prized than in Canada's hottest commercial insurance line right now – cyber.

Commercial brokers and insurers have done a very good job of raising their clients' awareness about cyber threats, says Jim White, chief sales officer and executive vice president of general commercial insurance at HUB International Ontario. But selling custom-made cyber insurance packages to clients has proved to be a challenge.

Some industries in Canada are at a higher risk of certain types of cyber threats than others. So it doesn't make sense, for example, for a broker to be telling a small fashion store about a breach at Equifax, because the cyber risks for each business are different. At times, brokers are guilty of a one-sided information dump instead of taking the time to talk to the client and truly understand their specific business needs.

"How do we make [cyber insurance] real for that particular customer's business?" White asks. "Customization, and really putting [specific information] into the client's context, as opposed to just spouting statistics and saying, 'Did you see that breach at XYZ Company?'"

John Chippindale, vice chairman and Canadian chief marketing officer at HKMB Hub International, says brokerages are increasingly offering

diagnostic services to determine a client's true cyber risk. "What people are starting to do is use services that will do a diagnostic on the company, which then categorizes their vulnerabilities and then the broker says, 'Here's how we will help you with those vulnerabilities.' I think that's more successful than just selling a product and what I would call ambulance chasing and talking about the big claims."

White adds that having a dedicated cyber expert on staff also contributes to a better sales experience for the client. "I once asked one of the larger cyber insurers, 'Which brokerage does it best?'" said White. "And she told me the brokerage firms that are the best have an expert who can tag along with each one of the sales guys and meet with their most important customers. Those are the offices that seem to be doing the best job."

In cyber, there is more business to be had through a better understanding of intangible risks such as reputational damage, adds Ray Thomson, associate director at A.M. Best. "There is some room to grow, certainly in the small business space," he says. "[Reputational damage] is a good example of what I would say is still evolving. There's still some expertise out there to be gained. Reputation is something to be concerned about, because once you lose that, it's very hard to get it back. How do you put a price on that? How do you put a number on that?"

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Options may include stock price, market cap, or a sales drop after a specific claim event. White said a Lloyd's underwriter might entertain such a discussion, at least. But placing coverage for the risk won't be easy because so many of Canada's businesses are in the category of a smaller size. As Chippindale quips: "You're not going to cover reputational damage for a drop in the stock price for [a] \$200 [premium]. You might do it with a very large company with a \$1 million deductible."

Coverage for social engineering is another place where the cyber product is finicky, and brokers need to stay on top of developments in this area. Social engineering describes a situation in which cybercriminals use human beings, employees, to gain access to company servers. Examples would include leaving a corrupted USB key around a workplace for someone to put into their laptop, or sending an email using the boss's email address to ask for sensitive password information.

"Social engineering is not very well understood by insurance brokers," said White. "There is confusion about

whether it should be placed under a crime policy or a cyber policy, and different insurance companies will do it both ways, which also creates confusion. Some people think, 'I have a crime policy, so it must have social engineering,' but they are not aware that you have

to have an endorsement to get that and pay extra money. Other people will say, 'I have a cyber policy. Definitely, I have social engineering coverage.' But with most of these policies, you have to add an endorsement and pay extra money for it." ■■■

OPPORTUNITY KNOCKS: TECH START-UPS

Canada's commercial insurance market could do a better job of offering customized packages for fledgling tech companies, says Derrick Leue, president and CEO of the commercial brokerage Prolink.

"The marketplace is really underserving certain segments, including early-stage, accelerating technology companies," said Leue. "As for any sole business, because that's what they are, liability products they need range from directors and officers, technology, E&O, cyber insurance, CGL, and some type of employment practices liability. Probably 15 to 20 different insurers are more than happy to provide products to mature, proven and profitable technology companies. But I would say there are very few options, only a handful at the most, available to early-stage tech companies."

Among the underwriting issues, tech startups often have *pro forma* financials, a deficit of some kind, and/or angel funding. Also, since startups typically offer products in new and innovative areas such as blockchain and social media, underwriters can't readily access historical loss data to help them understand or price the product. As a result, new tech companies "are really poorly served by the commercial insurance industry in Canada, unfortunately," says Leue.



SO, SUE ME. (WE'VE GOT LIABILITY COVERAGE.)

The rise of technology has created more opportunities brokers to place commercial liability cover, Thompson observes.

"I think anywhere you have legal concerns, anywhere where there's a lawyer involved, you get into your liability coverages," he says. "There is certainly room to grow there. A lot of it relates to the advance of technology: the more technology advances, the

more places pop up where there could be responsibility or liability."

Hirst says he has seen evidence of market hardening (higher rates and less insurance coverage available) in certain areas of Canada's commercial insurance marketplace — including liability-type risks.

"It's quite simply driven by losses," Hirst said. "So, for example, insuring anything that's got a trampoline in it seems to be incredibly difficult at

the moment. It's mainly down to frequency and size of losses that have occurred over a very long time, but certainly running up to Christmas last year, there were a couple of really bad claims, which has almost dried up capacity for trampoline risk."

Trampolines are a very specific risk contained within the larger category of sports and recreation insurance. This line is generally seeing price increases.

In the hospitality segment, covering

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...continued from page 20

night clubs, or bars with music or DJs, liability coverage would definitely benefit from the right broker touch. “We are finding a dramatic hardening of price at the moment, because the losses continue to be bad,” Hirst reports. “You’re now looking at a \$10,000 reserve, at least, which is more than one of these bars will pay in premium. The judgments aren’t

getting bigger, we’re just seeing more of them, unfortunately.”

Why? Various reasons include pressure to generate income because of higher rents can lead people to turn a blind eye to overserving alcohol. Bar-hopping is an issue, because it’s impossible for one bar to know how much alcohol may have been consumed at a previous bar.

Hirst is aware of one peculiar situation in which a person made a killing suing bars in western Ontario. “One particular person, who has now passed away, was a serial claimer of injuries apparently sustained in bars. There was an estimate that this person managed to generate something like \$300,000 in awards from various bars in a particular town.”



THE RISE OF EMPLOYEE BENEFITS

Anticipated consolidation of employee benefits firms in Canada could create an extra line of business for some of the larger players in the commercial property and casualty insurance marketplace.

Consolidation occurs in most industries to drive and leverage economies of scale while stepping up innovation through specialization. This is more difficult to execute within smaller firms with less scale and a smaller geographic footprint.

In the past, this advantage of scale has been more apparent in the P&C insurance space than in the employee benefits sector (e.g. life, health, medical, dental, disability, critical illness, etc.). However, a catch-up is taking place.

“We have a lot of employee benefits firms in the M&A pipeline, and I believe that [employee benefits] is going to be, particularly for the SME

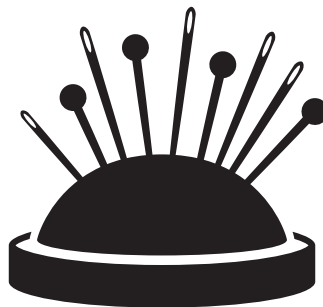
customers, a more integrated solution that’s going to line up beside commercial insurance, when in the past the two have been very separate,” predicts Chippindale.

“I believe this will be viewed from a practical standpoint as a new cov-

erence [large P&C] insurers that are going to want to provide these coverages in competition with the likes of a Sun Life, a ManuLife, an Industrial Alliance, and so on. I would see it as a natural, expanded part of the relationship and an extra line of insurance.”

But for commercial brokers to get into the employee benefits space, they would need to prepare by cross-licensing, says Chippindale. Brokers would need a license to sell life and health products, as well as a license to sell P&C products. Not everyone in the brokerage would have to be cross-licensed to take advantage of the opportunity, though.

“At the end of the day, I have an expert, and whether it’s an employee benefits expert, a D&O expert, a cyber expert, or a group personal lines expert, they are all specialists working together as a team,” said Chippindale.



erage that is very integrated into what these [commercial business] customers are looking for from one broker rather than two. We will ex-



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Keeping pace with **SME** business owners



Mazdak Moini
Vice President,
Commercial Lines
Aviva Canada

Some advice on how to “future-proof” the insurance needs of Canada’s very agile small and medium sized businesses.

It’s difficult for an industry built on legacy to transition into a world that is rapidly becoming digitized. A new generation of business owners will judge the value of the broker’s advice and the insurer’s promise.

Small and medium sized businesses (SMEs) make up 99.7% of employer businesses in the Canadian economy. Those 1.16 million SMEs ac-

count for 30 per cent of Canada’s GDP, 25 per cent of exports and 95 per cent of net job creation. The needs of a medium sized enterprise are as vast as the industries in which they operate. As businesses grow and their needs expand, the value that insurers and brokers bring to the insurance purchase must develop alongside.

It led us to one simple conclusion as we developed a new commercial insurance product for brokers and prepared to launch it into the market earlier this year: if businesses operate and grow differently, their insurance product should be nimble enough to reflect those changing needs. Brokers and insurers who work together with this understanding will certainly win in the mid-market space, and in commercial insurance

“It’s not about the cost, it’s about the value.”

overall. This simple yet central observation got me thinking about what other lessons I’ve learned from business owners and how they may be applied to the SME market.

GET AHEAD OF THE CURVE

The only constant for SME businesses is change. The development of SMEs is not always linear. As businesses grow, they see changes in operations, geographic boundaries, cyber presence, and sometimes even expand to different segments. Good business owners know what their customers need before they need it.

Insurers and brokers looking to fit clients into their own pre-existing segments will increasingly struggle to serve clients effectively. From a technology perspective, insurers that offer brokers with tools and systems that allow speed and flexibility will win more often. To best serve business owners, insurers and brokers must be able to arrange appropriate coverage immediately, and then keep in touch with clients to respond to their needs right away.

Increasingly, growth means expansion into online commerce and trading relationships. Most SME owners and managers have a limited understanding about

the risks that cyber threats can pose to their ongoing operation and more importantly to the privacy of their clients. For most businesses, getting ahead of the curve means assessing their cyber risk and extending their insurance coverage to afford a level of protection.

PRICE IS WHAT YOU PAY, VALUE IS WHAT YOU GET

The saying, “It’s not about the cost, it’s about the value” comes to mind when considering what the right insurance solutions can do for businesses. Cost will always be an important factor, but it’s very important for brokers and insurers to convey the value of their intangible product and the return on investment. Does your mid-market client understand the benefits of expert risk management, a reputable claims defense program, and best-in-class claims service? Brokers are uniquely positioned to help clients learn from the claims experience of other clients. Leading insurers use this knowledge to offer comprehensive resources to brokers and develop product solutions tailored for business needs.

Brokers can assess whether unclear policy language causes uncertainty for clients. Clients won’t buy into the cov-

erage if they don’t understand what the product offers or does not offer. Confusing coverage limits have traditionally been a pain point for many brokers. The good news is that transparent policy language does exist. Whether it’s a targeted product aimed at the operations of your small business client, or a bespoke policy tailored to the needs of your mid-market client, a straightforward policy declarations page and clear wording will help ensure that the client understands the value of the product.

FUTURE-PROOF INSURANCE

Successful businesses don’t ask whether they should grow their business, they ask how they can keep growing. It’s a no-brainer that brokers and insurers want to chase after successful and growing businesses when the client’s insurance needs are expanding at the same rate. As insurance professionals, we need to put ourselves in the business owners’ shoes. What areas of growth will our clients pursue and what challenges and issues will they eventually face? What resources and tools are available that are fit-for-purpose to help them overcome their obstacles? How quickly can brokers implement solutions that are clear and convenient for their clients? How can we “future-proof” our clients’ insurance policies as their businesses evolve?

MORE TO COME

How insurance is delivered and sold today is of utmost importance. One thing remains unchanged: there is always more to business insurance than meets the eye. No business is “small” or “simple” in the eyes of its owner. As insurance professionals, we need to create and deliver products that cover the risks of which the client is aware, and those of which they are not. We need to do this quickly and efficiently to deliver value for the client, the broker and the insurer. ■■■

Insuring the Intangibles

A shift in the global economy has changed the risks facing Canadian businesses. Companies are now calling for insurance solutions that protect their intangible assets.

Insurers are dealing with a shifting landscape. In addition to the impact of a warmer world, structural changes driven by technologic, economic, demographic, societal, and geopolitical trends are creating new risks and challenges for the insurance industry in commercial lines.



OVERVIEW OF BUSINESS RISKS

Climate Change

A back-to-back series of natural catastrophes led to record insured losses in 2017. The particularly active hurricane season, represented by Category 4+ hurricanes Harvey, Irma and Maria (HIM), coupled with wildfires, thunderstorms and heavy rainfalls, resulted in total insured losses of \$144 billion (all figures U.S.). Additionally, these events caused total economic losses of \$337 billion, leaving a global catastrophe protection gap of \$193 billion and thousands of people in need.

Although individual storms and hurricanes are never caused by a single factor, certain characteristics of HIM, and hurricane clustering in general, are expected to occur on a more regular basis in warmer climates. As mentioned by the Swiss Re Institute in the last issue of its Sigma report, “in the interest of societal resilience, further research on clustering of hurricanes and impact of global warming on storm formation is required.”

The effects of natural catastrophes in Canada were less severe in 2017, but they still affected our resources. We saw an increase in construction labour costs and materials, for example, causing strain on local projects since resources had to be dispersed.

We will continue to see the ongoing impact of cat events through severe storm activity and wildfires such as Fort McMurray in Alberta, which was the largest single cat event seen in Canada. The ongoing increased frequency of cat activity in Canada is consistent with the trends we are seeing globally.

Shifting Global Economy

The world economy is going through significant structural changes. Over a period of a few decades, the competitiveness of companies has increasingly come to rely on intangible assets instead of physical ones, in addition to the ability of a business to operate efficiently across borders.

This changing paradigm is creating new risks – for example, cyber, supply chain disruption – and shifting and expanding the demand for insurance from asset/balance sheet covers to earnings/cash flow protection. This transformation of the insur-



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ance industry triggers the need for new products and innovation around data analytics to provide clients with more holistic, global and end-to-end insurance solutions.

The developed and sophisticated Canadian commercial insurance market is directly impacted by these disruptive forces, which will put pressure on growth and profitability. For example, technology has been regularly cited in recent market studies as the main strategic priority of Canadian property and casualty insurers. In addition to insurance products responding to the technological challenge, developing technology-driven applications meeting the growing client demand for digital solutions will be key to maintaining a competitive edge and being prepared against the threat of new digital entrants.

From an overall market perspective, despite an abundance of capacity, the Canadian P&C market is expected to keep growing at a rapid pace further

supported by increasing interest rates and improved pricing conditions in certain segments.

The claims function will also be affected by these structural changes. For example, while claims frequency is on average expected to decrease thanks to better prevention methods and use of technology (e.g. sensors in cars to avoid collisions), the volatility and severity of claims is likely to increase due to climate change and a more integrated global economy.

New risks and new technologies will also change the profile of claims handlers. Less complex claims will increasingly be handled digitally, reducing the demand for lower-skilled claims handlers and creating a need for innovative claims handlers able to deal with a high level of complexity.

AGENDA FOR COMMERCIAL INSURERS

These changes in the global risk landscape are a challenge and have direct impact on commercial insurers. In addition

to the traditional P&C offering, commercial insurers will have to increasingly develop innovative risk solutions such as multi-year multi-line covers, non-physical damage business interruption, aggregate stop-loss, parametric and quality shortfall covers. For example, parametric insurance represents this new generation of index-based products automatically paying out pre-agreed amounts should the insured event breach intensity triggers (e.g. wind speed, earthquake intensity).

In order to respond to the particular needs of an industry or international businesses, the commercial insurance community will also have to develop more integrated solutions such as end-to-end covers which seamlessly provide coverage across jurisdictions. Overall, these changes will have an impact on how clients will be serviced, with client centricity becoming increasingly one of the main success factors in commercial insurance. ■■■



The Big Business of Small Business

Canada has more than 2 million small businesses. Here's how brokers can win over more clients in this huge market.



Shari Dodsworth
Senior Vice President,
Sales & Distribution
Northbridge Insurance

Unless you work in the industry, your understanding of insurance is likely going to be incredibly murky – even more so if you are a small business customer. When every penny counts, insurance coverage can quickly fall to the bottom of a small business owner's expanding list of priorities; especially if the reasons why they need it aren't exactly clear.

Research we conducted with small business owners last year found that about half don't have insurance because they think it's too expensive, and many don't bother with it at all.

This isn't a good reason for insurance providers to be dissuaded from working with small businesses. However small, this market is mighty: more than 2 million small businesses in Canada compose a whopping 98 per cent of our economy. This presents a tremendous opportunity for providers to change the perception of insurance coverage from a "nice-to-have" to a fundamental requirement for operations of all shapes and sizes. Small business owners have invested significant time and money into becoming their own boss, so advice on

how to protect what they've worked so hard to build will be welcomed by eager ears.

It's up to us as insurance providers to break through the daily noise engulfing busy entrepreneurs and build trust by offering sound advice where and when it matters most. Here's how.

BECOME AN ACTIVE PARTNER

Small business customers are very proud of their role in the Canadian economy; they want suppliers to understand and respect that. Business owners don't want to feel like they are an afterthought – that perhaps suppliers and vendors will get back to them only when they're done assisting larger customers. Small businesses want to work with insurance providers that treat them like true partners who will help them make the right choices for their business.

So, what steps can brokers take to ensure that they're not just covering customers, but are an active partner in their risk efforts? Connect with customers outside of the renewal process by routinely sharing information on industry trends and insights. Schedule time to check in with them and discuss how this might impact their business. There's an opportunity to help mitigate common risks associated with their industry through ongoing education and communication, which will deliver value and help them succeed in the long run.

SHOW, DON'T TELL THEM HOW YOU CAN HELP

It's a myth that small business customers always look for the cheapest insurance. They're often just looking for the best coverage they can afford, and they might not understand the risks facing their business. With that in mind, they rely heavily on their broker to boil it down and tell them what's right for their business.

Using case studies and testimonials, take the time to break down technical jargon and speak plainly with your small business clients. Guide them through

different scenarios involving their industry and let them see themselves in another business owner's shoes. Help them to take an active role in ensuring that they have the appropriate coverage and limits associated with the risks to their business. Entrepreneurs are often hungry for information. They'll appreciate that you took the time to teach them about a new aspect of their business and leave with a better understanding of your role in their success.

BE RESPECTFUL OF THEIR TIME

Small business owners wear every hat when it comes to running their business. They're chief financial officer, chief marketing officer – chief everything officer. They don't have a lot of time, so make it as easy as possible for them by offering the option to communicate via text, phone, or email. If they don't have time for a face-to-face meeting, be open to whichever method they'd prefer. Be mindful of the irregular hours they might keep. It goes without saying that when you do capture their attention, use their time wisely.


LEVERAGE TECHNOLOGY TO STAY AHEAD

Look for different ways that technology can help you deliver your value proposition to customers. Before the Internet, customers used to come to suppliers for information. Today, everyone's going online first. While this can lead to misinformation circulating around the web, it also provides an opportunity for brokers to attract small business customers during the research process and gain their trust as a credible source of information.

Insightful web content can be a great way to inform and engage both new and existing customers. For example, industry-specific case studies or online tools that guide customers through coverage options can quickly demonstrate value. When customers are researching, they'll find your information through search engines and gain a better understanding of what they need, regardless of what business they're in. Insights through additional online platforms like social media will also help to attract and engage a busy audience.

PARTNER WITH LIKE-MINDED ORGANIZATIONS

Beyond advising on coverage, insurance professionals can play a larger role in connecting customers with the right tools to help them succeed. Working with suppliers and organizations that serve similar industries is one way to ensure customers have access to a broader support network and other convenient services. Consider partnering with business associations to connect their members with specialized insurance resources and services that can help them grow.

The evolution of small business insurance might make it easier for this type of client to research and find solutions, but it doesn't mean they want to be left to their own devices. Small business owners value the advice that their insurance brokers provide. They will welcome your assistance. You just need to reach out and ask. 



Opportunity in Surety



Andrew Cartwright
Assistant Vice President
Trisura Guarantee
Insurance Company

Ontario's new construction liens act will open the door for brokers to secure new construction industry clients who now require surety bonds.

Payment delays are one the biggest barriers in the construction industry to investment, productivity and employment. This issue provided the impetus for the *Construction Lien Amendment Act*, Bill 142, which recently passed after an 87-0 vote in the Ontario Legislature. The legislation intends to bring about long-awaited improvements for the Ontario construction industry starting partially in July 2018.

The impact on the insurance and surety market in Ontario includes the following:

- Expanded market for surety bonds in Ontario, as the act now prescribes mandatory bonding on publicly funded projects.
- New contractors requiring bonds that did not require bonds in the past or existing contractors requiring additional surety support.
- Improvements to the lien legislation that create more stringent requirements for contractors around payment and holdback release; this will have a ripple effect on both contractors' cash flow and surety underwriting.
- Amendments to the bond forms in Ontario. This will provide enhanced coverage for the public buyers of surety bonds, but may also result in additional risks for contractors and sureties.
- Sureties may be required to participate in a new adjudication process to resolve construction disputes. This new adjudication process is slated to be rolled out in October 2019.

Basic rundown of Bill 142

- Much-needed updates to 35-year-old legislation include payment protection throughout the construction pyramid.
- Contractors and sub-contractors now have security and assurance about timelines for payment.
- Mandatory performance and payment bonds on public funded projects over a threshold contract price (much like the Miller Act in the USA).
- The judgement process will provide a chance for resolution of construction disputes without disrupting project schedules. Furthermore, it will assist in avoiding costly legal battles.
- No exceptions rule to hold-back release deadlines. This means a no-exceptions rule for when contractors and sub-contractors are paid.
- Mandatory payment protection for sub-trades.

The Ministry of the Attorney General of Ontario has just recently released the supporting regulations to the act. More than 400,000 workers are in the province's construction sector; their employers will soon see benefit from the legislation. With interest rates on the rise, the timing is good for this legislation to ensure that an additional financing burden is not entirely borne by the contractors.

Time will tell whether similar legislation will be introduced elsewhere in the country. The new legislation is limited to Ontario, but there is potential for a national impact. Other provinces are looking into prompt payment laws of their own and are watching to see how Ontario rolls out its new legislation. The impact of the new law in Ontario could provide guidance to other provinces on how similar legislation might be implemented.

The new legislation represents a big opportunity for brokers. Brokers can assist their clients in understanding the new legislation and how it might affect their business.

Different industry stakeholders have worked together to develop an updated bond form for public projects in Ontario. The proposed developments outlined above are certainly positive and will provide public owners with additional improvements around surety responses and coverage. That said, it may also mean additional risk for surety companies and contractors.

This is certainly a golden opportunity for brokers to secure new clients who had not required bonds before. Many owners of construction projects had already been using bonds. However, some had their own prequalification and risk management protocols whereas now they will be using bonds moving forward, the Ministry of Transportation being one example.

CANADIAN CENTRE FOR ECONOMIC ANALYSIS (CANCEA)

During the early part of the lien act review process, The Surety Associa-

tion of Canada (SAC) commissioned a report from The Canadian Centre for Economic Analysis (CANCEA). The report yielded a fair look at the value of surety bonds in Canada. The findings strongly supported the economic value of surety bonds in protecting the construction process and the wider economy.

The CANCEA report was useful in proving the value of our industry's primary product. Through our association with SAC, we took part in discussion and development about surety bonds and their role in the lien act review. We're excited about the results and look forward to further progress.

The construction landscape continues to shift. A new movement towards electronic bond forms is becoming a requirement of tendering authorities. We are providing certain brokers and contractors access to a free online platform to procure electronic bonds. ■■■

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What's New in Nuclear Claims Handling



A pool of Canadian nuclear insurers has created a state-of-the-art, made-in-Canada claims administration system for handling nuclear incidents.

The Nuclear Insurance Association of Canada (NIAC), a domestic pool of Canadian insurers and reinsurers, has developed a new, made-in-Canada, end-to-end claims administration system to respond to nuclear claims.

Two legislative changes last year prompted the development of NIAC's innovative claims solution. First, the *Nuclear Liability and Compensation Act* (NLCA) came into force in January 2017, broadening the heads of damages for eligible claimants and increasing operator's limits of liability to \$1 billion. Second, Canada entered into the *Convention on Supplementary Compensation for Nuclear Damage*, a multilateral international treaty to establish a global nuclear civil liability regime.

Taken together, these two milestones called for a new approach to claims response.

"Nuclear liability claims are completely unique because they combine the most challenging aspects of a catastrophe-type claim, a class action type claim, and a casualty-type claim," Wendy Hayden, manager of underwriting and operations for NIAC, said at the 2018 Leadership Forum held on March 1 in Toronto.

Elaborating in response to questions from *Canadian Underwriter*, Hayden noted that claims related to nuclear incidents would be third-party losses as opposed to first-party losses, which changes the relationship between claimants and the insurers.

"A large number of cat losses are weather related and there would likely be a number of insurers handling claims for their customers," Hayden says by way of example. "Most commercial, homeowner and automobile policies exclude nuclear peril, so the losses would not be first-party, but rather third-party losses handled by insurers of the nuclear operator."

Nuclear operators are required to carry insurance using the policy wording approved by Natural Resources Canada in accordance to the *Nuclear Liability and Compensation Act* [NLCA].

MADE-IN-CANADA APPROACH

After two years of consultation with experts in Canada's property and casualty insurance industry, NIAC developed a multi-faceted, made-in-Canada claims administration system. In addition, NIAC can provide centralized claims administration with the common goal to protect the public on behalf of all payors; this initiative was encouraged by the federal government.

The system "brings the complex world of nuclear to the complex world of insurance by delivering an innovative system for managing high-frequency, low-touch claims," NIAC says.

One crucial aspect is scalability of claims response. "Coupled with multiple factors of a cat loss, the capability to scale claims administration for the event is important," Hayden says.

"For example, we have considered factors such as a loss in an urban versus rural location, where population size would vary, or an evacu-

ation versus a non-evacuation scenario. In each instance, we have considered what NIAC would need to do to handle claimants' needs in a responsive, fair and equitable way."

NUCLEAR CLAIM RESPONSE

Another notable aspect of the claims administration system is the difference between emergency response – which is the responsibility of the nuclear operator and government – and claims response.

For example, once NIAC is aware of a nuclear incident, it would receive notification and collect information from the operator. NIAC would also get information from other stakeholders as to what is known about the specific event. Using this information, a NIAC team would meet to make an initial assessment.

This assessment would determine the scale of the claims response, as well as what would be required over the next 24 or 48 hours. It would involve communicating with NIAC's pool members, other payors, and the adjusting firm with which NIAC partnered for claims services to start engaging with claimants.

The emergency claims administration phase is expected to last anywhere from weeks to several months, but it would not likely be the full length of the response.

"After the emergency claims response is the second recovery claims response phase," says Hayden. "These will be the more complex claims, and the ones that take longer to settle. They will be settled in the more traditional way of handling claims. You'd get the claim, you'd start investigating it, and experts would be consulted." If the total amount of claims gets close to policy limits, NIAC would notify the government and they may wish to initiate the tribunal, as set out in the NLCA.

The claims administration system has a claims website ready to be "switched on" to go live in the event of a nuclear claims situation. Claimants would be

able to file a notice of loss electronically, in addition to using a dedicated call-in telephone number to the call centre.

Social media is part of the claims response communications strategy for getting information out to the public. "Lessons learned from recent events such as the Fort McMurray wildfires and hurricanes affecting the eastern sea-

board of the United States is that there is value in having a social media network ready for dealing with communications that works in conjunction with NIAC's claims administration," Hayden told *Canadian Underwriter*. "We believe social media is important for our customers, claimants as well as other valued stakeholders." ■■■

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Will top court give waivers a sporting chance?

David Dias
Freelance Writer



Why the fate of insuring sports and recreational facilities hangs in the balance.

Businesses engaged in sports and recreational activities may have to dramatically alter their operations next year if the Supreme Court of Canada sides with plaintiffs looking to strike down liability waivers that protect against injury claims.

Plaintiffs' counsel in *Schnarr v. Blue Mountain Resorts* (as well as a companion case, *Woodhouse v. Snow Valley Resorts*) have told *Canadian Underwriter* that they will seek leave to appeal to the Supreme Court by the end of May, after losing recently at the Ontario Court of Appeal.

Shantona Chaudhury, a litigator at Pape Barristers P.C. who represented David Schnarr in the case, says the appeal court decision "really waters down the scope of consumer protection in favour of these waivers. ... So we shall see."

If they succeed, insurers say it could make many recreational activities uninsurable. But for now, the plaintiffs are on the back foot, says Jeff Smith, who follows the law closely as vice-president of sport and recreational insurer Markel-Allsport.

LEGAL ODYSSEY OF WAIVERS

Courts across the country have consistently upheld the validity of liability waivers, says Smith. Still, he admits that waiting for the Schnarr decision was particularly nerve-racking. "We were quite concerned, and we were following it closely, because it is a real conflict and it was a novel and logical argument being presented by the plaintiffs."

Instead of challenging the wording or scope of the waiver, lawyers for the plaintiff argued that the legal issues in the case should be governed by an entirely different statute, the Consumer Protection Act [CPA] and not by the commonly accepted governing statute, the Occupiers Liability Act [OLA].

That's important because, unlike the OLA, the CPA prohibits the kinds of liability waivers upon which Blue Mountain relied. Chaudhury acknowledges that these are "really tough ques-

tions" for the court. Because "guests" of ski resorts could also be viewed as "consumers" of ski services, the case was a matter of interpretation.

Courts are supposed to bend over backwards to find harmony wherever possible between laws that seem to be contradictory, says Chaudhury, who added that mutually contradictory laws are simply not supposed to happen. But Ontario Court of Appeal Justice Ian Nordheimer, in his March 28 ruling, came to the exceptionally rare conclusion that the statutes are in fact "irreconcilable."

In such cases, established jurisprudence demands that the more specific statute — in this case the Occupiers Liability Act — must govern. And so the court ruled unanimously in favour of the defendant, Blue Mountain.

WHAT'S AT STAKE

Any finding to the contrary, Smith says, would have had a devastating impact on the sports and recreational industry, rendering activities like skiing, biking and scuba diving virtually uninsurable. Even non-profits like boy scouts would find themselves up the proverbial creek, unable to afford insurance for things like rafting or other wilderness excursions.

"Once you remove that mechanism, you're going to open up the floodgates to any sort of minor injury," says Smith. "I really don't think that it would be practical to insure any of these entities, and businesses just wouldn't be able to operate."

THE LIMITS OF WAIVERS

While the courts have so far upheld liability waivers, these contracts are not foolproof, says Robert Betts, the lawyer at Beard Winters LLP who represented Blue Mountain. Minors, for one thing, are unable to legally contract with parties, so they can't waive their right to sue.

Betts also points out that any waiver is only as good as it is written. Ski resorts like Blue Mountain have done a good job of issuing uniform contracts perceived to be the "gold standard" in liability waivers. These waivers employ all-encompassing language that covers nearly every eventuality — including

negligence on the part of the operator.

The explicit wording is necessary, says Betts, because if the waiver fails to cover a specific risk or injury, however obvious, the claims are actionable. "You don't get any of these kinds of arguments if you've got a properly drafted waiver," he says. "Absent that, none of the case law matters. It all starts with proper documentation, and a well drafted waiver."

Documentation around safety maintenance — policies, schedules and reports — will go a long way to help an operator prove adequate systems were in place, particularly when the operator can't rely on an ironclad waiver (in the case of a minor, say).

Operators must also be careful to present the waiver in an intelligible manner. Whether the guest reads the waiver is actually irrelevant (see *Goodspeed v. Tyax Mountain Lake Resort*), but the operator has a duty of presenting the waiver in such a way that the guest understands that physical risks are being assumed.

Even if the waiver is written properly, though, courts have discretion to render it unenforceable if the plaintiff can demonstrate an "unconscionable" level of negligence. "Let's say you had an operator that was operating a paintball facility but didn't hand out any kind of safety equipment," says Betts. "[A court might say] their conduct was so far below the standard that it's unconscionable to enforce the waiver."

Then there's the "sympathy factor," says Smith at Markel-Allsport. Regardless of the strength of the waiver, he says, when plaintiffs have suffered catastrophic injuries, courts are more likely to hear the case, thereby putting pressure on insurance companies to settle.

You won't often see a waiver case involving a 22-year-old who was in a wheelchair go to trial because of the risks associated with those decisions, says Betts. "Damages could be potentially \$10 million plus, even if you've got a waiver. There's still a lot of risk in that case."

When cases do get to trial, though, the liability waiver can serve a secondary purpose: leverage. "More often than not, it's used as a negotiating tool to get a discounted settlement," says Betts. "Practically speaking, that's often what a waiver is used for."

Critics of the current waiver regime, including the Province of Ontario, which intervened in the case on behalf of consumers, suggest that patrons of ski resorts and other sporting facilities are endangered by blanket liability coverage. But Betts points out that despite waiver protections or the lack thereof, operators have plenty of incentive to keep their parks safe.

"I find the operators that we work for are heavily invested in risk management," he says. "If you're operating a business where there are constantly accidents and injuries to your patrons because of your own negligence, the business, leaving aside any waivers, is going to fail."

The same can be said, needless to say, if operators are unable to access insurance. ≡

APPOINTMENTS



Dan Pinnington

LAWPRO announces the appointment of Daniel E. Pinnington as President & Chief Executive Officer.

Joining LAWPRO in 2001 as Director, practicePRO, Mr. Pinnington has been the driving force behind the practicePRO program, LAWPRO's innovative and internationally recognized claims prevention initiative. His

unique combination of practice experience and technology knowledge enabled him to provide lawyers with tools and resources to help them avoid malpractice claims and succeed in the practice of law. In 2012, Mr. Pinnington was promoted to Vice President, Claims Prevention & Stakeholder Relations. In that role he continued to oversee LAWPRO's claims prevention work and took on responsibility for the company's communications, stakeholder and government relations efforts. Mr. Pinnington is a Fellow of the College of Law Practice Management.

"I am looking forward to continuing to work with the amazing staff at LAWPRO. It is a privilege and honour to be able to lead the organization through these exciting and changing times," said Mr. Pinnington.



Victoria Crewe-Nelson

We are proud to announce that Victoria Crewe-Nelson has been appointed Vice President, Underwriting at LAWPRO.

As Vice President, Underwriting, Victoria has primary responsibility for the preparation, placement, and maintenance of reinsurance and corporate insurance. She plays a lead-

ership role in the analysis of program changes and improvements and ensures adherence to regulatory, program and underwriting requirements.

Victoria was called to the Ontario bar in 2003 after completing a B.A. and LL.B. through studies at the universities of Toronto, Ottawa and Edinburgh. Before joining LAWPRO in 2012, Victoria gained experience in practice areas including corporate/commercial, litigation, estates and trusts, real estate, and admiralty law. A past instructor with the bar admission course, Victoria has been published on topics including professional liability, the *Limitations Act*, class actions, family law, and parental responsibility.

LAWPRO is a wholly Canadian-owned insurance company providing professional liability insurance and title insurance in numerous jurisdictions across Canada. The primary malpractice insurance program currently insures over 27,000 practising lawyers, as well as providing them with risk and practice management programs to assist them in their law practices.

LAWPRO®
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Beware the One-Page Appraisal



Kelly Juhasz
Principal
Fine Art Appraisal +
Services



Darlene N. Wong
Personal Property
Appraiser, Owner
Brilliant Evaluations &
Appraisals

Insurers are increasingly rejecting one-page appraisals for valuable property such as jewelry, artwork or antiques – and for good reason.

As an insurance advisor, you have likely been presented with a one-page appraisal report for personal property such as artwork, jewelry or antiques. This seemingly simplified form can complicate your life immensely.

Here's a common scenario: a client hands in a one-page appraisal report written by the business where she originally bought her object. The business told her they did appraisals. However, when she submits the one-pager to her insurance company, the carrier won't accept it. Now either she or her insurer are calling us as qualified appraisers.

The value of some fine art, jewelry and other collectibles has increased substantially; for other objects, it has fallen drastically. Given the fluctuation in value, clients need to know that their insurance company will accept their claimed values and that their coverage for treasured assets is accurate.

Insurance brokers and claims adjusters who rely on appraisal reports to make decisions about their clients' futures are insisting on independent, impartial, and objective opinions of value.



WHAT'S WRONG WITH THE ONE-PAGE REPORT?

The industry is increasingly rejecting the one-page report – and for good reason.

The one-page report may not contain the proper description information or include photographs of the object. It may not be signed by the person who created it, and it may not include the credentials of a qualified appraiser.

Using jewelry as an example, the one-page report may not have been prepared by a qualified gemologist, goldsmith, or by someone who was also a qualified personal property appraiser. He or she may not have a solid understanding of appraisal methodology that is backed up with extensive training, accepted standards and rules, and an industry agreed-upon reporting format. Proper jewelry identification is only part of the appraisal process.

In a one-page report, there is often neither a justification for the value given nor a market analysis stating where the value opinions were developed. There may not be an accepted definition of value tied to the purpose of the appraisal. And the desired value definition, if present, may not be correct for the purpose.

Appraisal reports have different purposes. Each purpose requires the use of different valuations, which may in turn require the use of different approaches and markets to estimate the values. Different purposes may result in different estimated values for the same or similar objects. Only a qualified appraiser has the understanding and training to know how to proceed.

praised, wants to charge a percentage of the objects' values, and/or has a current or future interest in the objects valued, unless they disclose their interest or past history with the objects.

Always work with a qualified appraiser and be certain of the value. Save your clients, your company, and yourself time and money.

QUALIFIED APPRAISALS AND APPRAISERS

In the marketplace, the term "appraisal" may be used synonymously with "sales estimate," but it may not be a qualified appraisal report.

If a client needs insurance coverage or must submit a claim for damage or theft

- the date(s) and location of inspection, and the effective date of value; and
- the appraiser's qualifications and signature.

A credible appraisal report will contain the "Appraiser's Certification," which is customized to each appraisal assignment.

As an insurance advisor, you want to make sure that the people performing the appraisals are in fact qualified. This is part of your due diligence and risk assessment, not to mention part of your client customer service. Qualified appraisers have:

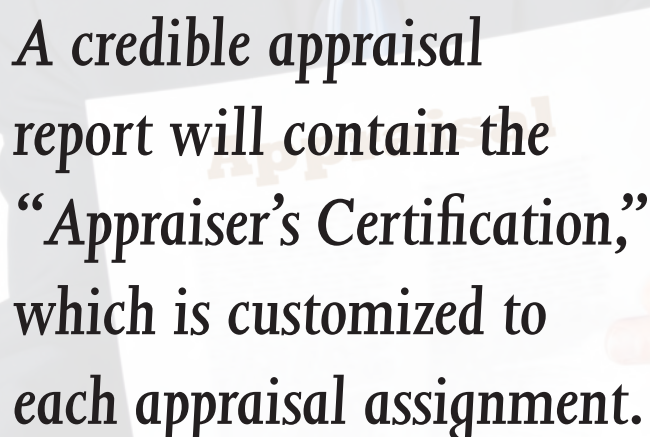
- training in appraisal methodology;
- market expertise and post-secondary education or additional qualifications in their specialty areas;
- years of appraisal experience; and
- hold a current membership in a recognized personal property association such as the International Society of Appraisers (ISA).

A qualified appraiser will offer an impartial and professional market analysis and opinion of value. This means that a qualified appraiser will never offer to buy the appraised object, likely didn't sell the client the object originally, and will not have any reason to provide an estimate that favours the client.

An appraiser develops and reports an opinion of value on a specific type of property. Some personal property appraisers may choose to specialize in just one area of practice, but many appraisers practice in more than one specialty. In addition to fine art and jewelry, specialties also include coins, sports memorabilia, decorative arts, photography, wine, and more.

Qualified appraisers work to the methodology, rules, and standards set out by the Uniform Standards of Professional Appraisal Practice (USPAP). This qualification must be updated every two years. To ensure appraisal experience, look for an appraiser who is a current member of the ISA.

ISA appraisers must prove formal education in their specialty areas and perform a minimum of 75 hours of continuing education and over 700 hours of appraisal-related services every five years. ≡



A credible appraisal report will contain the "Appraiser's Certification," which is customized to each appraisal assignment.

An effective date attached to each appraisal defines the date to which the appraiser needs to focus his or her attention to determine the value. The appraiser might need to understand the market and look up exchange rates from years ago. A one-page report may not contain that effective date, the date the appraisal was created, and/or the date the object was inspected.

Do not accept an appraisal report if it is handwritten or unsigned; if the fee is based on a contingency or upon the value of the property; and/or if the appropriate purpose and assigned use are not stated and defined.

Instruct your clients to avoid a person who claims to be an appraiser who offers to purchase the objects to be ap-

praised – or if they want to donate to a charity or need to divide their assets because of a death or divorce – they will require a qualified value. And a written, qualified value fills more than one page.

A QUALIFIED APPRAISAL REPORT HAS:

- a cover document explaining in detail what type of value is being sought ("purpose") and how the appraisal is to be used ("assigned use");
- the methodology and resources relied upon, including a market analysis and market(s) selected;
- a complete and accurate description of the property written in such a manner that it can be identified without photos but will also contain photos;

Who's at fault?



A guide for assessing the liability of machine drivers when they don't live up to the standards of human drivers.



Adam Campbell
Senior Associate,
Human Factors
—30— Forensic
Engineering

Who is to blame when a human operator could have performed better than their self-driving car?

The widely reported fatal collision in Arizona involving a pedestrian and a late model SUV outfitted with autonomous driving technology has raised questions about the technology's safety and readiness for today's roads.

While there are both technical challenges and ethical questions stemming from this unfortunate event, one of the most pressing among them will be in determining the extent of liability to attribute to the autonomous system, regardless of whether there are allegations of its failure.

Determining the cause of a collision is crucial to understanding the liability landscape.

When humans are behind the wheel, there are known limits and ranges of behaviour to be expected of normal, attentive drivers. The con-

sequences of departures from normal behaviours can then be studied directly through computer simulation of alternative scenarios.

However, when an autonomous vehicle is involved in a collision, there is – at least, so far – no clear understanding about the standard to which the technology should be held. If there is no benchmark for the expected capabilities of an autonomous vehicle, how can the extent of liability be properly attributed? These and related questions should be at the forefront of the legal and insurance industries as they begin to navigate this uncharted territory.

The intent of autonomous vehicles is essentially remove the human element from the system. It may therefore be a prudent test of liability in autonomous vehicle collisions to determine what a human operator of the vehicle would have done had they been engaged in the task of driving instead of self-driving technology. In effect, normal

human behaviour may serve as a logical benchmark for the minimal capabilities expected of autonomous technologies. Simply put, if self-driving cars cannot behave as well as a human driver in a given situation, there is limited justification to fully remove humans from the equation.

THE COLLISION: WHAT HAPPENED?

As an example of this approach, consider a hypothetical assessment of what a human operator could have done under similar conditions as those confronted by the autonomous vehicle that stuck a pedestrian. The reader should not interpret this article to be an investigation of actual collision circumstances.



Figure 1: Screenshot of the onboard forward-facing video camera showing the pedestrian and bicycle moments prior to impact.

Onboard video camera footage from the autonomous vehicle captured the collision and the moments preceding it. The female pedestrian was observed in the footage walking with a bicycle in an eastbound direction (from the driver's left to right), wearing blue jeans and a black top. The bicycle had a red frame, with no obvious reflector materials visible (Please see Figure 1). The vehicle did not appear to autonomously engage in evasive action (such as hard braking or steering) prior to impact, indicating a complete failure to react to the pedestrian.

Given the information available, some assumptions can be made for a hypothetical assessment of this event. For the pedestrian, let's assume that she was walking her bike at an average speed

for adult females of about 1.3 metres per second (m/s). For the vehicle, we will assume that it was travelling at the speed limit of 45 mp/h, or 72 km/h.

HUMAN INTERVENTION

Under nighttime conditions, a human operator should consider the approaching pedestrian as an obvious hazard when she was first observed nearing the lane of the northbound SUV, and when the pedestrian was sufficiently illuminated to allow for her detection.

To determine the distance at which the driver could first observe the pedestrian, it can be conservatively assumed that the sole light sources in the area

to begin evasive action prior to impact, initiating braking/steering when the vehicle was approximately 23 metres away from the impact location.

This braking may have allowed for two alternative outcomes. First, braking by a human operator could have allowed the pedestrian to pass in front of the vehicle and avoid impact altogether. Damage to the SUV was reportedly sustained to its right front, meaning the amount of braking expected of a human operator would delay the vehicle's arrival by just enough for the pedestrian to have cleared the vehicle's path.

A second possible outcome is that the collision may still have occurred but, if so, at a significantly lower impact speed. Had a human operator detected the pedestrian and braked (as expected), the SUV could have slowed to about 23 km/h when it arrived at the impact location. At this speed, a fatal outcome or a serious injury requiring hospitalization would not be expected.

FOOD FOR THOUGHT

The point of autonomous driving technology is to remove the human element from the driving ecosystem. As a by-product of these technologies, the potential for human intervention in critical collision situations is significantly and purposefully limited.

The overarching expectation is that the hazard detection technology onboard an autonomous vehicle would identify a pedestrian or any other hazard earlier than a human operator could and react more quickly, preventing more collisions. However, this recent event demonstrates that autonomous vehicles are still unable to perform to the level of human capacity in certain situations.

Benchmarking the performance of autonomous technologies against the performance expected of a human operator can provide some clarity to the legal and insurance industries in the complexities of attributing cause and liability when autonomous vehicles are involved in collisions, regardless of whether there is an allegation of technological failure or malfunction. ≡

were the low-beam headlights of the SUV. This assumption provides for the worst-case scenario for the driver, by assuming that the streetlights made no contribution at all. Based on the lighting for new bulbs in the involved SUV, a pedestrian dressed in dark grey clothing would be detectable by an approaching driver when the vehicle and pedestrian were 53 metres and 3.4 metres away from the impact location, respectively. Following detection, evasive action (braking and/or steering) would begin 1.5-seconds later for an 'average' driver.

WHAT DOES IT ALL MEAN?

Considering the hypothetical scenario detailed above, this analysis approach suggests that a human operator of the northbound SUV would be expected



Putting the pieces together.



Events and Seminars Calendar

CIP Society Events and Seminars give you the opportunity to learn, to network, to catch up on industry developments and to advance your professional and career development.

CIP Society Seminars

Kitchener—Personal to Commercial Boot Camp	June 7
Kitchener—Cannabis: Insurance & Risk Management Implications.....	June 11
Webinar—Insuring Unique Homes	June 15
Webinar—ADVANTAGE Live: An Update on Automated Vehicles in Canada	June 19
Calgary—Condominium Insurance Claims	June 20
Webinar—Manufacturers & Wholesalers.....	August 16
Webinar—Commercial Risk Assessment	August 29
Hamilton—The Connected Community.....	September 11

CIP Society Events

Vancouver—Annual Golf Tournament	June 15
Edmonton—Annual Golf Fun Day.....	June 18
Victoria—Annual Golf Tournament.....	June 20
Calgary—Battle of the Insurance Bands	June 21
Ottawa—Wine & Cheese	June 28
Kelowna—Annual Okanagan Boat Cruise.....	July 12
Hamilton—Annual Volleyball Tournament.....	August 29
London—Annual Golf Tournament.....	September 7

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UPCOMING EVENTS: FOR A COMPLETE LIST VISIT
www.canadianunderwriter.ca

1 **Albert Poon** [1a], most recently president of Cunningham Lindsey Canada, will remain a key part of the team following Sedgwick Claims Management Services' recent acquisition of Cunningham Lindsey. **Michael Holden** [1b] was named president of Sedgwick-Cunningham Lindsey's combined operations in Canada on April 18, two days after the merger was completed. Both Memphis, Tenn.-based Sedgwick and Tampa, Fla.-based Cunningham Lindsey have offices in Canada.

2 **Mo Kaur** will assume the role of president and chief operating officer of Premier Group. Kaur has been part of the Vancouver-based managing underwriting agency for six years. She has served as senior vice president for the past five years. She brings more than 25 years of insurance experience to the role, beginning her career in London, England for Royal Insurance, and serving in various underwriting and management positions with insurers in the Western Canada marketplace. Kaur succeeds Troy Moreira, who has held the position since late 2001.

3 **Sarah Robson** [3a] is replacing **Chris Lay** [3b] as president and CEO of Marsh Canada, the New York City-based commercial brokerage announced in April. Robson, managing director in Marsh's United States business, and global relationship manager in Marsh's Insurer Consulting Group, is a former specialties leader at Marsh Canada. Lay was appointed president and CEO of Marsh Canada in 2016. Marsh intends to name Lay CEO of its United Kingdom and Ireland region, subject to regulatory approval. Robson has worked for Marsh for more than 25 years, beginning her career in Canada as an underwriter at Chubb.

4 Gore Mutual Insurance Company has hired a former Marsh Canada executive to lead the brokerages it owns. Those brokerages - Noble, Jamieson-Hilts, and St. Clair - will now fall under a new subsidiary, known as Insurance Store Inc. Effective April 11, Insurance Store's new president is **Phil Dynes**, formerly Marsh Canada's senior vice president and office head in London, Ont. With offices in Collingwood,



1 a



1 b



4



9

Barrie, and Alliston, Noble was acquired in the summer of 2017. Jamieson-Hilts is based in Woodstock. St. Clair, based in Windsor, also has offices in Chatham and London.

5 Claims adjusting firm Catastrophe Response Unit (CRU) has made Paul Robertson managing director of Maltman Group International, which CRU acquired in early 2015. Robertson, who joined Maltman's in 2016, has claims adjusting experience in construction, environmental and professional li-

ability. Based in Markham, Ont., CRU has hired Varma Singh as assistant director for Maltman's. He previously worked in claims for AMF Underwriting Management, Catlin, Travelers and AIG.

6 Carlton Insurance Brokers Inc. of Jasper, Alta., which specializes in commercial auto and oil and gas, has been acquired by Hub International Limited. Terms of the deal were not disclosed. Carlton Insurance CEO Tony Carlton will report to Doug Lyall, vice president of sales of Hub Barton, and Elizabeth Fiegehen, vice president of


2

3a

3b

10

11

operations at Hub Barton. In addition to commercial auto and oil and gas, Carlton's insurance offerings include ridesharing, personal and commercial auto, homeowners and tenants.

7 Bob Gunn, former CEO of both London-based RSA and its Canadian branch, was re-elected recently to the board of directors of Fairfax Financial Holdings Ltd. Also re-elected to Fairfax's board was Brandon Sweitzer, president and CEO of Guy Carpenter and Company from 1996 through 1999. The elections were announced

April 27 after Fairfax's annual general meeting. Fairfax is the corporate parent of Northbridge Insurance and OdysseyRe.

8 Pario Engineering & Environmental Sciences LP has hired Martin Grech as senior vice president of operations. Pario, which is owned by SCM Insurance Services, provides a variety of insurance and risk-related services including accident reconstruction, environmental consulting, spill response, site assessment, contaminated site remediation and hazardous materials identifi-

cation. Grech was previously a consulting manager in the human capital practice at a financial services firm.

9 On Side Restoration Services Ltd. has hired **Derek Van Geffen** as its branch manager in Van Geffen's home town of London, Ont. His previous experience includes claims support after the Fort McMurray, Alberta wildfire in 2016. Van Geffen's qualifications include: applied microbial remediation technician; fire and smoke damage restoration technician; water damage restoration technician; applied structural drying; and asbestos worker and supervisor.

10 **Sheldon Wasylenko** is among the brokers acclaimed to the board of directors of Centre for Study of Insurance Operations. He previously served as presi-

dent of the Insurance Brokers Association of Saskatchewan. By day, Wasylenko is general manager of Saskatoon-based Rayner Agencies Ltd., a firm owned by his family. CSIO held its annual members' meeting in April. Also acclaimed to new two-year terms on CSIO's board were: Steve Earle (W.C.L. Bauld Insurance Brokers); Mathieu Brunet (MP2B Insurance inc.); Sean Christie (Gore Mutual Insurance Company); and Christopher Harness (Northbridge Financial Corporation). CSIO chair Steve Whitelaw, vice president of strategic planning and execution for Travelers Canada, has another year in his current term.

11 ClaimsPro has appointed **Chantal Rhodenizer** as director of insurer management services. Rhodenizer, who has worked for ClaimsPro since 2014, was previously national account manager. ClaimsPro is owned by SCM Insurance services. Rhodenizer reports to Kumar Sivakumaran, vice president, national operations. 



GALLERY

GO BIG! was the fitting tagline of the **2018 RIMS** conference, held in the great state of Texas from April 15 to 19. San Antonio – now in its tricentennial year – hosted the proceedings, which included a massive tradeshow, keynotes and seminars, and numerous social events run by the **Risk Management Society** or conference sponsors. *Canadian Underwriter's* busy after-hours schedule included functions held by **AIG**, **Crawford & Company**, **Sedgwick** and **XL Catlin**, plus the ever popular **RIMS Canada Night**, sponsored this year by **AIG**, **Aviva**, **Canadian Litigation Counsel**, **XL Catlin** and **Zurich**. Thank you all!



GALLERY

See all photos from this event at www.canadianunderwriter.ca/gallery



GALLERY

See all photos from this event at www.canadianunderwriter.ca/gallery

The British Invasion was the theme and All You Need is Love was the mantra of the **2018 WICC Ontario fundraising gala**, held May 2 at Toronto's Fairmont Royal York hotel. More than 600 guests enjoyed a meal of traditional British fare and entertainment from Beatles tribute act The Caverners, who played their pre-dinner set in full Sgt. Pepper's garb – perhaps inspired by the many guests who, literally, wore the U.K. on their sleeves. (The night's prize for best costume went to AIG Canada's Lynn Oldfield and her pet Corgi.)





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