Hello ORIMS members

By: Paul Provis, ORIMS Vice President

ORIMS has had over the past year. As mentioned previously, our Professional Development sessions have been top quality. The sessions have been moderated by a professional speaker and for the first time, have been approved for RIBO accreditation. All sessions have been well attended which is a testament to the interesting and relevant subject matter. Our Christmas luncheon once again remains one of the best attended events in the industry with over 700 people bearing a winter snowstorm for an afternoon of fun at the Westin. Through your generosity, ORIMS was able to present a $10,000 donation to the Daily Bread Food Bank. The annual Edward Ricketts curling bonspiel was held in February at St Georges curling club. Again, through members’ generosity, ORIMS was able to present a $3,000 donation to WICC.

Over the summer the ORIMS Board will be meeting to strategize another exciting year for our membership with top quality professional development sessions and of course our fun social events. On behalf of the ORIMS Board, thank you for your continued support and we hope to see you out at some of our upcoming events.

Out on a Limb? That’s Your Problem

By: Sean Murtha, Thomas Gold Pettingill LLP

It is an unfortunate reality that property owners are often sued when someone is injured on their property. This is true even in cases where the injury was entirely caused by the negligence of the injured party. However, in a decision that is sure to please both property owners and their insurers, the Ontario Court of Appeal dismissed a claim against a municipality in which the teenaged appellant was gravely injured after falling from a tree in a municipal park. The tree itself is an unfortunate reality that property owners are often sued when someone is injured on their property. This is true even in cases where the injury was entirely caused by the negligence of the injured party. However, in a decision that is sure to please both property owners and their insurers, the Ontario Court of Appeal dismissed a claim against a municipality in which the teenaged appellant was gravely injured after falling from a tree, and in so doing embraced a common sense approach to claims brought pursuant to Ontario’s Occupiers’ Liability Act, which requires that an action be brought within two years.

The appellant submitted that the tree in question was inherently dangerous, and that in allowing it to grow within the park the municipality had failed to meet its obligations under section 3(1) of the Occupiers’ Liability Act, which requires that an action be brought within two years.

The case in question is tragic. The appellant was 16 years old in 2001 when he was rendered a paraplegic after falling from a tree in a municipal park. The tree in question was a swamp willow, which commonly grow alongside river banks all across Ontario. It had multiple trunks with large limbs, and local teenagers used it as a place to congregate as it was in relative isolation within the park. The tree itself was known by the appellant and his friends as the “Chilling Tree”, and the Court heard evidence that the appellant and his friends had climbed it many times prior to the date of the accident.

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The evidence presented at trial demon-

strated that the municipality had met its
obligations under the Occupiers’ Liability
Act. The tree from which the appellant fell
was healthy, and typical of its type. The
trial judge heard evidence in regard to the
municipality’s monitoring of the park prior
to the appellant’s accident, and determined
that it was reasonable in the circumstances.
Municipal employees were present in the
park on at least a weekly basis during busi-
ness hours, and were instructed to inspect
the trees in the park and trim them when
necessary to remove dead wood that might
be considered dangerous. No municipal
witness had ever seen anyone climbing the
“Chilling Tree” prior to the appellant’s fall.
Further, the appellant did not lead any ex-
pert evidence which showed that the mu-

The Court of Appeal agreed with the
appellant’s appeal. A unanimous court
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of Appeal held that “there is no general rule”
against awarding costs against FLA plain-
tiffs. While the Court of Appeal noted that
$5,000 in costs against each of the
FLA plaintiffs were “somewhat high”, they
were acceptable in the circumstances. The
FLA plaintiffs were further ordered to pay
$500 each for the costs of the appeal itself.
Having the Court of Appeal hold FLA
plaintiffs accountable for costs is certainly
helpful for defendants in future actions, as
it reiterates the need for FLA plaintiffs to
consider the merits of their claims, given
the potential cost consequences they face if
the main plaintiff is ultimately unsuccess-
ful at trial.

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Thomas Gold Pettingill LLP is a litigation law
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claims, and also defend businesses in a wide vari-
cy of personal injury, property damage and eco-
nomic loss claims.

... from page 1

occupier take all reasonable care to see that
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occupiers, however.”

The Court of Appeal agreed with the
appellant’s appeal. A unanimous court
quoted the trial judge, and noted that
“trees, being by their very nature, things
which can be climbed, and therefore fallen
from, are potentially harmful”. The Court
of Appeal went on to state that:
“any danger posed by this tree was an ob-
vious one. If you chose to climb it you
could fall and be injured. There is no duty
to warn of such an obvious and self-evi-
dent danger, nor any duty to monitor be-

Such an acknowledgement from On-
tario’s highest court is welcome. Parties
should not be held responsible for acci-
dents, as tragic as they may be, simply be-
cause an obvious danger exists on their
property. While there is surely a duty on
property owners pursuant to the Occupiers’
Liability Act to ensure that their property is
kept reasonably safe, the Court of Appeal
has recognized that there is a concurrent
responsibility on individuals to not put
themselves into obviously dangerous situa-
tions. The Court of Appeal has recognized
that property owners cannot be held to the
impossibly high standard of ensuring that
no dangers exist on their premises. Because
call risks cannot be avoided, individuals
must take care, and cannot simply look to
property owners for compensation when
they suffer an injury as a result of an obvi-
ous danger.

While it remains to be seen what effect
this decision will have going forward, it is
clear at this point that the Court of Appeal
has embraced a common sense approach
which protects the interests of defendants
in Occupiers’ Liability Act claims.

Cost Consequences for Family
Law Act Plaintiffs

Also of note, the Court of Appeal up-
held the trial judge’s decision to award
costs in the amount of $5,000 each as
against six Family Law Act plaintiffs
(“FLA plaintiffs”). In appealing the costs
award from trial, the appellant argued that
there should be no costs award made
against the FLA plaintiffs. The Court of
Appeal dismissed this appeal as to costs, as
it held that “there is no general rule”
against awarding costs against FLA plain-
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Renewable energy – from sources such as wind, water, the sun and biomass – is surging as Canada shifts away from dependence on fossil fuels.

The numbers paint a promising picture. In 2013, Canada ranked 7th among G20 countries in renewable energy investment, according to Clean Energy Canada. Cumulative investment in clean energy in Canada totaled $25 billion over the past five years.

Photovoltaic solar and wind generation are leading the charge. Wind energy production in Canada grew to installed capacity of 7,803 MW in 2013, up from 136 MW in 2000, according to the Canadian Government. Solar energy production is growing dramatically as well. In 2013, installed photovoltaic capacity in Canada totaled 1,210 MW, compared with just 7.2 MW in 2000.

Government incentives have helped to fuel growth. In Ontario, a feed-in tariff (FIT) policy introduced in 2009 guaranteed attractive rates for electricity produced from renewable sources. The policy was subsequently modified, but interest in renewable energy production has remained steady.

Big Equipment, Big Risks

Since many wind and solar power producers have been in business for less than a decade, incidents and accidents haven’t been widely reported. They can, however, be dramatic. Consider the following potential scenarios:

• A winter storm dumps two feet of snow and causing multiple tracking solar panels to crack under the weight. Several others show signs of significant structural damage. Energy production is disrupted for weeks.

• A fire kills a mechanic who was performing maintenance in the nacelle of a wind turbine. Due to the height of the turbine, it takes firefighters several hours to put out the blaze.

These are just two examples of the hazards involved in generating renewable energy. Wind and solar producers are also susceptible to other types of severe weather, such as high winds, hail and floods. In addition, if there are tenants involved, (for instance, a leased rooftop solar installation), a fire could damage not only the solar panels (the insured property), but also the building as well as property of the tenant inside.

Making matters worse, the inherent characteristics of renewable energy production can magnify the impact of an accident. Many solar or wind farms are in remote locations, so it can take longer for emergency responders to arrive. Once there, any uncertainty about whether the equipment is still electrified can impede response efforts. With large, specialized equipment, replacement or repair costs can run into millions of dollars.

The local community needs to be considered as well. Community members may file lawsuits over injuries and perceived nuisances, particularly if setbacks or other regulations weren’t strictly followed.

The Trifecta to a well-managed wind/solar installation:

Fortunately, as with most risks, energy producers can take steps to minimize potential harm to people and property. Among the most important:

• Stick with top-tier component parts. Since component parts represent a significant percentage of overall wind and solar farm costs, it’s logical to seek out the most cost-effective solutions. But all parts are not equal; it’s important to know where the original equipment manufacturer sources parts from. If equipment breaks down, injuries, down time or even just the cost of replacement parts could quickly wipe out those savings. From wind turbine gear boxes to photovoltaic system inverters, renewable energy component parts tend to be highly specialized. Some manufacturers have built a strong reputation and track record, while others are relatively new to the market. Typically, the better the manufacturer, the lower the likelihood of machinery breaking down, overheating, short-circuiting or malfunctioning in some other way. Seek out the tried, tested and true.

• Choose a reputable installer with a proven track record. Who is actually conducting the installation? Is the work being outsourced? Solar installation is booming, but only a few installers are experienced in completing large-scale jobs. Referrals are an important source of information. Your insurance broker will likely know whether a potential candidate specializes in your area and whether the firm has a reputation for safety. It’s also important to get the specifics on the firm’s warranties and guarantees, as well as its insurance program. Installers should provide documentation of proper and adequate insurance before they perform any work. These are indicators of better providers, and you may get the added bonus of discounts on your insurance program as well.

Location is another critical aspect of installation. For instance, it’s important to avoid locations where natural hazards are more likely to challenge safe power generation. Solar panels can buckle under the weight of snow; wind turbines may break in over speed in excessive wind. Electrical components should be installed above historic flood water levels when a flood plain is involved. In addition, avoiding migratory bird routes helps reduce the potential for wind turbines to cause bird injuries and deaths.

And of course there’s the “people factor.” Emphasizing safety, adhering to ordinances such as setbacks, and starting a dialogue about local concerns can help gain community acceptance and minimize the chance of lawsuits.

• Conduct maintenance consistently. Good news: Renewable energy equipment is being manufactured to require less maintenance than in the past. However, the quality of scheduled and unscheduled maintenance still affects not only the longevity but also the safety of power generation equipment. As with manufacturing and installation, maintenance is highly specialized and requires experience and expertise matched to the project at hand. Look for companies with technical knowledge to help maintain and preserve the life of your specialized equipment as well as a commitment to the safety of others.

In many cases, the equipment manufacturer provides a maintenance contract on equipment for the first several years. If so, know the details as they can have a positive impact on your insurance program. In addition, have a plan in place to continue maintenance after that contract expires. If the equipment manufacturer is not maintaining the equipment, choose a vendor that has serviced your type, size and brand of equipment.

A Strong Safety Net

Clearly, preventing a loss is preferable to responding to one. But even with the best of efforts, incidents and accidents can happen. Choose an insurance provider that demonstrates the same knowledge and experience as your equipment, installation, and maintenance providers. Ask brokers and insurance companies about their experience in insuring renewable energy firms. Have they handled businesses like yours, and for how long? Do they do business where you do and can they transact business in countries where you’d like to go? What’s their reputation in the marketplace?

From planning to operating and insuring a renewable energy production facility, focused preparation and research now can help keep a business on track for years to come.

By Alan Lee, Chubb Insurance
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From Davos to Main St – part 1

By Daniel R. Galvao, Credit Insurance Advisory Group

GDP is not a leading economic indicator (such as industrial purchases, shipping rates, employment) as it typically lags a quarter or two until changing trends can be spotted but it does offer big picture on which countries (or regions) are growing and which ones are stable or shrinking. Global GDP is just the aggregation of major economic zones. This is where the attention should be paid: although global GDP has flat lined, primarily due to negative growth in Europe and a deceleration in China, there are growth areas which are balancing those out. The US economy has, since late 2013, started a slowly but steadily up trend which helps the Canadian economy as 75% of our exports still go there. Specific emerging and frontier markets, such as Indonesia, Colombia and India are consistently growing with GDP rates above 5% and, differently than some previous darlings that fizzled in the horizon (ie. Brazil, Poland, Turkey), these markets have created the long-term structural base to sustain that growth rates for several years.

Concluding this first part, we can see that the view from the top of the Alps show some areas of opportunities and consequential risks. In the next segment, we will link these to the industries and sectors in Ontario that are likely to be most affected by the risks imparted.

Daniel Galvao is a risk management professional with experience in the professional services and corporate banking sectors. He was most recent senior vice president and head of the financial products practice at Marsh. Daniel holds an MBA in international Business from McGill University, a degree in Industrial Engineering from the Polytechnic Institute of the University of Sao Paulo, and a B. Comm. from Mackenzie University. He can be reached at: daniel.reis.galvao@ymail.com and on LinkedIn at LinkedIn.com/in/danielgalvao1.
Thursday, April 23 ORIMS held the third and final PD session for 2014-15 at The Toronto Board of Trade, First Canadian Place.

The final workshop in this year’s series in Fail Forward Resiliency Training (by Ashley Good) kicked off by examining some of our neurobiological and otherwise instinctive reactions to failure and what we can do - in spite of our often dysfunctional reactions - to build a more productive relationship with failure. Participants were presented a metric to assess the learning and innovation competencies of their organizations. This metric recognizes our instinctive reactions to failure often prevent us from maximizing what we can learn, so sets out competencies that allow us to protect against our instincts. It is a useful tool to identify where improvements can be made to allow learning and innovation to thrive.

Finally, the course looked at various approaches for visualizing failure in order to detect failures early and deal with them appropriately. Upon conclusion of the course, 22 participants received certification in the Fail Forward Resiliency training.

Thank you to all those who participated in this year’s PD program for your support. Stay tuned for next year’s exciting slate of upcoming PD sessions for 2015-16.

Upcoming Events

ORIMS AGM 2015
The Annual ORIMS AGM will be held on Wednesday May 20th, 2015 at McCague Borlack Offices in Downtown Toronto. Networking reception will follow at Earl’s Kitchen and Bar at 150 King Street from 5-9pm. Registration forms and additional information can be found on ORIMS website.

ORIMS Golf Tournament - 2015
ORIMS will be holding its Annual Golf Tournament at the Deer Creek Golf Club. It’s a great event with awesome people, good food and amazing prizes. Please save the date and join us for an exciting day of golf on Tuesday June 23rd, 2015. Details to follow in the coming weeks.
On Monday February 23rd, 2015 ORIMS hosted the Annual Edward C. Ricketts Memorial Curling Bonspiel, held at St. George’s Golf & Country Club. Despite the continued fight through flu season and the bitter winter elements, 85 curlers came out to participate in this year’s event. A good time was had by all and the event raised $3,000 for Women in Insurance Cancer Crusade (WICC).

The ACE Canada team took top spot this year. Congratulations to:
- Skip – Lilia Fernandes
- Vice – Cameron Brady
- Second – Wayne Briggs
- Lead – Felix Buhociu

This event could not have been the success it was without the support of our sponsors. SCM Insurance Services, AON Canada, RSA Canada, Canadian Litigation Counsel, ACE INA Canada and inTrust powered by Cunningham Lindsey. Your generosity and faith in our organization is greatly appreciated. Thank you all so very much.

James Eka
Director of Social Programs
Chapter Events Cont’d.