



# PULSE

THE HEARTBEAT OF RISK MANAGEMENT, APRIL 2015

## Hello ORIMS members

■ **By: Paul Provis, ORIMS Vice President**



**S**pring is typically associated with new beginnings and change. As we emerge from our deep freeze this winter, I have no doubt that everyone has been especially longing for some warm weather. Spring also represents change and new beginnings for the ORIMS Board as well as we can all look forward to an exciting upcoming period. On April 23rd, our 3rd and final Professional Development session on the Fail Forward series was held. It represented the conclusion of a very successful Professional Development year for ORIMS as we dared to venture something new. On May 20th, our AGM will be held at the offices of McCague Borlack. The new ORIMS Board will be sworn in, followed by a networking cocktail reception at Earl's Kitchen and Bar. Please register for this fantastic event at your earliest opportunity before it sells out! This is a great opportunity to meet the new Board and to re-connect with old friends. We are anticipating at least 4 new faces (and perhaps some familiar ones too) on the Board this year so it represents an exciting period of renewal and an injection of new ideas. On June 23rd, ORIMS will be holding its most popular event of the calendar year which is the annual golf tournament. It will once again be held at Deer Creek Golf Club in Ajax. This is always a fun and well attended event which is not to be missed so circle your calendars. We just hope to get better weather than last year.

I would also like to take this opportunity to reflect upon the many successes that

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 braving 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**

**I**t 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*.

### Winters v. Haldimand (County), 2015 ONCA 98 – Case Summary

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.

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

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occupier take all reasonable care to see that persons entering premises are reasonably safe.

The evidence presented at trial demonstrated 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 business 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 expert evidence which showed that the municipality's system of inspecting fell below the standard of care expected of municipality in the circumstances.

Importantly, it was noted that "generations of teenagers" had climbed the tree prior to the appellant's tragic accident, and there had never been a report, formal or even anecdotal, of any previous injuries (save for a sprained ankle a teenager had suffered many years prior as the result of "horsing around" in the tree). The trial judge ultimately dismissed the appellant's action, finding that the municipality acted reasonably in the circumstances. He helpfully acknowledged that just because a danger may exist within a premises, liabil-



ity will not automatically attach to a property owner. Indeed, the trial judge stated:

*"in a perfect world, of course, all risks could be avoided, and no accident such as the tragic one in this case would ever occur. That is not the standard required of occupiers, however."*

The Court of Appeal agreed with the trial judge's reasoning, and dismissed 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 obvious 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-evident danger, nor any duty to monitor beyond what the Township is doing at the time of this most unfortunate accident."*

Such an acknowledgement from Ontario's highest court is welcome. Parties should not be held responsible for accidents, as tragic as they may be, simply because 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 situations. 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 all 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 obvious 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 upheld 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 plaintiffs. 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 unsuccessful at trial.


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Thomas Gold Pettingill LLP is a litigation law firm in Toronto. The firm's lawyers act for insurers, corporate policy-holders in insurance coverage claims, and also defend businesses in a wide variety of personal injury, property damage and economic loss claims.

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# Renewable Energy: Three Keys to Safer Power Production

■ By Alan Lee, Chubb Insurance



**R**enewable 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 en-

ergy. 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 the 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 re-

quire 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.

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# From Davos to Main St – part 1

■ By Daniel R. Galvao, Credit Insurance Advisory Group

If you are like me, you were not invited to the gathering of finance ministers, institutional investors and international economists in the Swiss alps resort of Davos...And probably, like me, you wonder however how they come up with a risk report prediction for the year ahead? These “big picture” fellows, all jammed together for a week and suddenly... a risk dash-board, which historically has been somewhat accurate and a good test-case scenario for many risk managers.



Interest rates are at low point and have been there for four years now. It is unlikely they will (or can) be reduced further unless a real case of deflation hits Canada (à la Europe). Therefore, one is better served with a scenario analysis of likely slowly increasing of interest rates, probably in tandem (albeit a little later) with the US Fed policy. Although low interest rate facilitate corporate borrowing, there is no real advantage of borrowing unless if it is to invest in productive means that in the medium to long-term, return more than the cost of capital plus a healthy profit. Since the Canadian economy is primarily dependent on US growth, the likely advantage is to use the competitiveness of the loonie, powered up with lower interest rates to gain a foot in newer markets, for example emerging Europe, which still present a good investment prospect for Canadian firm. Even countries like Portugal, Spain and Italy, offer mid-market bargains for a well capitalized Canadian company that goes shopping.

The risk aspect associated with low interest rates are two-fold: first, companies and people might borrow more than optimally when rates are low, just to be forced to reorganize their finances when rates eventually move up (more of that will be covered in part 2). Secondly, once interest rates start to move up in Europe and in the US, insurance companies and reinsurance groups (which tend to be headquartered there) will have a disincentive to focus just in underwriting profits since then investment profits will return (as per pre-2000 era).

The cross-regional impact of future increases in interest rates, demonstrates the world is de-facto, if not de-jure, a true global market. That implies that several opportunities (and risks...) lie elsewhere in the world, which leads me to the last macroeconomic variable to be analyzed: flat GDP or gross domestic product.

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 uptrend 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@gmail.com](mailto:daniel.reis.galvao@gmail.com) and on LinkedIn at [LinkedIn.com/in/danielgalvao1](https://www.linkedin.com/in/danielgalvao1).

## Macroeconomics – the known unknowns...

There are several macroeconomic trends at play in any given moment in the globe and in each country, province, etc. For the sake of brevity and objectivity, we will discuss only the top three that are already impacting the Canadian economy the most: lower oil prices, low interest rates and the flat line world GDP.

Although not all the Canadian economy is attached to oil prices, a good portion of it is dependent on the impact of production and transportation of crude to many parts of North America, primarily the US market. Alberta is not the only province affected by a reduced oil production schedule: all service providers to the energy industry, across Canada, are already feeling the pressure of lost contracts and request for price reduction. Lower gasoline and diesel prices were not sufficient to provide a “efficiency bonus” to transportation fleets and consumers. Therefore the negative effect of lower export revenue and canceled contracts has been higher than a positive effect of reduced pump prices. The real positive effect of lower crude price is its impact on the loonie (CAD) which is perceived as a commodity currency. So, with lower CAD, Canadian exporters of goods and services have a competitive advantage in the global markets. Bank of Canada’s Stephen Poloz has been quick to explore this opportunity by surprising the financial markets with an interest rate cut last January, which leads me to the second macro-trend...low interest rates.

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# ORIMS Professional Development Sessions #3

**T**hursday, 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 other-wise 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.



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# Chapter Events

## 2015 ORIMS Curling Bonspiel

**O**n 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 Litiga-

tion Counsel, ACE INA Canada and in-Trust 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.



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