

The Employer's Voice

Volume 1, Issue 4

July 2009



EMPLOYERS' ADVOCACY COUNCIL

Working with employers to eliminate workplace injuries and their costs



Ontario's leading source of Occupational Health and Safety, Prevention and Disability News for Employers

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**Canadian
Manufacturers &
Exporters**
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CME

The **FACE** of Canadian manufacturing and global business

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REGULAR FEATURES

Executive Director's Message

As we get into the midst of another summer season and in anticipation of the warmer weather ahead, both employers and employees need to be vigilant and well prepared for the possibility of working in extreme conditions resulting from hot weather.

The members of the Occupational Health and Safety Council of Ontario (OHSCO) have developed an excellent resource to provide information and advice on managing and controlling heat stress in the workplace. This "Heat Stress Awareness Guide" includes a stress awareness guide booklet (sample policy, self audit checklist, essential heat stress prevention program), a heat stress awareness tool (reference chart) and a poster.

This guide provides good information on the causes, symptoms and treatment of heat stroke related illnesses; also presents a five step approach to using the humidex to assess heat stress hazards and outlines specific actions for managing and controlling heat stress.

Copies are available through your Workplace Health and Safety Association (HSA), or by contacting the Workplace Safety & Insurance Board (WSIB) directly at 1-800-387-0750.

Enjoy this issue of *The Employer's Voice*, and have a safe and great summer.

Fred Spiro
Executive Director

Welcome - New EAC Members

Boaden Catering Ltd
Cambridge Patterns Ltd
Centre d'accueil Roger Seguin
Douglas Ford Lincoln Sales
Flair Woodworking Ltd.

Hercules Tire Company of Canada
IKEA Etobicoke
Lovelock Consulting
GWS Tube Forming Solutions Inc.

Pure Metal Galvanizing - Mississauga
Royce-Ayr Cutting Tools Inc.
Safety Training & Consulting Services
Swift Railroad Contractors Corp.
Tri City Materials

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Ask the Expert

Question:

EAC has agreed to respect the anonymity of both the employer and the employee

"We had a driver who was in a motor vehicle accident 2 months ago. He was injured, and the functional abilities form now states he can return to driving, with restrictions. Now, he is saying that he is afraid to drive any vehicle, and wants to see a psychologist. WSIB tells us that it might take 6-8 weeks for the initial consultation, and that it could drag on for years. His modified non-driving work is a hindrance to the other workers, as they think he's milking it?"

Answer:

Michael Zacks, Director (A) and General Counsel, Office of the Employer Adviser (OEA)

Firstly, employers should know that the Workplace Safety & Insurance Board (WSIB) will pay benefits for a psychological condition resulting from a physical injury. This is called a psychotraumatic disability. WSIB Operational Policy 15-04-02 provides that:

A worker is entitled to benefits when disability/impairment results from a work-related personal injury by accident. Disability/impairment includes both physical and emotional disability/impairment.

Although this employer has dealt with the immediate problem of Loss of Earnings (LOE) costs by offering non-driving work, the employer is encountering resentment from other employees to the injured worker's accommodation. One of the best strategies to deal with this, is to have a comprehensive return to work policy in place so staff knows what the employer's Return to Work (RTW) process is, and that it is for the benefit of the injured worker and the company.

The more significant problem is the delay in the worker having a psychological assessment. What likely occurred in this case is the worker was referred by his family doctor to a psychologist who has an eight week waiting time for an appointment. One practical option to deal with the delay, is for the employer to offer to arrange and pay for a speedier assessment. Long delays in workers getting psychological or psychiatric referrals are common. Where the cost to an employer in waiting for the usual referral process to unfold is significant, an employer can offer to arrange the referral; however, it would be at the employer's cost, and must be with the worker's and WSIB's agreement. Where the worker agrees the WSIB will likely not object, the employer can offer such a service at a regular return to work meeting with the worker, indicating who the psychologist is, that the results of the consultation will be confidential and that the report will go to the WSIB, not the employer.

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Tip of the Month

How can I manage my worker's claim effectively?

As the WSIB assumes the worker's short-term and long-term earnings are the same, you may need to ask the decision-maker for a recalculation of the worker's average earnings if their short-term average earnings do not reflect their long-term average earnings. If a recalculation results in a lower rate, a benefit-related debt is created and the worker may have to pay that amount back to the WSIB.

Courtesy of Michael Zacks, Office of the Employer Adviser

Ministry of Labour - Court Bulletins

July 23, 2009:

Arriscraft International GPT Limited Fined \$70,000 After Worker Injured

KITCHENER, Ont. - Arriscraft International GPT Limited, a Cambridge maker of masonry building products, was fined \$70,000 on July 21, 2009, for a violation under the Occupational Health and Safety Act (OHSA) after a worker was injured.

On August 30, 2007, a worker was operating a machine that processes calcium silicate building stones. One stone needed adjusting. In doing this manually, the worker suffered severe hand injuries.

A Ministry of Labour investigation found that Arriscraft did not create and implement a formal policy for safely operating the machine.

Arriscraft International GPT Limited pleaded guilty under the OHSA to failing, as an employer, to take every precaution reasonable for the protection of the worker.

The fine was imposed by Justice of the Peace Robert Gay. In addition to the fine, the court also imposed a 25-per-cent victim fine surcharge on the total, as required by the Provincial Offences Act. The surcharge is credited to a special provincial government fund to assist victims of crime.

[To read more Court Bulletins](#)

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EAC September 2009 Events Calendar

September 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24		26
27	28	29	30			

**Register
ONLINE
AND SAVE**

September 15, 22, 30, 2009:

"Tool Box" for Claims and Disability Management Workshop

Mississauga - September 15 (8:00 am - 4:00 pm)

Kitchener - September 22 (8:00 am - 4:00 pm)

Ottawa - September 30 (8:00 am - 4:00 pm)

September 17, 2009:

Workplace Safety & Insurance Appeals Workshop

Ottawa (8:00 am - 12:00 noon)

September 23, 2009:

How to Manage a Ministry of Labour Visit Workshop

Markham (8:00 am - 4:00 pm)

September 29, 2009:

Electrical Safety in the Workplace and ARC Flash Control Workshop

Mississauga (8:00 am - 12:00 noon)

[Details and Registration](#)

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EAC Safety Group Update

The three Safety Groups:
Multi-Sector, Magna and the Canadian Vehicle Manufacturers' Association (CVMA)

We hope everyone is having a safe and enjoyable summer! With no meetings scheduled for the summer months, this is an excellent time to make good progress with your elements. Remember to use the **EAC website samples** as a resource. If you have any sample standards that are missing from the website, please forward them directly to Henry Decloe at henry@EACforEmployers.org.

We look forward to seeing everyone when the meetings resume in September!

For more information on the **potential of receiving up to 6% premium rebate** from the WSIB Safety Group Program call us at **1-888-663-4929** or to download an application form, visit our website, www.EACforEmployers.org. We would love to hear from you!

POINTS OF INTEREST

WSIB - First Quarter Financial Report

Due to the financial concerns by Ontario employers' about the present financial position of the WSIB, the Hon. Steven W. Mahoney, Chair, Workplace Safety & Insurance Board (WSIB), has made a commitment to provide on an ongoing quarterly basis, unaudited copies of the WSIB financial reports.

The First Quarter Report to Stakeholders for the quarter ended March 31, 2009, has been released and is now available on the WSIB website.

[Details:](#)

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WSIB - 2010 Preliminary Premium Rates:

WSIB has posted the preliminary premium rates for 2010 at:

<http://www.wsib.on.ca/wsib/wsibsite.nsf/public/premiumratespreliminary2010>

The maximum insurable earnings ceiling for 2010 will increase by 4% from \$74,600 to \$77,600.

As well, the significant change is the Board's intention to only freeze rates for rate groups with good performance:

"Premium rates will be frozen for rate groups with good health and safety performance, while rate increases will be calculated for poor-performing rate groups in the usual way."

September enforcement blitz: hazardous materials

As published in the Accident Prevention eNews June 2009

"I run a small paint manufacturing company in Kitchener, Ontario and a Ministry of Labour inspector issued an order for us to set up a WHMIS program. If my employees take a WHMIS training course, will we be compliant?"

[Details](#)

2009 Review of OELs

The Ontario Ministry of Labour is seeking input on the proposed adoption of new or revised **occupational exposure limits (OELs)** or listings for 17 chemical substances.

The **60 day consultation period ends September 18, 2009**. Submissions may be mailed, faxed or sent electronically to the following addresses:

The 2009 OEL Update Project
Ontario Ministry of Labour
12th Floor, 400 University Avenue
Toronto ON N7A 1T7

Facsimile: 416-326-7650 / Email: oelupdateproject@mol.gov.on.ca

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2009 Review of OELs

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Regulated under the Occupational Health and Safety Act, OELs restrict the amount and duration of worker exposure to hazardous workplace substances such as asbestos, benzene and lead. The proposed changes are based on recommendations by the American Conference of Governmental Industrial Hygienists, (ACGIH). ACGIH recommendations regarding exposure limits are the basis of OELs in many North American and other jurisdictions.

The table (http://www.labour.gov.on.ca/english/hs/oels/09_review.html) posted on the Ministry's website contains new or revised OELs or listings proposed for 17 substances resulting from changes recently recommended by the ACGIH.

Important proposed changes include:

- ◆ Updated listings for 13 substances including the development of an OEL for a specific particle size fraction for 8 of these substances.
- ◆ The withdrawal of the separate listings for Rubber solvent and V.M. & P. Naphtha and the adoption of ACGIH's method for deriving OELs for refined hydrocarbon solvents set out in Appendix H of the 2009 version of the ACGIH handbook of threshold limit values.
- ◆ The withdrawal of the Ontario-specific listing for Petroleum ether that, similar to the chemical agents, Rubber solvent and V.M.&P Naphtha, would continue to be regulated by applying the method for deriving OELs for refined hydrocarbon solvents set out in Appendix H of the 2009 version of the ACGIH handbook of threshold limit values.

Ministry of Labour (MoL) Ladder Chart

Ladders:

What Ministry of Labour inspectors look for

Recently, the MOL provided further clarification on how they plan to deal with ladders. Here are a few of the main points.

- 1) According to the Construction Regulation, ladders are not work platforms. They are a means of access. In situations where you can use a scaffold or other type of approved work platform, use it. You may only work from a ladder when it is not possible to use a proper work platform.

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Ministry of Labour (MoL) Ladder Chart

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- 2) If working from a ladder is your only option, remember that ladders are more hazardous than work platforms. Fall protection rules apply to ladder use. If your feet are more than three meters from the ground, you must use fall protection.
- 3) The MOL will allow "short duration" work from ladders—less than 30 minutes. Therefore, a worker may not work from a ladder for more than 30 minutes at one time. Workers may work from a ladder multiple times throughout the day, as long as there is an adequate rest period or alternative work in between. The amount of rest required depends on the task and the worker's physical condition. This differs slightly from an earlier interpretation of the rule, which was that the 30-minute maximum applied to the *entire* day.

Don't forget: if you are doing short duration work from a ladder and your feet are more than three meters from the ground, you must use fall protection.
- 4) You must keep your centre of gravity between the sides of the ladder and have two feet on the rungs at all times while working.
- 5) Carrying equipment or material up or down a ladder is not permitted. Inspectors will look for 3-point contact.
- 6) Ladders must be set up at proper angles, which is one foot out for every three to four feet up.
- 7) Ladders must be set up on firm, level surfaces and the area around the base must be free of material and debris.

For a detailed chart explaining how MOL inspectors will enforce ladder use on jobsites, download the

[MOL ladder enforcement chart](#)

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Occupational Disease Codes

Long Latency Occupational Diseases to be excluded from Experience Rating

The Workplace Safety and Insurance Board (WSIB) has excluded long latency diseases from experience rating.

The excluded categories of diseases are contained in the experience rating operational policies, and are:

- ◆ Acquired Immune Deficiency Syndrome (AIDS)
- ◆ carcinoma
- ◆ chest diseases due to aluminium and cadmium exposure
- ◆ chronic noise exposure
- ◆ chronic obstructive lung disease
- ◆ pneumoconiosis due to asbestos, silica, talc, hard metal (cobalt), and other mineral dust
- ◆ Sclerodema

Here is a list of Occupational Disease Codes Injury Codes

AID	AIDS
ASB	Asbestosis
COD	Chronic Obstructive Lung Disease
DFN	Industrial Noise Deafness
EMP	Emphysema
GCP	Gold Miners - Chronic Interstitial Pneumonia - Underground & Surface/Underground
GIB	Gastro-Intestinal Cancer, Bowel
GIC	Gastro-Intestinal Cancer, Colon
GIR	Gastro-Intestinal Cancer, Rectum
GIS	Castro-Intestinal Cancer, Stomach
GSC	Gold Miners - Stomach Cancer Underground & Surface/Underground

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Occupational Disease Codes

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GSL	Gold Miners - Silicosis
GST	Gold Miners - Silico Tuberculosis
KEM	Leukemia
LAR	Laryngeal Cancer
LGM	Gold Miners – Lung Cancer Underground & Surface/ Underground
LMM	Mixed Miners – Lung Cancer underground & Surface/ Underground
LSU	Lung cancer – Uranium – Surface Worker Radiation
LUA	Lung Cancer, Asbestos
LUC	Lung Cancer, Coke Oven
LUF	Lung Cancer, Foundry
LUG	Lung Cancer, General
LUN	Uranium - Nuclear Workers
LUR	Lung Cancer, Arsenic
LUS	Lung Cancer, Sinter
LUU	Lung Cancer, Uranium
MCP	Mixed Miners – Chronic Interstitial Pneumonia – Underground & Surface/Underground
MES	Mesothelioma
MSL	Mixed Miners – Silicosis Underground & Surface/ Underground
MST	Mixed Miners - Silico Tuberculosis Under ground & Surface/ Underground
NSC	Nasal Sinus Cancer
SCL	Scleroderma
SKI	Skin Cancer
SLC	Silicosis
SMM	Mixed Miners – Stomach Cancer Underground & Surface/ Underground

Courtesy of Michael Zacks, Office of the Employer Adviser

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Quebec Health & Safety Fines To Triple by 2011

By: Canadian OH&S News
June 22, 2009

QUEBEC (Canadian OH&S News)

In a bid to bolster prevention efforts in Quebec workplaces, employers who violate the province's health and safety laws will see their penalties increased starting next July.

On June 10, Quebec labour minister David Whissell announced that Bill 35, which modifies various provisions of the health and safety regime, had received unanimous support in the National Assembly.

"Today, we're sending a clear message to employers who put the health and safety of their workers at risk," says Whissell in a statement. "The increase in fines is certainly a deterrence for those found to be negligent, but above all it's a measure destined to reduce the number of accidents whereby everyone wins, the employers just as much as the worker."

The fines, which currently range from \$5,000 to \$20,000 for a first offense, will double on July 1, 2010, and will triple to as much as \$60,000 on January 1, 2011. By that date, multiple repeat offenses will trigger fines of up to \$300,000. The amendments also stipulate the fines will be revisited each year, beginning January 1, 2012. A release from the labour ministry notes that this is the first increase the fines have seen since Quebec's health and safety laws were written 30 years ago.

Fines still short of other jurisdictions

These updates bring Quebec closer in line with other jurisdictions, although there is still some distance between them. For example, a violation of the *Occupational Health and Safety Act* in both Alberta and Ontario can bring a penalty of as much as \$500,000. In Prince Edward Island, that number is \$250,000.

Also included in Bill 35 are changes to the indemnities paid out to the families of workplace accident victims. Following a fatality, families will now be entitled to up to \$94,569, up from \$50,000, and a new indemnity will see children of single parents compensated as well.

The changes have gotten support from organized labour in Quebec. "Could this law have had more teeth?" asks Confédération des syndicats nationaux vice-président Roger Valois in a release. "Certainly. But without a doubt, it's a step in the right direction. We've been calling for these measures for years."

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Quebec Health & Safety Fines To Triple by 2011

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Almost one million forms eliminated

In order to relieve some of the administrative burden that health and safety can place on businesses, Bill 35 also reduces workers' compensation premiums and simplifies their payment. The changes are expected to eliminate nearly one million administrative forms, and save businesses about \$75 million.

"For Quebec businesses, it means greater flexibility, fewer forms and more savings," says Whissell. "In the current economic context, that's no doubt a major gain."

Still, the changes have the Fédération des chambres de commerce du Québec (FCCQ) worried. "The FCCQ recognizes the importance of occupational health and safety, that's for sure," says FCCQ president and director general Françoise Bertrand in a release. "Still, this new financial burden imposed on businesses must not be made too heavy for them to bear."

The FCCQ release also notes that many employers are deeply skeptical of the inspection system, some even claiming it can amount to a form of harassment. The organization is calling upon the province's health and safety authority to put in place a mechanism to ensure investigations are conducted fairly.

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Critical Injury or Fatality of a Non-Worker

To Report or Not To Report:

As published in the Hicks Morley electronic publication "FTR NOW" (July 8, 2009)

[Details of this article](#)

NEW! Updated Certification Training - Part One

For Joint Health and Safety Committee (JHSC) Members

[Details and Registration](#)

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CME Ontario 15th Annual Golf Invitational



CME Ontario will be hosting its 15th Annual Golf Invitational at The Country Club, Woodbridge, on **September 10th, 2009**

Get involved with this unique marketing opportunity!

[Details and Registration](#)

Health & Safety Best Practices Sharing Visit



Join CME for this complimentary
Health & Safety Best Practice *Plant Visit*

Monday, September 14, 2009

9:00 am to 11:00 am

Richmond Hill, ON

Staples Canada Inc.,
Winner of Retail Council Award for Retail Health & Safety

[Details and Registration](#)

Feature Articles

Paying Overtime

**Recent High Profile Court Decision Will Educate
Your Employees on Overtime Entitlements**

by Lisa Stam and Christina Doria, [Baker & McKenzie LLP](#)

*Lisa Stam is an employment, labour and human rights lawyer at Baker & McKenzie LLP and can be reached at 416-865-6924 or by email at lisa.stam@bakernet.com. Lisa is grateful to Christina Doria, a summer student at Baker & McKenzie LLP who greatly assisted with the writing of this article.

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Paying Overtime

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A recent high profile court case will continue to educate your employees on their entitlements to overtime pay. This article will review overtime entitlements in Ontario, the recent court case creating all the buzz, and the proactive steps employers should take to minimize unnecessary overtime claims.

(1) Ontario Overtime Requirements

Overtime wages

An employer cannot require an employee to work more than 8 hours in a day or 48 hours in a work week, unless the parties mutually agree to do so. If the employee does work more than 44 hours in a week, the employer must pay overtime at the rate of one and one-half times the employee's regular wage rate for each hour of overtime.

"Work week"

Entitlement to overtime pay is to be calculated by reference to the "work week".

The Ontario *Employment Standards Act, 2000* (ESA) defines "work week" as either a period of seven consecutive days selected by the employer for scheduling work, or a recurring period of seven consecutive days, starting on Sunday and ending on Saturday.

Hours of work and overtime are primarily employment standards issues, which vary from province to province throughout Canada. The Ontario ESA overtime provisions apply to all employees, except those who fall under certain exemptions, such as supervisors or managers, certain salespeople, IT professionals and various emergency service employees.

(2) The CIBC Class Action Decision

On June 18, 2009, an Ontario court refused to certify a \$600 million class action lawsuit brought by employees alleging that the Canadian Imperial Bank of Commerce (CIBC) failed to pay overtime to current and former customer service staff. While the decision will likely be appealed, it identifies important defenses available to employers that may be facing overtime class action lawsuits.

The allegations

Dara Fresco, a CIBC employee, alleged that the customer service staff had workloads that could not be completed within the standard working hours.

Fresco claimed that the CIBC policy required or permitted employees to work overtime "off the clock" to meet the demands of their jobs and that the CIBC failed to pay for the overtime work in contravention of the Canada Labour Code (CLC).

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Paying Overtime

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Certification

Under Ontario's *Class Proceedings Act (CPA)*, a lawsuit cannot proceed as a class action until it has been certified by the Court. The test for certification under the CPA has a number of elements, one of which is commonality of the issues to each of the class members. For issues to be common, they must form a substantial ingredient of each class members' claim.

Decision

The Court found that the class action lawsuit against the CIBC was not a proper case for certification because there were no 'common issues'. The key finding was that each claim for overtime presented individual factual scenarios and the alleged non-payment of overtime was not the result of a wrongful act common to the class members.

Ultimately, the Court concluded that because the CIBC's overtime policy requiring pre-approval from a manager was not unlawful, the allegations for unpaid overtime occurred on an individual basis.

While the decision in the CIBC case is unique to its specific facts, it is a positive outcome for employers defending or facing overtime class action lawsuits and will undoubtedly help shape the result in the numerous current overtime class action lawsuit cases pending before the Canadian courts.

(3) *Proactive Steps for Employers*

Employers should be aware that it may not be a sufficient defence for an employer to claim that the employee was not expressly *required* to work overtime. If the employee works more than 44 hours a week to get their job done, they are entitled to overtime pay. To help defend against unnecessary overtime claims, employers should consider some of the following:

- ensure that there is a formal approval process in place;
- clearly document all overtime hours in a manner that is transparent to the employee to avoid disputes;
- monitor workloads and spread the work around to avoid disproportionate work schedules; and if necessary, discipline (or threaten to discipline) employees who continue to work overtime without authority.

The CIBC case, and the other high profile overtime class actions that are still working their way through the courts, have generated some media attention and will continue to inform your employees of the overtime entitlements they may have. Taking proactive steps with your workforce's overtime hours will help minimize unexpected or unnecessary overtime claims.

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Bill 168

Ontario Moves to Add Violence and Harassment to Occupational Health and Safety Act

[Details of this article](#)

Canadian OH&S - Related Workplace Violence and Harassment Chart

[Details of this chart](#)

Courtesy of Cheryl A. Edwards, Heenan Blaikie LLP

THE EAC CONNECTIONS

Cheryl A. Edwards Presentation

EAC's Special Feature Presentation on "Preventing Workplace Violence"
held on June 26, 2009

EAC wishes to thank Cheryl A. Edwards, Partner,
Heenan Blaikie LLP

for this well-attended and informative feature presentation.

Thank you to all those who attended!

Heenan Blaikie LLP

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Jayson Myers Breakfast Networking Event

Keynote Address Featuring:

Jayson Myers

President & CEO, Canadian Manufacturers & Exporters

Economic Challenges & Opportunities for Ontario Workplaces

held on June 5, 2009



Sponsored By:



EAC thanks **KPMG Waterloo**
For **SPONSORING** this
well-attended and informative breakfast meeting.

Thank you to all those who attended.

See you at the next Breakfast event!



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2009 EAC Golf Tournament

On Tuesday, July 14th, mother nature was on our side as over 40 golfers enjoyed a day of golf with the sun shining bright and not a cloud in the sky! Guests were welcomed to lunch on the patio at the Springfield Golf and Country Club in Guelph. After enjoying a fun, friendly day of golf, attendees enjoyed a delicious barbecue dinner and participated in the live and silent auctions.

EAC would like to thank all of our participants and special guests for taking the time to participate in this year's tournament.

We would like to extend a special thank you to our HOLE SPONSORS AND the companies who contributed to cash/gifts and auction items, without whom this event would not be possible.



Hole Sponsors:

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Industrial Accident Prevention Association
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Keyser Mason Ball LLP
Quatro Group Software Systems Inc.
Zfactor Communications**



Congratulations to the day's winners:



**Longest Drive - Men:
Longest Drive - Ladies:
Closest to the Pin - Men:
Closest to the Pin - Ladies:
Best Score:
Most Honest Golfers Foursome:**

**Mike Dorst
Charlene Couture
Ron Guest
Caroline Thorburn
Chair Mahoney and team
Ruben Goulart and team**



The Employer's Voice

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Thank you to our Partners:

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