



# Loss of Information When Using T-Scores With Personality Tests

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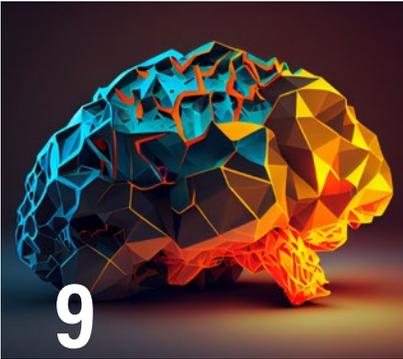
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**TERRY DOHERTY, CFEI**  
**President, OIAA**

**I**t is time for the final curtain call, time to say Goodbye, Farewell. It has been an amazing journey for myself, my family and all the friends I have met along the way. I can't believe it is down to one final message from me, about the OIAA and my presidential year. Everyone who has been in this position before told me that it would be over in the blink of an eye, and it has.

It feels like I just kicked butt in Go-Karts last week, just kidding; I won because 1st and 2nd took each other out and I just happened to sneak by but I will take it, a win is a WIN!

Being a part of this special group of people and being President, is something I will always cherish. I knew I wanted to be President from the 1st day I went to my 1st delegate meeting in Toronto. I saw everyone sitting around the table and discussing ways to improve the organization and the events planned to bring people together to network and educate them about the importance of knowing one and other.

I owe my journey to Simone Cybulski, she convinced me to become the delegate when she was moving up to the Sr. Executive of the OIAA. Unfortunately, Simone didn't get the Presidential year she deserved, but we know and love everything she did and tried to do in her year. It all started with the TIAA, Thousand Islands Adjusters Association. The TIAA is an amazing chapter, and I am looking forward to going back after

my term as Past President to help the TIAA once again.

I am most proud of WP Radio, I started this OIAA podcast in 2017, and my 1st guest was then President of the OIAA, Jennifer Graham. The podcast continues to grow and change, and I love that about the OIAA. My favorite day of the year for podcasting is the Claims Conference, I get to speak to old friends, meet new friends and find out what is happening now and into the future. The guests are always so interesting and bring such energy and flair to each interview. I am already looking forward to next year's interviews.

Looking forward, I am very excited to see what Shawna has in store for us next year, you know it is going to be great. She is surrounded by some powerful ladies, Jennifer Brown, Emily Feindel, Carrie Keogh and Christine Andrews; just to name a few.

I want to thank everyone who helped make 2023-2024 a raging success, mostly I want to thank Kyle Case for his mentorship and guidance as he now steps back from Past President and likely back to the LCA in some capacity.

Congrats to our charity, MacKids and to Michael Cardillo, Brittany Hand and the wonderful Gianna Cardillo. They are an incredible family, who allowed us into their lives to share a bit of the strength and courage it takes to deal with very sick child and still be able to stand up everyday and deal with the rest of what life brings your way.

I will leave you with a quote from my favorite author, "Don't cry because it's over. Smile because it happened" -Dr Seuss

With that, I say Goodbye, enjoy your summer; be safe and see you at the next OIAA event.

**Yours truly,**

**Terence Doherty,**

**Accident Reconstructionist-Level 3**

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			OCTOBER Kick Off@K1 Speed Mississauga	Christine Andrews	All members

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studies. Her academic journey is driven by a profound passion for health equity and research aimed at enhancing healthcare accessibility and representation for minority groups.

### **Dan Baldwin**

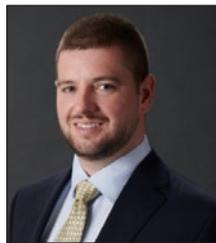
Dan has diverse experience representing clients in his varied litigation practice and has established a reputation for himself as analytical, communicative, and knowledgeable. Dan's insurance law practice comprises insurance defence, subrogation and coverage work and he provides legal services to a broad range of insurers and other organizations.



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Liam graduated from Western University in 2018 and received an Honours Specialization in Economics, Politics and Philosophy.



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**W**here does the time go? It certainly doesn't feel like 14 years have gone by since I first joined the board of the London Claims Association, but as they say – time flies when you are having fun!

I joined the LCA as a director for the 2010-2011 OIAA Year and have to say that taking this step was one of the best decisions I have made in my career. Getting involved in the OIAA has given me so many opportunities. From helping me expand my network and make countless new friends, to learning leadership skills while working through various roles in the association I can honestly say I would not be where I am today but for getting involved.

As I look back over the past 14 years, there are a few things that really stand out for me:

- ◆ At the London Claims Association, I was given an opportunity early on to be on the planning committee for an Out of Town, leading the Tradeshow Portfolio. This was hard work, but a rewarding experience that taught me so much (and it gave me the chance to meet Sam Roberts!)
- ◆ Shortly after joining the Senior Executive of the OIAA, all our plans halted as the world dealt with COVID-19. Being part of the team to tackle this problem and share my love of Trivia with our virtual trivia events will be a memory that I cherish for

years to come.

- ◆ Stepping into the role of President of the OIAA and kicking things off with our first post-COVID event, branded the “Come to Town,” was a capstone moment for me. Bringing our industry friends and family back together and helping boost life and energy back into the OIAA through this event will be something I am most proud of during my time on the Executive.
- ◆ Finally, watching the success of this past year and the hard work put in by everyone on the Provincial Executive and each of our Chapters I leave the role of Past President confident that great things are in store for the OIAA.

In my first message as President of the OIAA, I thank my employer, Co-operators, for the support I have received to be a part of the OIAA and give back to our community. In this final report that I write for the WP, I want to share that message of thanks once more. I am honoured and consider myself lucky to work for a company that allows me the opportunity to volunteer, to get involved and to make a difference.

With that said, and as much as being involved has helped me, I also feel that it has made me a stronger employee. Learning skills that I would not have otherwise learned. Building relationships that I may not have built. Making me more resilient. Increasing my engagement in the work that we do. These are just some of the benefits of having employees get involved in the OIAA. As a close out this message, I want to encourage everyone, who is interested to find a way to participate. Come to an event, join your chapters board, sign up to be a member. It won't take you and those around you to realize the benefits of the OIAA.

Thank you to our entire membership for the opportunity to have been part of this amazing organization. I am excited to see where things go next for the Ontario Insurance Adjusters Association!

**Kyle Case,**  
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# Loss of Information When Using T-Scores With Personality Tests: Illustration with the Minnesota Personality Inventory-3 (MMPI-3)

By: Jonathan Siegel, Chendur Gandhidoss, Zehra Alvi



## The Main Point of the Article

**T**he authors of the MMPI-3 should have refrained from using T scores for assessing an individual's test score severity across any reference group, especially since the raw score distribution of the 52 scales are not equally positively skewed. Instead, calculating only percentile

equivalents for each raw score of the 52 scales from the U.S.A. standardization sample (810 men and 810 women) would mitigate information loss. This article will demonstrate how the decision to use T scores in the MMPI-3 has resulted in unidentified information loss, carrying significant clinical implications for interpreting T scores.

## Overview

The Minnesota Multiphasic Personality Inventory-3 (MMPI-3) is a popular measure of personality in North America with 335 items and 52 scales (10 validity scales and 42 clinical scales), capturing personality characteristics and psychopathology for individuals aged 18 and over.

## Measuring Personality Characteristics: T Scores

MMPI-3 results are reported using T scores across the 52 scales. A T score is derived mathematically, ensuring a mean of 50 and a standard deviation of 10, with a one-to-one correspondence with the standard normal distribution (or z-distribution) for modelling phenomena depicting symmetry without skewness. Therefore, the T score offers psychologists a standardized method to evaluate how far an individual score deviates from the average of any comparison group (see Figure 1. below).

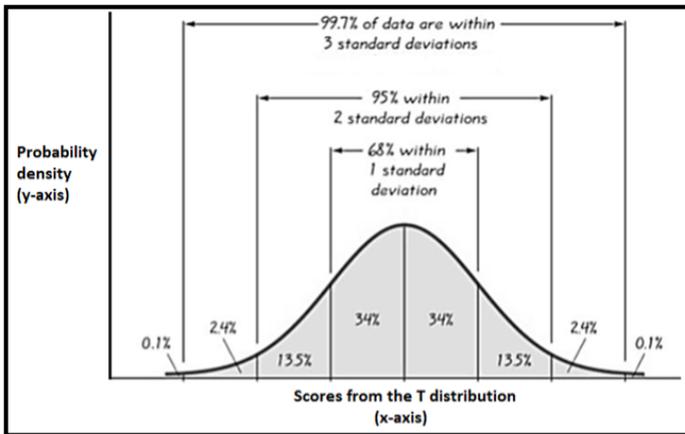


Figure 1. Graph Showing the Correspondence Between z-scores and T-scores

<sup>1</sup> <https://medium.com/geekculture/empirical-rule-statistics-811b004d58b8>

Based on a standard normal distribution, 68% of scores are located within one standard deviation from the mean, 95% within two standard deviations, and 99.7% within three standard deviations. This served as a template for T-score distribution; thus, the relationship applies.

Hypothetical “Bob’s” T score of 75 on a measure of depression would exceed two standard deviations, suggesting that he endorses more symptoms of de-

pression than the mean of the comparison group.

## Standard Definition of T Score and Characteristics

- ◆ Commonly known as linear T score
- ◆ Linear transformation of raw scores into a SYMMETRIC distribution with a mean of 50 and standard deviation of 10
- ◆ Correspond one-to-one with the standard normal distribution
- ◆ For example, a T score of 70 ALWAYS has a percentile value of 95%, while a T score of 50 ALWAYS has a percentile value of 50%.
- ◆ ONLY raw scores from SYMMETRICALLY shaped distributions should be converted into T scores through the T score linear transformation to preserve percentiles

## Problems with T Scores with Personality/ Psychopathology Tests

### 1. Scores on Personality/Psychopathology Measures Are Not Symmetrically Distributed

Intelligence test scores tend to be symmetrically distributed, as noted in the graph above, making T scores applicable with a normal distribution. However, psychopathology test scores are not typically symmetrically distributed since they measure abnormality, meaning most people do not have marked psychological problems.

For example, a large random sample of Canadians ages 18 and older would likely yield a distribution of scores on mental health, well-being, and psychopathology that are positively skewed (see Figure 2 below).

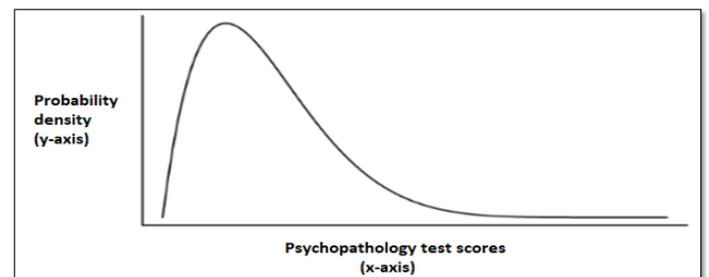


Figure 2. Graph Showing a Positively-Skewed Distribution

2. Scales of the MMPI-3 are not identically positively-skewed.

Page 21 of the MMPI-3 manual for administration and scoring states, "The degree of skewness of the raw-score distributions of the corresponding linear T-score distributions varied from scale to scale. Consequently, the same linear T-score value (e.g. a T score of 70) could have different percentile values for different scales." The authors essentially upend the very definition of a T score, as by convention (and definition), psychologists only use the term for the result obtained after linearly transforming a score from a normal distribution (symmetric, with zero skewness).

By definition, A T score MUST have the same percentile value as its corresponding raw score (which is obtained from the raw score distribution). This is ONLY possible when the raw score distribution is symmetric. However, with measures of psychopathology, given that distributions are NOT symmetric, we now run into the problem of different percentile values for the same T score. This is a problem that needs to be corrected. But how, and at what cost?

The authors attempt to address this problem of creating T scores from positively skewed raw score distributions by presenting a prototype distribution with the single corresponding T score distribution for the 42 different clinical scales on page 22 of the administration manual. However, this prototype is still NOT a fully standardized normal distribution. Of note, this problem extends beyond the MMPI-3 to all personality tests where T scores are derived from positively skewed raw score distribution (e.g. The Personality Assessment Inventory). It is beyond the scope of this paper to discuss how other personality measures address this problem.

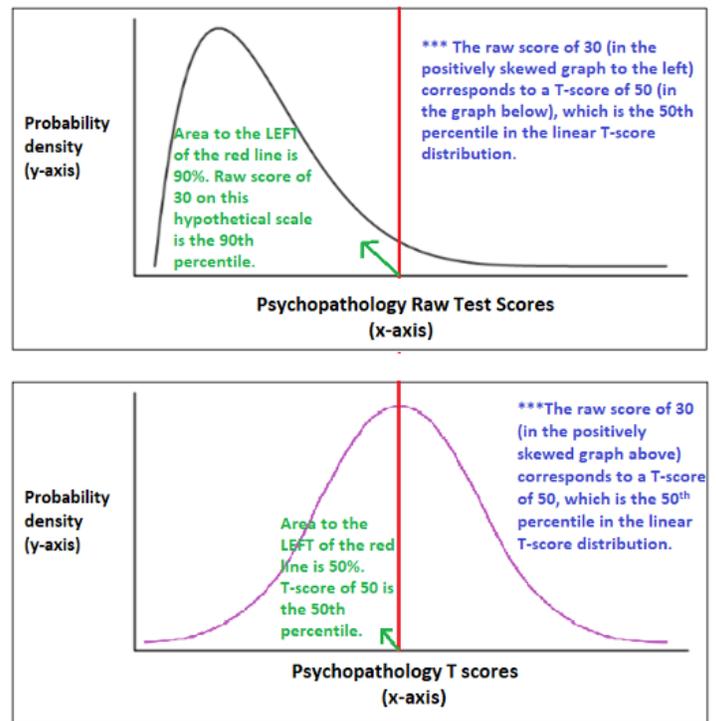
This fundamental problem could have been entirely avoided if the authors of tests of personality and psychopathology (including the MMPI-3) implemented percentile equivalents only and eliminated the use of T scores. To review, this is the main point of this article.

<sup>2</sup> <https://app.passyourmath.com/courses/theory/116/1746/26497/en>

## Lack of Percentile Equivalence Between Raw Score Distributions and the T Score Distributions

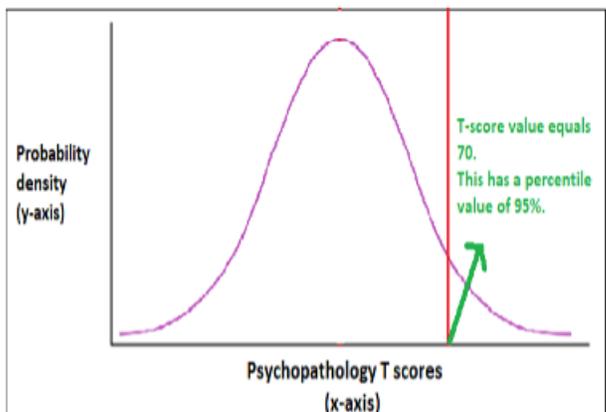
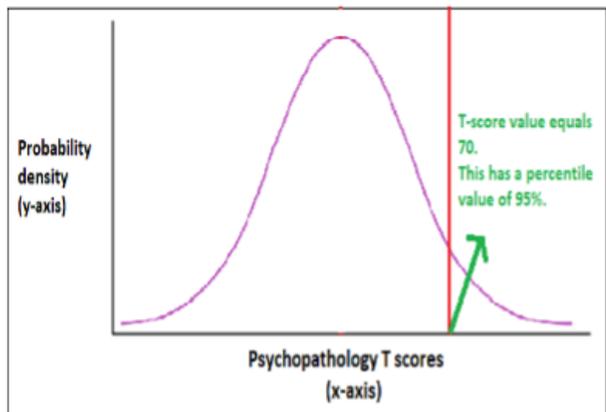
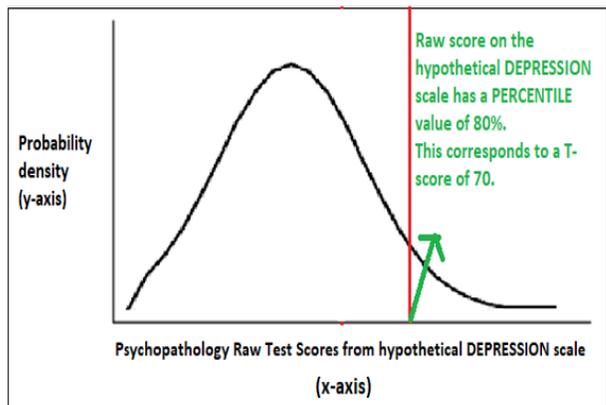
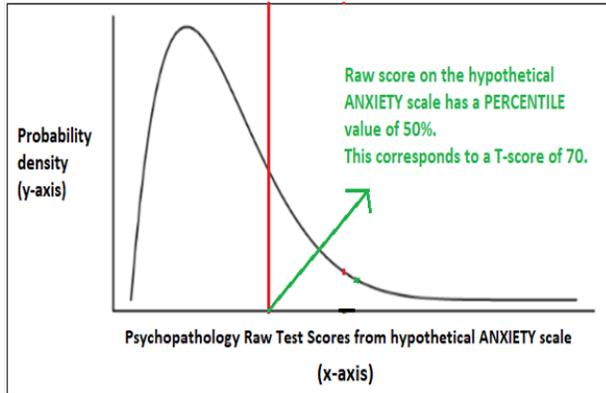
Assuming hypothetical Bob scores 30 on a clinical scale of the MMPI-3 (Figure 3) and 30 is also the mean of the distribution, we get two different percentiles (50% and 90%): one based on the corresponding symmetric T score distribution and the other on the positively skewed raw score distribution. From a clinical perspective, this discrepancy invalidates the principle of consistent percentile values for any particular raw score and its corresponding T score, particularly when dealing with positively skewed raw score distributions.

*Figure 3 below illustrates that for a positively skewed raw score distribution, the percentiles do not match with the corresponding T score distribution.*



Note that while Figure 3 above depicts the problem of using T scores with positively skewed raw score distributions using a single raw score distribution (scale), Figure 4 below illustrates the same problem but using two differently positively skewed raw score distributions.

Figure 4 below illustrates how with a T score of 70, we will yield two different PERCENTILES (50th percentile versus 80th percentile) on two different hypothetically positively skewed RAW SCORE distributions (e.g. Anxiety and Depression).

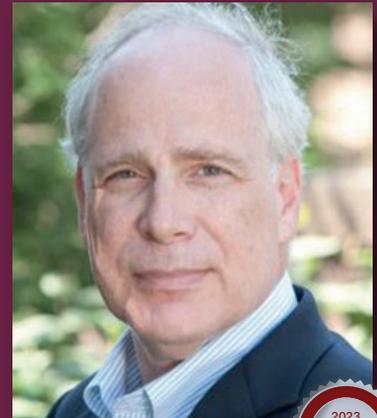


Note: In this example, the T score corresponds to the 95th percentile on a symmetric raw score distribution, BUT since the clinical scales are positively skewed (and not to the same degree), it corresponds to the 50th percentile on the Anxiety Scale and 80th percentile on the Depression Scale. This is clinically significant as a 50th percentile scoring individual (relative to the standardized sample) is not reporting as severe symptomatology as an individual scoring at the 80th percentile. While the authors of the MMPI-3 manual attempted to rectify this problem, as noted on pages 21 to 23, we assert that the problem has not been resolved. Furthermore, there is no transparent reference to the specific statistical procedures employed to create Figure 3-1.

### Illustration of How Differently Positively Skewed Distributions Yield Different Percentile Values for the Same Raw Score

The same raw score on three different positively skewed scales yields three different PERCENTILE VALUES (see Figure 5). Looking at Figure 5 (for illustrative purposes only), notice how a raw score of 6 on these three scales have differing percentiles (60th, 85th, and 99.99th).

## MEDIATIONS ARBITRATIONS



**Marvin J. Huberman**

LL.B., LL.M. (ADR), FCI Arb

Marvin has over 30 years of experience in insurance disputes. He is a former Vice-Chair of the Ontario Commercial Registration Appeal Tribunal, and is the current Integrity Commissioner for several municipalities, and a Certified Specialist in Civil Litigation (LSO).



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With a normal distribution, a linear T score can be created from the raw score because the linear transformation preserves the original shape of the raw score distribution.

However, the authors do not explain that the distributions are positively skewed differently, leading to different percentile equivalents for the same raw score. Merely creating T scores from raw scores from these skewed distributions (attempted through composite T score distribution) will not solve the inherent problem of non-equivalent percentiles for the same raw score across differently positively skewed distributions. By not addressing this issue, the problem manifests in the final product (the T scores), which provide critical information in clinical assessments.

For example, using Figure 5 below as a hypothetical illustration, a raw score of 6 in the standardization sample on the "Worry" scale might correspond to the 60th percentile; however, given a differently positively skewed distribution, this raw score might correspond to the 99.99th percentile on the "Anger Proneness" scale.

When the authors of the MMPI-3 created composite T scores by combining the linear T scores of the two

scales, the important distinction in the lack of percentile equivalence is ignored.

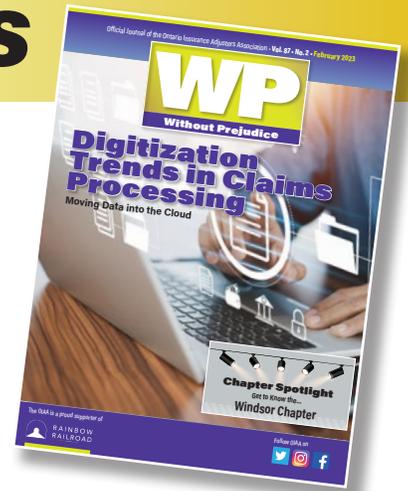
Consequently, when hypothetical Bob is administered the MMPI-3 and obtains a raw score of 6 on the "Worry" scale, the T score that is referenced in the administration manual will likely be associated with a different percentile equivalent (e.g. the 90th percentile) than the 60th percentile obtained from the standardization sample. The 90th percentile implies that Bob has a serious psychological issue concerning "Worry;" however, Bob is only slightly worse than most of the standardization sample in terms of "Worry" (e.g. 60th percentile).

Clinicians would naturally be more concerned with Bob's scoring in the 90th percentile than the 60th percentile and might consequently recommend a different treatment plan. This is a significant consequence of the information that is lost because of the authors creating a composite T score instead of eliminating T scores altogether. While the numbers provided are for illustrative purposes only, the authors do not provide sufficient information in the administration or technical manual to reveal precisely the information lost when the composite T score distribution was created.

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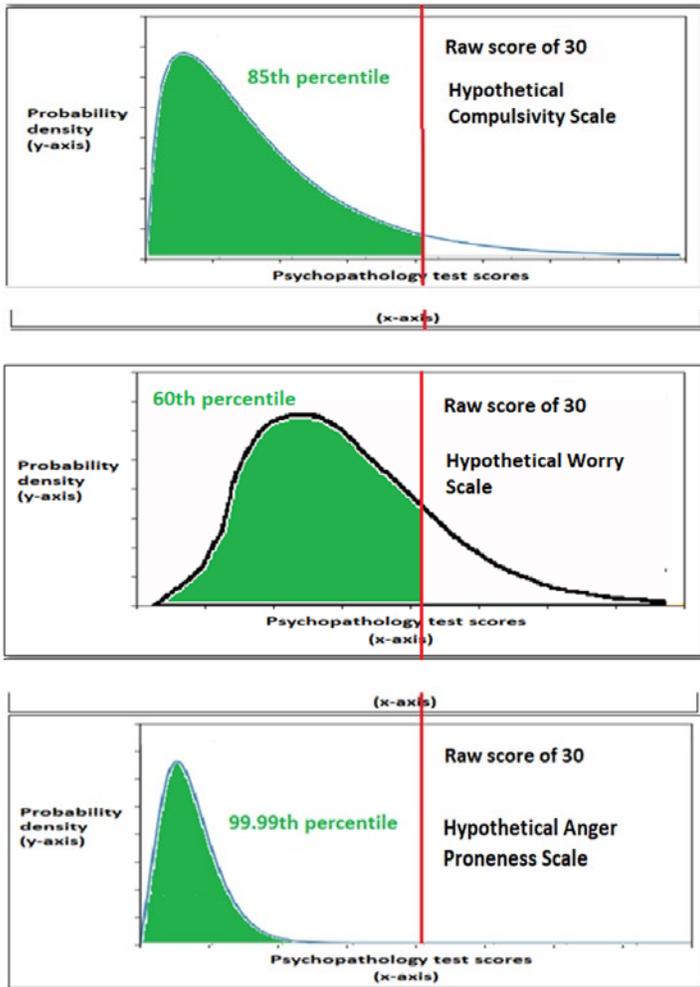
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Figure 5: Same raw test scores of 30 but different percentile equivalence for three differently positively skewed distributions. Depicted in graphs below (three graphs).



### Using MMPI-2 Data for Creating MMPI-3 Uniform T Scores: A Flawed Process

The Prototype Distribution for the derivation of Uniform T scores for the MMPI-3, which consists of 335 items, is based on the SAME Prototype Distribution

as the MMPI-2 that consists of 567 items, which we assert is a flawed process. While the authors express it was done for consistency, in the absence of creating both a composite T score distribution and subsequent regression analyses specific to the normative sample for the MMPI-3, the authors assume that the prototype distribution will be the same, but this cannot be since the MMPI-3 has 42 clinical scales and the prototype distribution for the MMPI-2 was based on 16 scales.

Thus, we cannot reliably utilize the Uniform T scores published in the MMPI-3 manual as being reflective of the percentile equivalents for the raw scores obtained in the normative sample as it has resulted in information loss. This has significant implications for the clinician when forming opinions to determine severity of psychopathology. We emphasize the point that authors of personality tests should be avoiding the use of T scores for reporting results and instead rely on percentile equivalents only, that is, when comparing any individual's test scores to scores from the standardization reference group.

### Summary and Conclusion

Unlike IQ scores, which typically follow a symmetric (normal) distribution with T scores always associated with the same percentile equivalent, scores on measures of personality and psychopathology deviate from symmetric distribution. This is acknowledged by the authors of commonly used measures of personality, such as the Personality Assessment Inventory (PAI) and the Minnesota Multiphasic Personality Inventory (MMPI-3). This article specifically examines the MMPI-3 to illustrate that T scores do not have the same equivalent percentiles when working with raw

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scores from differently positively skewed distributions.

Rather than eliminating T scores in favour of percentile equivalents only (which, we assert, would have been the more appropriate method), the authors of the MMPI-3 implemented a process involving statistical procedures to create Uniform T scores. However, we contend that these scores do not accurately capture the percentile equivalents for each of the 42 Substantive Scales (clinical scales) based on the 1620 individuals (810 men and 810 women) in the standardization sample. This does not mean that the MMPI-3 does not have significant clinical value and utility. It means that significant caution must be exercised when attempting to assign quantitative values and using the T scores published in the MMPI-3 manual to capture the precise degree of an individual's clinical psychopathology.



**Dr. Jonathan Siegel,  
Psychologist**

Jonathan Siegel earned his Bachelor's degree in physiological psychology from McGill University in 1978. He earned his Masters (1982) and Doctoral degree (1986) from the University of Toronto and became licensed as a psychologist in 1988. Jonathan's

primary practice is conducting psychological disability assessments with individuals involved in car accidents. He also conducts descriptive and inferential statistics to evaluate the effectiveness of treatment programs for individuals suffering from alcohol and drug addiction.



**Chendur  
Gandhidoss**

Chendur Gandhidoss earned his Bachelor's degree in Quantitative and Mathematical Economics and Statistics at Carleton University in

2013, his Master's degree in Probability and Statistics at Carleton University, in 2016, and is currently conducting research in Statistics.



**Zehra Alvi**

Zehra Alvi is currently a fourth-year Honors Human Biology student at the University of Toronto and skipped a year in high school at the University of Toronto Schools. She has been a Dean's List student throughout her undergraduate studies. Her academic journey is driven by a profound passion for health equity and research aimed at enhancing healthcare

accessibility and representation for minority groups. She is an executive member of UofT's Médecins Sans Frontières (Doctors Without Borders) chapter and the co-founder of Little Doctors. Throughout her undergraduate years, Zehra has actively engaged in research endeavors focusing on identifying and addressing gaps in health knowledge and healthcare provision. Her paper on "Musculoskeletal Symptomatology in Skeletally Immature Students carrying Heavy Backpacks: A Retrospective Study" is being published in the Journal of the Canadian Chiropractic Association. Her commitment to improving healthcare outcomes underscores her dedication to making a tangible difference in the lives of others, as she hopes to pursue a career in medicine.

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WP Radio will continue rolling out MyKey's series 'Home Away From Home', on the podcast network and will additionally be at all Ontario Insurance Adjusters Association events, recording live with guests, sponsors and other members of the industry.

In 2023, WP Radio has focused on expanding their production of branded content shows, as part of their mission to constantly grow and enhance their roster of episodes.

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For more information on all branded content productions, options for sponsorship, and guest spots on interviews, please contact Kieran Doherty by phone or email.

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# Chapter Spotlight

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## THOUSAND ISLANDS CHAPTER

### TIAA President's Message

As they say - time flies when you are having fun! Summer is almost here, and I must say that we were spoiled this year, as we didn't have the bad weather and winter storms of previous years. It is also nice to not have to contend with any Derechos or tornados in our area.

At the Thousand Islands Chapter we had a Christmas gathering at The Buckle, a nice country bar downtown Kingston on December 14th. We had a great turnout of professionals who enjoyed socializing and some snacks courtesy of the Chapter.

We were honoured to be a sponsor for the current President, Terry Doherty's Celtic Kitchen Party, which was held at Hard Way Cider Co. Those who attended had a great time. The band was amazing, and our own Social Delegate Lynn Forestell joined them for one number playing the spoons.

Our annual golf tournament is coming up on September 18th at the Colonnade Golf & Country Club in Joyceville. We are always appreciative of the support for our golf tournament and last year we were happy to donate \$6,000.00 to two charities; Camp Banting, a camp for individuals with Juvenile Diabetes, as well assisting in a local child's goal to purchase a guide dog. We are happy to report that he was successful in achieving his goal!

I have been the President of the TIAA since August 1st, 2019 and this will be my final year, and thus, final article. There have been many changes since 2019 when we held monthly meetings with guest speakers, to the pandemic when we were unable to meet with each other until now.

Over the years there have been many individuals involved in

the TIAA. It takes the efforts of many for the Chapter to be successful, and as I've previously indicated, the support of our Chapter by individuals outside of the TIAA territory is a testament to its success, and for that, we are very thankful. I want to take this opportunity to thank each and every one of you for your support over the last five years. It has not gone unnoticed, and I could not have done it without you. I will continue to support the TIAA and look forward to this year's events as Past President.

If you are interested in joining the TIAA, please reach out to any member of the Executive, or check out our website at [wearetiaa.com](http://wearetiaa.com).

***On behalf of the TIAA Chapter, we look forward to seeing you all at our golf tournament in September.***

**Shari Hamilton**

**Outgoing President,  
Thousand Islands Chapter**

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### TIAA Delegates final report

In just a few short months I will be reaching a humbling career milestone – ten years as an independent adjuster. I have spent all ten of those years at PCA Adjusters in Kingston, and an active member of the Thousand Islands Adjusters Association. And while, to me, this may seem like a significant career marker, I am aware that claim veterans of 25+ years in the industry may give little weight to such an anniversary.

“Talk to me when you hit 30 years, kid. You’re still the young guy!”

I take no offence - those adjusters have earned their stripes. It is also some of those adjusters with multi-decade experience that have helped me along the way through mentorship, or an occasional conversation to discuss a unique claim situation.

While I’m grateful for the support along the way, I have also been able to find my own way and develop my own strategies and approach to property and casualty claims. A decade in the industry also allows you to form relationships and build trust with adjusters and industry partners. Fostering trust with colleagues and peers is essential to success in this industry.

For me, ten years as an adjuster may seem like a long time, but I realize it’s only a snapshot of the P&C claims industry.

What is so surprising is the amount of change we have seen over those ten years. Climate change, market trends and a shift in claims handling procedures have all resulted in a very different claims landscape. For better or for worse, the industry is not the same as it was when I began my career. So, as I reach “The Big 1-0”, I will look back at my growth in the insurance industry and reflect on the changes we have seen over that time period. And while I take a moment to celebrate a career milestone, I understand and appreciate that to the seasoned, grizzled veterans of the claims industry – I’m still the young guy.

**Duncan Southall**

**OIAA Delegate,  
Thousand Islands Chapter**





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# The HST New Home Rebate - A Boring But Necessary Consideration

By: Dan Baldwin



**T**he insured has suffered a total fire loss of their primary residence located in Ontario. You retained a fire investigator who determined that the origin of the fire was caused by the negligent installation of the chimney assembly by Too Close Fireplaces.

The insured has dwelling limits of \$850,000.00 for the rebuild and has selected Build It Contracting to complete the rebuild. In discussions with Build It Contracting, the insured wants upgrades to the kitchen and bathrooms which will add \$42,500.00 to the rebuild.

The quote provided by Build It Contracting provides for a total cost of \$850,000.00. You have made the insured aware that the \$42,500.00 in upgrades will not be covered by the Policy. The insured acknowledges this and wishes to move forward with the uninsured upgrades.

Fast forward – you have sent a demand letter to Too Close Fireplaces. The opposing adjuster wants to know whether the HST New Housing Rebate (the “HST NHR”) will be recovered to reduce the damages.

You now need to get up to speed with the HST NHR.

## **Rundown on the HST New Housing Rebate**

The Harmonized Sales Tax (HST) is the 13% tax paid on top of the purchase price when an insured builds a new home. HST is the combination of the provincial (PST) and federal (GST) taxes and amounts to 13% on a property’s purchase/build cost. When HST was implemented, it increased the tax on new homes from 5% to 13%.

The HST NHR was introduced as a measure for relief against the increased cost of buying or building a new home. It allows a homeowner to secure a partial rebate of the provincial and federal parts of the HST.

The federal part of the HST Rebate permits the insured to claim 36% of the GST if the rebuild costs \$350,000.00 or less. However, if the costs to rebuild exceed \$350,000.00 the rebate gradually reduces. When the cost hits \$450,000.00 the rebate is reduced to \$0.00. Hence, there is no federal rebate for rebuilds at or exceeding \$450,000.00.

While the federal part of the HST Rebate bars recovery for rebuilds over \$450,000.00, the Ontario NHR does not include this limiting condition. The maximum Ontario NHR depends on whether HST was paid on the purchase of the land. The rebate is limited to a maximum of **\$24,000.00** if the insured paid HST on the purchase of the land (for example if they built a home on vacant land they purchased earlier), and **\$16,080.00** if HST was not paid on the purchase of the land (for example if they purchased a resale home as their primary residence).

With today's cost of construction, it is rare that a rebuild will not exceed \$450,000.00 which bars recovery of the federal portion of the HST NHR. As a result, this article is focused only on the rebuild of an insured's home located in Ontario with costs exceeding \$450,000.00.

## Questions on the HST NHR

In discussing the HST NHR with clients, the following questions have arisen:

1. What are the eligibility requirements?
2. Is it worth it to pursue the HST Rebate on a rebuild?
3. If the insured contributed to the cost of the rebuild, how is the HST Rebate allocated?
4. What is the process to recover the HST NHR?

## Eligibility Requirements

When an insured property is rebuilt in Ontario at a cost of \$450,000.00 or more the insured **may** be entitled to the HST NHR.

Eligibility requirements relevant to insurance rebuilds include:

- the property is a newly built or substantially renovated house (which includes a condominium unit, a modular, mobile or floating home);
- the insured built, or engaged someone else to build or substantially renovate the house for use as their or their relation's primary place of



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residence;

- ▶ the insured or their relation is the first to occupy the house since the construction or substantial renovation began (an exception is if the house is sold before occupancy); and,
- ▶ the insured paid GST/HST on the purchase of the land or on the purchase of the construction materials and services related to the construction or substantial renovation.

### What is a substantial renovation?

The HST NHR is not limited to complete rebuilds following a total loss. The insured may also be eligible for recovery of the HST NHR if 90% or more of the livable areas in the interior of the home is removed or replaced.

In many claims, like those involving extensive fire and smoke damage, the interior of the home is virtually gutted such that all wiring, plumbing, heating, doors, and windows are removed and replaced. This can result in 90% or more of the interior being removed and replaced, which opens the door to the Ontario HST NHR (and for claims less than \$450,000.00 – both the federal and provincial portion of the rebate).

### How much again - and who cares?

While in the grand scheme of things, the HST NHR is not a significant sum of money, when adjusting numerous total and/or large loss claims, recovery of the HST NHR can add up to a significant sum of money being recovered by the insurer over time.

You also need to care about the HST NHR to avoid the reduction of damages in a subrogated claim. For example, if no HST NHR was pursued in the fire claim we noted above, Too Close Fireplaces would (or should) seek to reduce the subrogated damages by the amount that could have been recovered in the HST NHR. This means \$16,080.00 or \$24,000.00 may be carved off the insurer's claims for damages (depending on whether

HST was paid on the land).

So now that we have answered the "how much does it pay" and "who cares" questions – let's discuss the allocation of the HST Rebate.

### Allocation of the HST Rebate

Subject to the specific policy wordings, where the rebuild costs are equal to or less than the policy limits, and the insured has not paid out-of-pocket for any upgrades, the insurer is entitled to recover 100% of the HST Rebate.

Questions have arisen with respect to the allocation of the HST Rebate in two (2) scenarios:

1. How is the HST Rebate allocated when the insured has contributed to the rebuild cost for upgrades; and,
2. What happens when policy limits are exhausted?

In the facts outlined above, the dwelling limits under the Policy are \$850,000.00. The insurer has paid \$807,500.00 under the policy and the insured paid \$42,500.00 to cover the cost for upgrades to the kitchen and bathrooms. In this scenario, the insurer has contributed 95% and the insured contributed 5%

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to the total cost of the rebuild inclusive of HST.

Subject to the specific policy wording, on these facts, the insurance company and insured would share the HST Rebate pro rata in proportion to their contributions to the rebuilding costs. If the maximum \$24,000.00 HST Rebate was available, the insurer would recover \$22,800.00 and the insured \$1,200.00. This outcome is consistent with Section 278(2) of the Insurance Act, which reads:

**(2) Pro-rating recovery** – Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

Let's consider the over limits scenario. To do so, we will change the facts such that the policy limits were exhausted at \$807,500.00 and the insured paid \$42,500.00 to complete the rebuild with materials of like kind and quality (i.e. no upgrades).

The right of subrogation is triggered upon payment to the insured under the policy even if there has only been partial indemnification. Subject to the policy wordings, Section 278(2) of the Insurance Act applies with the same outcome. The insurance company is to recover 95% and the insured 5% of the HST Rebate.

## The Process to Recover the HST NHR

You must have working knowledge of the eligibility and documentation requirements for the HST NHR to properly advise the insured on the process. This will require review of GST/HST New Housing Rebate bulletin RC4028(E) Rev. 22 (the "Bulletin").

We recommend you start each claim fully informing the insured of the HST NHR and the right of the insurance

company to recover all or a portion of the rebate. This can be accomplished in a letter to the insured at the outset of the claim outlining the mandatory documents that must be completed. Reference to the Bulletin should be provided in the correspondence.

To complete the HST NHR claim, you will need to work with the insured to prepare the GST/HST New Housing Rebate Application for Owner-Built Houses which includes completion of the Construction Summary Worksheet.

In our example noted above, Build It Contracting is a registered builder and the general contractor for the project. This means the Construction Summary Worksheet will be easy to fill out as only the amounts paid to Build It Contracting need to be outlined in the Construction Summary Worksheet (as all subcontractor invoices, materials etc. are billed by the general contractor).

If your insured is acting as the general contractor, it is important that all invoices for services and materials are maintained and inputted into the Construction Summary Worksheet. Updating the Construction Summary Worksheet throughout the rebuild is the

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There are some important insurance related factors to keep in mind to ensure recovery of the HST NHR, including:

1. All invoices must be in the homeowner's name. While the insurer can pay the invoice, the invoices must be in the insured's name.
2. The homeowner must be invoiced for the full cost of the rebuild – not just the HST – as it is the total cost which is considered to determine the quantum of the HST NHR.
3. The HST NHR must be claimed by and paid to the homeowner.
4. Only one homeowner can make the HST NHR claim, even if there are co-owners.
5. Complete the application for the HST NHR on occupancy to avoid delays that may prejudice recovery of the rebate.

As it is the homeowner who makes the claim and is paid the HST NHR, there are two (2) options for the insurer to recover the rebate:

1. Recover the rebate when received by the homeowner. If this method is utilized, we strongly recommend having the insured sign a Promissory Note which can be relied upon if the insured defaults on their obligation to pay the HST NHR recovered to the insurer.
2. Use the net-of-GST/HST method and pay the homeowner an amount net of the rebate and then the homeowner can recover the HST NHR.

The first option is often the standard route, as most insureds will not wish to float a portion of the rebuild costs while they await recovery of the HST NHR.

## Summary

The HST NHR can amount to significant recovery when all claims are considered over time.

In the context of subrogated actions, taking steps to recover the HST NHR will also ensure that damages claimed by the insurer are not reduced by the failure to pursue the rebate.

In summary, the HST NHR is a boring but necessary consideration in the adjustment of total or large loss claims.

## Dan Baldwin

Dan has diverse experience representing clients in his varied litigation practice and has established a reputation for himself as analytical, communicative, and knowledgeable.

Dan's insurance law practice comprises insurance defence, subrogation and coverage work and he provides legal services to a broad range of insurers and other organizations. Dan's insurance defence practice includes property damage claims, construction deficiencies, bodily injury claims and general insurance disputes. Dan has defended to trial and negotiated the settlement of numerous bodily injury claims involving occupiers' liability, products liability, assaults, commercial liability, and motor vehicle accidents.

Dan is quickly developing a name for himself in the complex area of subrogation, working with clients on all aspects of the recovery process to resolve subrogated claims with the best interests of their insureds and organizations in mind.

Dan was born and raised in Belleville now resides in Prince Edward County, Ontario. When not litigating, he is most likely spending time with his wife and their three rambunctious young girls.



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# Accidental Fires

## Meeting the Burden of Proof to Establish Liability

By: Joseph Baldanza, Partner and Liam Mackrell, Associate - Bell Temple LLP



**I**t is well-established law in Ontario that a plaintiff cannot recover damages arising from an accidental fire. The determination of liability regarding fire loss in Ontario hinges upon finding the specific origin and cause of a fire. If it is not possible to determine how or where the fire originated, the fire will be deemed “accidental”, and any possible liable party will be relieved of liability. The Fire Protection and Prevention Act, 1997, S.O., 1997, c. 4, (“the Act”) provides that no action for damages can be brought as a result of an accidental fire. Section 76 of the Act reads as follows:

“No action shall be brought against any person in whose house or building or on whose land any fire accidentally begins, nor shall any recompense be made by that person for any damage suffered thereby; but no agreement between a landlord and tenant is defeated or made void by this Act.”

Section 76 of the Act does not provide a definition of what constitutes accidental. This has left the interpretation of the term accidental fire open to interpretation by the courts. What constitutes an accidental fire under the Act is defined by the caselaw.

It is also important to note that the term accidental in the legal sense is different than the term accidental which you may see in a fire investigation report or expert report. Often a report might list the cause of the fire as accidental when the fire was not caused intentionally. This does not mean that the fire is accidental under the Act. For example, a fire might be listed as accidental in a report, but was started as a result of negligence, which is not considered accidental under the Act. Therefore, it is important to understand the distinction between the term accidental in the legal sense and in the colloquial sense.

### Development of the Caselaw

An early case defining what constitutes an accidental fire is *Neff v. St. Catherines Marina Ltd*, [1998] OJ No. 253 (ONCA) (“Neff”). In this case, the plaintiffs’ sued the defendant Marina when their three boats, which were being stored at the Marina, were destroyed by a fire. The fire occurred in the middle of the night and went undiscovered until morning. The cause of the fire was unknown and no evidence from the fire department was called at trial.

Ruling in the plaintiff’s favour, the trial judge held that the action was not for damages arising from a fire, but in respect of right arising from a bailment arrangement, and as such, the nature of the cause of action rendered the Act irrelevant. Moreover, the trial judge took issue with the complete lack of evidence as to the cause of the fire, whether accidental, intentional, through negligence, or otherwise.

The defendant Marina successfully appealed the decision. The Court of Appeal disagreed with the trial judge’s rejection of the Act. The Court held that the fire was produced by mere chance and could not be traced to any cause. Therefore, the defendant established that any negligence on its part in failing to care for the boats was barred by the Act.

The Court expanded on *Neff* in *Cromie v. Fry*, [1999] OJ No. 4046 (ONSC), and held that it was not necessary to provide proof “to a scientific certainty”, but a “common sense” analysis must be applied when determining a fire’s probable cause. In this case, the defendant parked his car in the plaintiff’s garage and mounted a radiant heater in front of the engine in order to dry out the engine area overnight. The next morning a fire broke out, destroying the car and the garage. At trial, the plaintiff tendered expert evidence that the most probable cause of the fire was ignition of the vapours escaping from the vehicle’s gas line or the air conditioning system. The expert for the defence, on the other hand, hypothesized several possible causes of the fire, including an overheated connection between the extension cord and the heater wire.

The Court dismissed the plaintiff’s action. It was determined that there was insufficient evidence to conclude that any of the possible causes of the fire was the probable cause of the fire. Most importantly, based on the parties’ dueling experts, it was impossible to conclude that the placement of the heater in the engine compartment was the probable cause of the fire. The fire was deemed to be accidental, and the plaintiff’s claim failed.

Another example of what the court interprets to be an accidental fire under the Act is in *Xie v. Jiang*, 2015 ONSC 1231. In this case a fire occurred in the dryer of the defendant’s condominium unit and caused damage to surrounding condominium units. The origin of the fire is not disputed. At the time of the fire, the defendant was drying 2 bedding comforters. The plaintiff claimed that the fire was caused by an excessively large load in the dryer and that the defendant was negligent in the operation of his dryer. The Court dismissed this action for two reasons:

- i. The evidence failed to establish that the defendant had been negligent in the operation of the dryer. There was insufficient evidence to show that the load was unnecessarily large. This highlights another important part of the plaintiff’s burden. The plaintiff does not only have to prove, on the balance of probabilities, the origin and cause of the fire. The plaintiff then has to prove that it was the defendant’s negligence that caused the fire.
- ii. One expert was unable to conclude what caused the fire. Another expert provided three possible causes, including the failure of dryer components, the ignition of lint within the dryer, and the ignition of the load within the dryer. These were all possible causes, but no probable cause was determined.

## Identifying Subrogation Opportunities

The interpretation and effect of the Act should be considered when identifying possible subrogation opportunities. When identifying possible subrogation opportunities, subrogating parties should consider a three-pronged approach.

First, the subrogation party should conduct a prompt initial investigation to identify and preserve relevant evidence. Parties should retain an engineer to inspect the scene right away to perform this task.

Second, the subrogating party should determine the origin and all potential causes of the fire. Again, parties should retain an expert and have them attend the scene right away. The expert must examine the scene of the fire before it is cleaned and/or repaired so they can determine all the potential causes of the fire. This will allow the subrogation party to investigate each possible cause and eventually determine the most probable cause of the fire. Also, if retained promptly, the expert can meet with fire

department representatives to review the evidence, get their evaluation of what happened and develop an understanding of their investigation.

Third, after the subrogating party has retained an expert, the expert has inspected the scene of the fire, all necessary evidence has been preserved and a list of potential causes has been provided by the expert, the subrogating party can determine whether there is a viable case to show that one of the potential causes is the most probable cause.

The benefit of the three-pronged approach can be seen in *McCooeye v. Michigan Trading Inc.*, 2009 ONSC 71716. In this case, the plaintiff's property was under construction. The defendant was the plaintiff's contractor. The plaintiff alleged that the fire was the result of combustion in the arches of an extension cord which was negligently placed by the defendant. The plaintiff supported this allegation with two expert reports which agreed that the fire was caused by the arches in the extension cord. However, the plaintiff's experts actually disagreed where the fire originated. The defendant's expert did not provide different theories as to the origin and cause of the fire but determined that the fire was not caused by the arches in the extension cord.

The Court accepted that it was a distinct possibility that the fire was caused by the arches in the defendant's extension cord. However, the Court determined that the arches were merely one possible cause of the fire and was not satisfied, on a balance of probabilities, that the arches were the probable cause of the fire.

In this case, the Court actually specifically references the shortcomings of the plaintiff's investigation into the origin and cause of the fire. The Court stated that the plaintiff should have taken possession of the subject power cord and had it examined. If there was destructive testing of the power cord which showed that the arches caused the fire, it likely would have been enough to prove the plaintiff's case. This highlights the importance of conducting a prompt and thorough initial investigation to identify and preserve evidence.

It is also important to note that if the subrogating party brings the action and can not pinpoint a cause of the fire, then they are vulnerable to summary judgment. In *Ali v. Ottawa (City)*, 2017 ONSC 739, the defendant moved for summary judgment to dismiss a fire loss claim for this rea-

son. The plaintiffs sought damages against their landlord for a fire they claimed originated from a faulty electrical socket due to the landlord's failure to perform proper maintenance on the electrical box. The plaintiffs had an affidavit of a 9-year-old stating that sparks and flames came out of the electrical outlet when she plugged in a charger. The plaintiffs also had an affidavit from a forensic engineer who examined the socket in question. He deposed that there were signs of sparking and arcing in the electrical box which may have been caused by foreign objects, such as cockroaches. He opined that the physical evidence was consistent with the testimony of the 9-year-old that the origin of the fire was the electrical socket. The Court determined that it was conceivable that, with the evidence presented, the cause of improper maintenance could be supported and the motion was dismissed. Although the motion was dismissed, this case highlights the importance for subrogating parties to pinpoint a cause of the fire to ensure the viability of the subrogated action.

There are cases in which plaintiff has successfully recovered losses from a fire. For example, in *Kinsmen Club of Kingston v. Walker Estate*, 2005 ONSC 39885, the plaintiff landlord and two of its tenants sought damages from another tenant in relation to a fire. The evidence indicated that the defendant had fallen asleep while smoking and woke to find her comforter on fire. The defendant then dragged the comforter into the hallway, shouted "FIRE", and exited the building. The Court determined that the origin and cause of the fire was the defendant's smoking materials smoldering on her comforter. Since careless smoking was obvious, section 76 of the Act did not apply.

Another example of a successful plaintiff is *MacPherson and Macpherson v. Allen et al*, 2010 ONSC 3247, in which the plaintiffs were successful in recovering their losses from a fire in their home. The defendant completed electrical work at the plaintiffs' home. The parties agreed that the origin of the fire was in the attic of the home. The plaintiffs claimed that the fire was caused by the negligent stapling of electrical cables by the defendant. However, there was no remaining evidence of improper wire stapling in the area of origin due to the damage from the fire. The defendant argued that there was no clear probable cause of the fire. The defendant pointed to evidence that there were rodent droppings in the area of origin and argued rodents chewing the wires could have caused the fire.

The Court accepted the plaintiffs' argument that the fire was caused by improper stapling of electrical wires. Although there was no remaining evidence of improper stapling of electrical wires in the area of origin, it was determined that there was evidence of improper stapling of electrical wires throughout the house. This was sufficient evidence for the Court to determine that, at the time of the fire, there was improper stapling at the origin. Due to the evidence of improper stapling of electrical wires throughout the house and the lack of evidence that pointed toward any other possible cause, including rodents chewing the wires, the Court determined that the plaintiff proved that the improper stapling of electrical wires was the probable cause of the fire.

This highlights that experts need to point to a particular cause in a successful subrogation claim. The most persuasive expert reports speak about all possible causes, rule out all other possible causes, and then provide an argument regarding why one cause is the probable cause. In this case, the expert report would have spoken about the improper electrical wiring and the rodents. It would have ruled out rodents chewing wires as a likely cause of the fire. Finally, it would have provided arguments regarding why improper electrical wiring was the probable cause of the fire.

The Fire Protection and Prevention Act 1997, S.O., 1997, c. 4, provides an evidentiary burden in subrogated actions for the subrogating party to prove, on the balance of probabilities, the origin and cause of the fire.

Each fire has a distinct fact scenario and the handling of a subrogated claim will differ depending on the facts.



**Joe Baldanza**

Joe Baldanza is a Partner at Bell Temple and also articulated with the firm. He was admitted into the Partnership in 2005, and is a determined

and aggressive litigator with a keen eye for detail. He regularly represents insurance and commercial clients in the Ontario Superior Court of Justice and takes a proactive

approach to litigation, including utilizing Alternative Dispute Resolution, to resolve complex matters.

Joe's practice ranges from commercial litigation to personal injury, but he specializes in property claims (Water and Fire Loss), subrogation, coverage opinions for Homeowners' and CGL policies, oil spill/leak claims, tort motor vehicle accidents, product liability and occupiers' liability. He is also regularly retained to conduct appraisals for property loss and business interruption claims under the Insurance Act. Joe is also Co-Chair of the firm's Property/Subrogation Groups.



**Liam Mackrell**

Liam joined Bell Temple as an associate in 2023. Before joining the firm, Liam completed his articles at a litigation boutique in Toronto where he worked on a diverse range of complex commercial litigation matters.

Liam graduated from Western University in 2018 and received an

Honours Specialization in Economics, Politics and Philosophy. Liam received his Juris Doctor from Queen's University Faculty of Law in 2022. During his time at Queen's University, Liam received the Honourable Mark G. Peacock Scholarship in Constitutional Law for excellence in the study of the Canadian Charter of Rights and Freedoms.

Liam's practice is diverse, working on matters regarding property damage litigation, construction litigation, commercial litigation, tort motor vehicle accident litigation and personal injury litigation.



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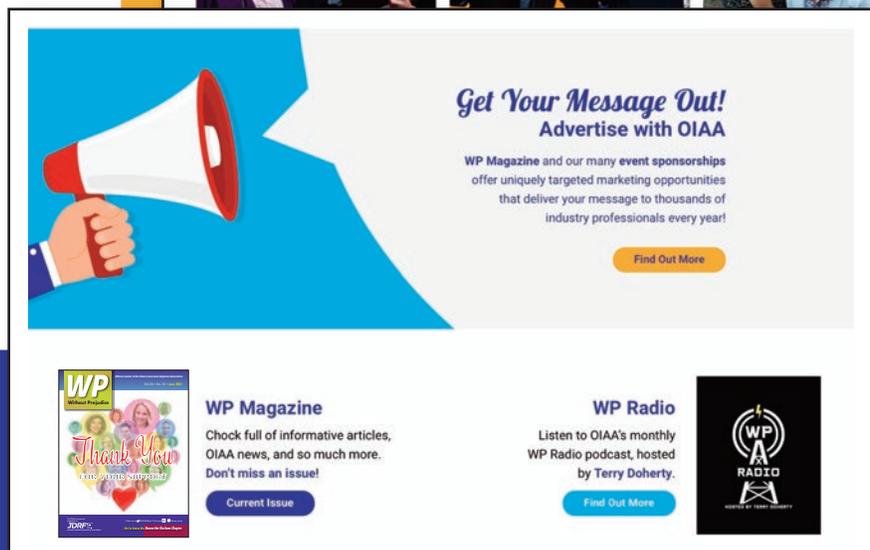
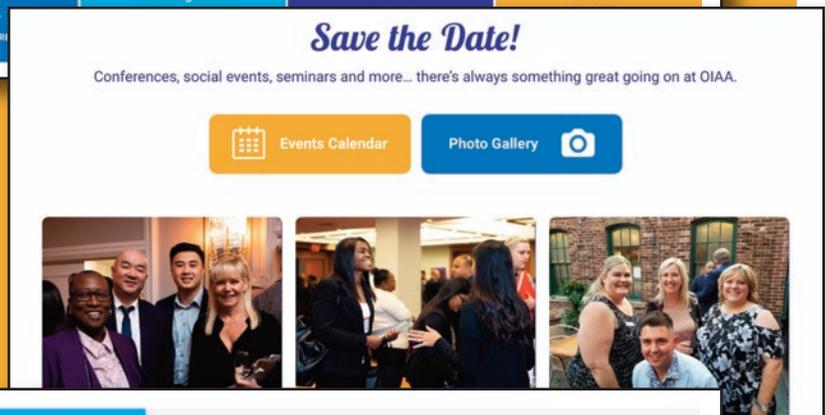
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