

THE
MIDDLESEX LAW
ASSOCIATION

Snail



December/January Issue

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What's inside this issue

- 02 **PRESIDENT'S REPORT** by Erin Rankin Nash
- 04 **LIBRARY NEWS** by Cynthia Simpson & Shabira Tamachi
- 06 **TOAST TO RUTH BADER GINSBURG** by Heather Ross
- 08 **REPORT ON PAST CPD PROGRAMS** by Paula Puddy
- 12 **TIPS AND TRICKS FOR VIRTUAL HEARINGS AND PROCEEDINGS**
by Jessica Naujokaitis
- 14 **FEDERATION OF ONTARIO LAW ASSOCIATIONS' FALL PLENARY**
by Karen Hulan
- 15 **MEMBER UPDATES**
- 16 **ARE LAWYERS CREATIVE?** by Daniel Mailer
- 17 **MENTAL ILLNESS AWARENESS WEEK (MIAW)** by Teresa Donnelly
- 18 **JUST KEEP SWIMMING** by Chelsea Smith
- 20 **WHICH WAY OUT OF THE LADY BARRISTERS ROOM?**
by Yola S. Ventresca
- 22 **THE CYCLICAL ISSUE FACED BY LONG TERM CARE HOMES**
by Katelynn Drake
- 24 **PREDICTIVE HIRE AND THE ETHICS OF ALGORITHMS** by David Spence
- 25 **WILL NOTICES**
- 28 **THANK YOU TO OUR MLA CPD VOLUNTEERS** by Paula Puddy
- 30 **HELP LONDON YOUTH THIS CHRISTMAS** by Natalie M. Brezden
- 32 **EXECUTIVE & COMMITTEES**



President's Report

By: Erin Rankin Nash / Ferguson Patterson Law

This marks the last newsletter of 2020 - and what a year it has been!

What started as a new decade full of promise, quickly converted to seismic shifts in everyone's world. It is a testament to our resiliency to see the silver linings that have come out of the past 9 months. With respect to the delivery of justice and the way we, as lawyers, do things, there have been more changes in the past 9 months than in the past 90 years. On behalf of my fellow Trustees I would like to thank our local bench and bar, their support staffs, court office staff and courthouse staff for being nimble and adaptive. This is a clear example that no one part is greater than the whole – and that only by everyone working together we have kept the delivery of justice moving.

MLA Small Civil Working Group

Many changes have occurred to adapt to or new reality. But more is needed. The MLA has struck a **Small Civil Working Group** composed of experienced local lawyers **Dave Williams, Lou-Anne Farrell, Mike Robb and Evelyn ten Cate** as well as **Justice Grace and Joy Beattie**. The mandate of the group is to reach out to members of the local bar and get input into what changes will help ensure that legal work continues to get done, looking at what has caused backlogs, what changes might help ease those backlogs and prevent future backlogs. They will look at rules, statutes and regulations to see what changes may need to happen. At the end, their report will be presented to the AG. If you are interested in providing input, suggestions or recommendations



please email one of the lawyers directly or us the MLA email info@middlaw.ca

Standardization of Naming

CaseLines has been launched in Toronto and is expected to be rolled out in the Southwest Region late spring or early fall. In the meantime it would help our courthouse staff if lawyers started implementing consistent naming standards for documents being filed. Instead of developing a new naming standard, the MLA, in conjunction with our Judges and courthouse staff are asking lawyers to use the naming standards that we will need to start using once we get CaseLines. Please ensure that going forward, the following naming

standards are used. Examples are:

- Notice of Motion
 - Moving Party - Smith, A
 - 14-JUL-2020
- Notice of Application-Applicant
 - Jones, C - 21-NOV-2020
- Statement of Defence
 - Defendant - ABC Company
 - 02-JAN-2021
- Compendium-Responding Party
 - Davis, D - 03-MAR-2021
- Factum-Intervenor
 - Jones, F - 11-NOV-2020

LSO Funding

There is reference elsewhere in this newsletter to the sudden cuts to our funding from the LSO that were just announced during the last week of November. The difference means a cut of \$57,000 to our library. Our members need to understand that various groups pressuring the Law Society to reduce their fees, is one of the factors resulting in this decrease to our association. This cut to the Law Society fees, means that our fees should go up. The MLA had not raised our fees in 14 years and last year we had a fee increase. The plan was to have a slight fee increase every year so we did not have to make another large increase ten years from now. Given the impact of the pandemic the MLA Trustees have made a decision not to raise our fee this year in order to help our members. We need to look at other ways we can increase our funding, or reduce our spending.

As members we encourage you to think about what the **Library/Resource Centre** will need to provide in 2026. What will our MLA members need from

their association in 2026? If you have any suggestions or comments please email us at info@middlaw.ca.

January Meeting with the Treasurer

The Treasurer of the LSO is **Teresa Donnelly**, from nearby Goderich. In January we are going to be holding a fireside chat with Teresa Donnelly. Look for details for how to sign up in the weekly Wednesday email to our membership.

Awards to Jim, Rasha, Carolynn

The fall **Plenary for FOLA** was held on Zoom on November 12. **Karen Hulan** has written a summary of the meeting for this newsletter. At the end of the day they announced the winners of the inaugural FOLA awards. Our past President, **Jim Zegers**, was the winner of the President's Award. This is a much deserved recognition for Jim. For years Jim has been a tireless promoter of **Courthouse Rocks**. He oversaw the redesign of our newsletter, **the Snail** and initiated the revamped **Opening of the Courts**. The MLA has benefitted from Jim's vision and *let's get it done* attitude.

Congratulations to our current **Trustee, Rasha El-Tawil**, and former Trustee, **Carolynn Conron**. Both are recipients of the **top twenty under 40**. This recognition is well deserved as both Rasha and Carolynn's contributions to our community are significant. *Congratulations Jim, Rasha and Carolynn.*

On behalf of my fellow Trustees I would like to wish everyone a joyful holiday season. We all understand that it will not be the way that we like to celebrate the holidays, but there is light at the end of the tunnel.

We also need to keep in mind those acquaintances who may be alone over the holidays. While this is a season of gathering, for many people it is a period of difficulty. Given the impact of the pandemic, those experiencing difficulty will have their difficulties exacerbated. Please remember to reach out and stay connected with those who may be alone.

[For each of you I am attaching a link to a very important read.](#) Many people are exhausted and can't understand why they don't feel recuperated after a restful

weekend. That is because, as the author points out, there are two states of being - fatigue and depletion.

Fatigue generally applies to your body and your mind. Depletion generally applies to your emotions, your intellect, and your spirit. Depletion can give you the feeling of physical or mental exhaustion. But you know it's not fatigue you're suffering when rest and relaxation don't replenish you.

The way to treat depletion is with restoration, not with relaxation. While relaxation is a passive state of "not-doing", restoration is a deliberate, active choice of activities different from your routine activities, which add energy instead of consume energy.

Hopefully each of you can take time to restore as well relax. We have done so well up to this point we just need to persevere.

Thank you again to everyone for all you have done to help us get through all the changes that 2020 has brought.

Erin Rankin Nash
PRESIDENT





Library News



Contributed by:

Cynthia Simpson and Shabira Tamachi
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Cell Phones in the Library

We have noticed an increase in cell phone use in the library, especially conversations conducted on speaker phone. It is disruptive to other library users (and the staff) if you carry on loud conversations on your phone while in the library. This is increasingly annoying when your call is on speaker phone. We ask that our users refrain from taking calls on speaker phone *anywhere* in the library and please try to restrict all cell phone use to our lounge areas.

O'Brien's Encyclopedia of Forms

We are thrilled to announce that **Thomson Reuters** has finally transferred our online subscription to **O'Brien's Encyclopedia of Forms** from its cumbersome, antiquated, stand-alone platform to our **WestlawNext** subscription. You now have all the convenience of one-site searching with much better search functionality and document delivery options. Yes, you can finally email precedents to yourself right out of WestlawNext rather than saving documents, one at a time, onto our desktops to forward through your email!

Budget 2021

We have been advised that the Law Society is imposing a significant budget cut on county libraries for 2021 which the **Legal Information and Resource Network (LIRN)** will apply on a sliding scale based upon current funding amounts. The Middlesex Law Association, as one of the five Regional libraries in the system, is facing a double-digit funding cut which will directly affect our collections budget.

We are reviewing our loose-leaf resources in print and online via our **Lexis Advance Quicklaw and WestlawNext e-resources** and considering whether cuts will be made and by decreasing our text collection budget.

We ran a piece in last month's article about the resources that you have available at no charge from your office, including the **LSO's AccessCLE, HeinOnline, and CanLII**, so take a look again at all you have at your fingertips!

Lexis Advance Quicklaw

As mentioned above, we may be making cuts to our collection based upon availability of information via online resources. Our subscriptions to **WestlawNext and Lexis Advance Quicklaw** are for in-library use only but **LexisNexis** has generously extended free access to its service to every Ontario lawyer from their office. In addition, the package available to lawyers is more comprehensive than what we have available in the library, so it's an excellent time to sign up and learn how to search materials in this service.

Any existing IDs for lawyers should now be reactivated (unless it's been more than 30 days since you accessed it), and new [participants can once again self-register using the following code here.](#)

Court Robes for New Calls

Preparing to start your law practice is already expensive and the pandemic is probably making it harder for some upcoming New Calls. Two long-time members have donated court attire to the library and would like to see the

items go to new lawyers. We have a court vest, tabs, dickie and two skirts from one of our women lawyers and a robe and vest from a male lawyer. If you are interested in seeing the items, please call (519-679-7046) or [email us](#) to arrange a time to stop in and see them. We ask our members to pass this information on to their articling students in case they are too busy working to see our article.

New Books

New titles are arriving every day, and here are the latest:

Archibald & Echlin. **Annual review of civil litigation 2020**, Thomson Reuters

Archibald/Killeen/Morton. **Ontario Superior Court Practice 2021**, LexisNexis

Aylward, Stephen. **Law of unincorporated associations in Canada**, LexisNexis

Billingsley, Barbara. **General principles of Canadian insurance law -3rd ed.**, LexisNexis

Butkus, Mavis. **2020 annotated Ontario Landlord and Tenant Statutes**, Thomson Reuters

Carlson, John. **Personal injury damages --2020 ed.**, LexisNexis

Firestone, Stephen. **Ontario motor vehicle insurance law and commentary, 2021 ed.**, LexisNexis

Fuerst, Justice Michelle. **Ontario courtroom procedure -- 5th ed.**, LexisNexis

Gold, Alan. **Practitioner's Criminal Code 2021**, LexisNexis

Gold, Alan. **Practical guide to the charter: section 10(b)**, LexisNexis

Grant, Stephen. **Lawyers' professional liability --4th ed.**, LexisNexis



Hiltz, D'Arcy. **Guide to consent and capacity law in Ontario --2021 ed.**, LexisNexis

Hutchison, Scott. **Hutchison's search warrant manual 2020**, Thomson Reuters

Imai, Shin. **Annotated Aboriginal Law: The Constitution, Legislation and Treaties 2020**, Thomson Reuters

Koturbash, Gregory. **Guide to conducting bail hearings in Canada**, LexisNexis

Lavender, Stephen. **2020 annotated Ontario Human Rights Code**, Thomson Reuters

Lavender, T. Stephen. **2020-2021 annotated Ontario Employment Standards Act**, Thomson Reuters

Lavender, T. Stephen. **2020 annotated Employment Insurance Act**, Thomson Reuters

Libman, Justice Rick. **Handling summary conviction offences - 2021 ed.**, Thomson Reuters

LSO. **Six-minute administrative law and practice 2020**.

LSO. **Buying or selling a business 2020**.

McCarthy Tétrault. **Annotated Ontario securities legislation--53rd ed., 2021**, Lexis Nexis

McConnell, Rose H. **Document registration guide --22nd ed.**, LexisNexis

McLachlin, Beverley. **Canadian law of architecture and engineering --3rd ed.**, LexisNexis

Morden, John W. and Paul Perell. **Law of civil procedure in Ontario -4th ed.**, LexisNexis

Munoz, W. Alejandro. **2021 Annotated Ontario Education Act**, Thomson Reuters

n/a. **Ontario OH&S Act & Regulations 2020 - consolidated ed.**, Thomson Reuters

Payne, Julien. **Canadian family law -8th ed.**, Irwin Law

Randazzo, Daniel. **2020 annotated Ontario Labour Relations Act**, Thomson Reuters

Segal & Libman. **2020 Annotated Ontario Provincial Offences Act**, Thomson Reuters

Sherman, David, ed. **Practitioner's Goods and Services tax annotated. 41st ed**

2020, Thomson Reuters Snyder, Ronald. **2020 annotated Canada Labour Code**, Thomson Reuters

Sopinka, John. **Trial of an action - 4th ed.**, LexisNexis

Steinberg, Perkins, Lenkinski, James. **Ontario family law practice 2021 -2 vol.**, LexisNexis

Stewart, Sheilagh. **Stewart and Moffatt on provincial offences procedure in Ontario - 4th ed**, Earls Court Press

Tamaro, Normand. **2020 annotated Copyright Act**, Thomson Reuters

Tolensky, Marni and Stephen Lavender. **2020 annotated Canadian Human Rights Act**, Thomson Reuters

Tustin and Lutes. **Guide to the Youth Criminal Justice Act --2020/2021 edition**, LexisNexis

Watt, Beedell, Regimbald, Regan and Estabrooks. **Supreme Court of Canada practice 2020**, Thomson Reuters

Wilton, Ann and Joseph, Gary. **Family law arbitration in Canada --4th ed.**, Thomson Reuters

Missing Books

Wills & Estates lawyers in particular!
Please look for that distinctive red and white Property of Middlesex Law Association sticker on the spine of any books that might be kicking around your office/back seat/family room sofa right now!

Wills & Estates missing books:

Allen, John. **Estate planning handbook -4th ed.**

Hull, Ian. **Challenging the validity of wills -2nd ed.**

Hull, Ian. **Macdonell, Sheard and Hull on probate practice -5th ed. (2016)**

Oosterhoff, Albert H. **Oosterhoff on wills --8th edition (2016)**

Rintoul, Margaret. **Practitioner's guide to estate practice in Ontario -4th ed.**

Other Missing Books:

Bolton, Michael. **Defending drug cases -4th ed. (2016)**

Bourgeois, Donald J. **Charities and not for-profit administration and governance handbook --2nd ed.**

Fuerst, Justice Michelle. **Ontario courtroom procedure -- 4th ed.**

Goodis, David. **2012 annotated Ontario Freedom of Information & Protection Act**

Lavender, Stephen. **2015 annotated Ontario Human Rights Code**

Johnston, David. **Canadian securities regulation -3rd ed.**

MacDonald, James. **2015 annotated Divorce Act.**

MacFarlane, Q.C., Bruce A. **Cannabis law.**

OBA. **Business agreements: practice and precedents.**

n/a. **The Annotated 2015 Tremear's Criminal Code.**

Shearer, Gillian. **Law and practice of workplace investigations.**

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Toast to Ruth Bader Ginsburg



Contributed by:

**Heather Ross / Founder, South West Region Women's Law Association;
General Counsel, The Ross Firm; Ex-Officio Benchler, Law Society of Ontario**

The following toast was made at the October 23, 2020 online SWRWLA event.

Ruth Bader Ginsburg spent a lifetime flourishing in the face of adversity before being appointed a Supreme Court justice, where she successfully fought against gender discrimination and unified the liberal block of the court.

She was born Joan Ruth Bader on March 15, 1933 in Brooklyn, New York. Her father was a furrier in the height of the Great Depression, and her mother worked in a garment factory. Ginsburg's mother instilled a love of education in Ginsburg and influenced her early life as she watched Ginsburg excel at James Madison High School. Her mother was diagnosed with cancer and died the day before Ginsburg's high school graduation.

Ginsburg's success in academia continued throughout her years at Cornell University, where she graduated at the top of her class in 1954. That same year, Ruth Bader became Ruth Bader Ginsburg after marrying her husband Martin. After graduation, she put her education on hold to start a family. She had her first child in 1955, shortly after her husband was drafted for two years of military service. Upon her husband's return from his service, Ginsburg enrolled at Harvard Law.

Ginsburg's personal struggles neither decreased in intensity nor deterred her in any way from reaching and exceeding her academic goals, even when her husband was diagnosed with testicular cancer in 1956, during her first year of law school. Ginsburg took on the challenge of keeping her sick husband up-to-date with his studies while maintaining her own position at the top of the class. At

Harvard, Ginsburg tackled the challenges of motherhood and of a male-dominated school where she was one of nine females in a 500-person class. She faced gender-based discrimination from even the highest authorities there, who chastised her for taking a man's spot at Harvard Law. She served as the first female member of the Harvard Law Review. Her husband recovered from cancer, graduated from Harvard, and moved to New York City to accept a position at a law firm there. Ruth Bader Ginsburg had one more year of law school left, so she transferred to Columbia Law School and served on their law review as well. She graduated first in her class at Columbia Law in 1959.

Even her exceptional academic record was not enough to shield her from the gender-based discrimination women faced in the workplace in the 1960s. She had difficulties finding a job until a favorite Columbia professor explicitly refused to recommend any other graduates to U.S. District Judge Edmund L. Palmieri unless he hired Ginsburg. Justice Palmieri hired her as a clerk. After her two year clerkship she was offered some jobs at law firms, but always at a much lower salary than her male counterparts. She instead took some time to pursue her other legal passion, civil procedure, choosing to join the Columbia Project on International Civil Procedure. This project fully immersed her in Swedish culture, where she lived abroad to do research for her book on Swedish Civil Procedure practices. Feminism was flourishing in Sweden. The experience proved formative. She was able to directly observe a different way to organize society and the experience awoke her dedication to gender equality where she became an architect of the legal fight for

women's rights in the 1970's.

Upon her return to the U.S., she accepted a job as a professor at Rutgers University Law School in 1963, a position she held until accepting an offer to teach at Columbia in 1972. There, she became the first female professor at Columbia to earn tenure. Ginsburg also directed the influential Women's Rights Project of the American Civil Liberties Union during the 1970s. In this position, she led the fight against gender discrimination and successfully argued six landmark cases before the U.S. Supreme Court. Ginsburg took a broad look at gender discrimination, fighting not just for the women left behind, but for the men who were discriminated against as well. Ginsburg experienced her share of gender discrimination, even going so far as to hide her pregnancy from her Rutgers colleagues until her contract was renewed. Ginsburg accepted Jimmy Carter's appointment to the U.S. Court of Appeals for the District of Columbia in 1980. She served on the court for thirteen years until 1993, when Bill Clinton nominated her to the Supreme Court of the United States.

Ruth Bader Ginsburg began her career as a justice where she left off as an advocate, fighting for women's rights. Barely five feet tall and weighing 100 pounds, Justice Ginsburg drew comments for years on her fragile appearance. But that appearance belied an extraordinary toughness.

In 1996, Ginsburg wrote the majority opinion in *United States v. Virginia*, holding that qualified women could not be denied admission to Virginia Military Institute. Her style in advocating from the bench matches her style from her time at the ACLU: slow but steady, and calculated. Instead of creating sweeping

limitations on gender discrimination, she attacked specific areas of discrimination and violations of women's rights one at a time, so as to send a message to the legislatures on what they could and could not do. Her attitude was that major social change should not come from the courts, but from Congress and other legislatures. This method allowed for social change to remain in Congress' power while it received guidance from the court.

Ginsburg did not shy away from giving pointed guidance when she felt the need. She dissented in *Ledbetter v. Goodyear Tire & Rubber Co.* where the plaintiff, a female worker being paid significantly less than males with her same qualifications, sued under Title VII. She was denied relief under a statute of limitations issue where the majority held that the limitations period ran from the date she received her paycheck rather than from the date she found out she was being paid less than her male colleagues. The facts of this case mixed her passion for federal procedure and gender discrimination. She broke with tradition and wrote a highly colloquial version of her dissent to read from the bench. She also called for Congress to undo this improper interpretation of the law in her dissent, and then worked with President Obama to pass the very first piece of legislation he signed, the Lilly Ledbetter Fair Pay Act of 2009, a copy of which hung proudly in her office.

And of dissenting opinions she famously said: *"Dissents speak to a future age. It's not simply to say, 'my colleagues are wrong and I would do it this way,' but the great dissents do become court opinions and gradually over time their views become the dominant view. So that's the dissenter's hope: that they are writing not for today, but for tomorrow."*

Until her death on September 18, 2020, Ginsburg worked with a personal trainer in the Supreme Court's exercise room, and for many years could lift more than both Justices Breyer and Kagan. Until the 2018 term, Ginsburg had not missed a day of oral arguments, not even when she was undergoing chemotherapy for

pancreatic cancer, after surgery for colon cancer, or the day after her husband passed away in 2010. Justice Ginsburg proved time and again that she was a force to be reckoned with, and those who doubted her capacity to effectively complete her judicial duties needed only to look at her record in oral arguments, where she was, until her death, among the most avid questioners on the bench.

When she stood in the White House Rose Garden to accept her nomination to the Supreme Court in June 1993 she paid a tribute to her mother – and it is a tribute to all mothers: *"I pray that I may be all that she would have been had she lived in an age when women could aspire and achieve and daughters are cherished as much as sons."*

And on gender equality she said this, *"Women will have achieved true*


equality when men share with them the responsibility of bringing up the next generation." And further, *"I ask no favour for my sex. All I ask of our brethren is that they take their feet off our necks."*

In a September 25, 2020 interview in McLean's magazine, Canada's own great dissenter, former Supreme Court Justice Claire L'Heureux-Dube said of RBG that, *"Courage on the bench is important and she has courage like no one. Dissenters are the voice of the future and it's women who are doing it."*

So to all of my colleagues in law, what we do takes great courage.

A toast to your courage and the courage and the legacy of the inimitable, the notorious Ruth Bader Ginsburg.

L'chaim.


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Report on Past CPD Programs



Contributed by:
Paula Puddy, MLA CPD Director

CPD Hours Clarification on EDI, and Professionalism

As the December 31 deadline approaches, here are a few reminders about your CPD hours and reporting:

- EDI is part of professionalism. As such, any EDI hours obtained in 2020, count towards your professionalism hours for this year as well as your 3 hours of EDI by 2020;
- Any additional EDI or Professionalism hours in 2020 count towards your Substantive hours for that calendar year. (You can never have enough professionalism!)

[Here is a link to the LSO's FAQ page on CPD](#)

Report on Past Programs

The Middlesex Law Association was pleased to make a donation to London Lawyers Feed the Hungry on behalf of all of the volunteers who participated in these events.

The Semi-Annual Women's Networking Event

The latest Women's Networking Event was held virtually on October 16, 2020. We had 25 lawyers and students join us!

During this event, we discussed strategies and tips to manage and cope, personally and professionally, during the pandemic. Topics discussed included technology, software, working from home, going to the office, Zoom tips, well-being tips, home schooling, managing guilt, balancing work and home, taking a vacation, stress management and more!

Thank you to our chair, Louise Mimmagh, for sharing her thoughts and experience during these trying times. It was great to hear from so many attendees on their experiences and strategies to cope too!

Thank you to all participants who strongly supported this event! We have a

supportive bar, and we are only a phone call or an email away if you need help or support, or someone to listen.

The 15th Annual Business Breakfast

This annual breakfast was held on Wednesday, October 9, 2019 with 30 lawyers in attendance. Thanks to Scott Spindler of Harrison Pensa LLP for chairing the program. Here is a brief summary of the presentations:

Keith Trussler provided a potpourri of case commentaries involving the CRA. Specifically, he touched on cases that addressed:

- Requirements to provide information
- Principal residence exemptions
- Lending money to finance a business

Lance Ceaser spoke about the "24-Month Cap on Reasonable Notice – Alive & Well" and the importance of conducting proper workplace investigations.

David Spence spoke about a "Return to Work & the Duty to Accommodate" due to COVID-19. He also reviewed two cases referring to the developments in the enforceability of employment contract termination clauses.

The Fifteenth Annual Straight from the Bench Conference

The Middlesex Law Association held its Fifteenth Annual Straight from the Bench Conference on November 2, 2020 and November 3, 2020. Thanks to everyone, speakers, attendees and chairs, for accommodating the ever-changing date of the conference!

This year's conference welcomed over 120 lawyers, judges and sponsors who covered a variety of "hot" litigation topics with a focus on advocacy, remote hearings and technology. Our short snappers were a hit.

Summary of Presentations

Best Practices in Remote Hearings by

Barbara Legate. Barb highlighted the key features outlined in the lengthy report entitled best practices for remote hearings as advocacy moved online. Checklists and an executive overview are included in her materials. Here are some of the highlights:

- Consult local practice directions
- Test the technology
- Practice using the technology
- Agree ahead of time on an agenda
- Discuss and agree on procedural issues

Developments in Public Authority Liability by Professor Erika Chamberlain of Western Law. Erika Chamberlain's presentation reviewed key provisions of the *Crown Liability and Proceedings Act, 2019*^[1] and their effects on the immunity of public authorities in tort law. While the legislation appears to be an attempt to expand Crown immunity, it has so far been interpreted in a way that is consistent with the existing common law.

Social Media & Defamation in the Internet Age by Michel Castillo of Castillo Law Chambers. Michel's presentation was not about the evils of social media. To the contrary; social media is potentially an outstanding tool. The problem is that it is also, potentially, a source of many headaches for our clients (let alone for us as professionals). However, social media can be misused, and people have a tendency to be Dr. Jekyll in real life, but Mr. Hyde on the internet. It is not enough for people to disagree, some people must vehemently disagree and sometimes add adjectives and expletives to make their point (of course they do not but somehow, they feel like they do!) This presentation reviewed the law of defamation, recent cases including damage awards, and tips on how to "behave" and avoid claims for defamation in the internet age!



Entitlement to Bonuses by Anne Marie Frauts of Frauts Lawyers. Anne Marie reviewed the recent Supreme Court of Canada decision in *Matthews v. Ocean Nutrition Canada Ltd.* which addresses an employee's entitlement to bonuses after being terminated. The Supreme Court of Canada held that for the purpose of calculating wrongful dismissal damages, the employment contract is not treated as terminated until after the reasonable notice period expires. Matthews should therefore be awarded the amount of the bonus as part of his common law damages for breach of the implied term to provide reasonable notice.

The Future of Advocacy by Guy Pratte of BLG LLP. Guy Pratte shared his thoughts, in particular, emphasized the continued importance of oral advocacy. He encouraged lawyers to continue to rely on written advocacy, but being persuasive, and looking people in the eye, would still be an essential skill for future advocates.

To Zoom or Not to Zoom by Jim Zegers of Zegers Law PC. Is the physical courtroom a relic of the past? Will the future be one where litigants meet in a virtual courtroom? Like the accused who is kept in suspense until the final line of the trial judge's decision, you read to the end of Jim's paper to find out. Among the amendments to the *Criminal Code* contained in Bill C-75 (which came into force June 21, 2019) were provisions to expand and standardize the availability of audioconference and videoconference technology. Jim's presentation examined sections 714.1 and 714.2 of the *Criminal Code* and tried to provide guidance as to when a court will permit witnesses to give evidence by audioconference or videoconference, or find that the fundamental principles of justice require in-person testimony.

2SLGBTQ+ Creating Positive Space by Deirdre Pike of Queer Positive Power. Deirdre's presentation focused on creating a positive, and inclusive space, at the firm, in the courtroom, and beyond for the queer community. She shared her knowledge, stories, and explained many terms to

improve the audience's understanding of the challenges faced by this community and how we become an ally or friend.

Highlights from Members of the Bench

Chief Justice Geoffrey Morawetz discussed *Technology in the Courts, What Has Changed in 2020* and how things will likely improve with software programming called Caselines in 2021.

The Honourable Madam Justice Kelly Tranquilli, facilitated by Dara Lambe, spoke about *Advocacy during the Pandemic*.

In providing advice to the bar regarding preparing for virtual hearings, Madam Justice Tranquilli discussed the importance of concise, quality written material on long motions/applications. Her Honour suggested bookmarking PDF motion records and facts, properly naming electronic documents, and hyperlinking authorities cited in facts. She also encouraged counsel to consider filing a compendium for lengthy motions/applications.

In terms of the hearing itself, Justice Tranquilli suggested using the case management provision in the *Rules of Civil Procedure* if necessary to have counsel speak to the presiding justice in advance to agree upon mode of hearing and any procedural issues contemplated. During the hearing, Justice Tranquilli reminded counsel that the hearing is treated as if it were in a court room. While gowning has been suspended, business dress is expected and only water is to be consumed. Background noise and lighting should be considered if proceeding via videoconference.

The Honourable Mr. Justice Grace provided guidance and answered questions about the status of the course in the Southwest region as of November 2020. It is essential that everyone, lawyers, students, clerks, assistants and legal support, read the latest practice direction rather than emailing or calling the trial co-ordinator's office. Everyone has been working hard, and doing their best to adapt to this new reality. Obviously, the space limits given the

important safety requirements at the court house are a significant barrier to hearing trials and jury trials. Justice Grace will continue to communicate with the members of the bar. He would appreciate any feedback being directed to the MLA's Bench & Bar representatives, Rasha El-Tawil and Jennifer Wall.

Regional Senior Justice Thomas delivered a Southwest Regional Update which, as always, was comprehensive and informative (and right on time this year!) Compared to previous years, the southwest region has a full complement of judges. Furthermore, the number of virtual hearings increased exponentially since March. Obviously, there are significant challenges as outlined by Justice Grace.

Thank you to the Honourable Madam Justice Lynne Leitch for being our judicial chair of this conference for the fifteenth year in a row. Clearly, her Honour is committed to delivering a high quality and practical litigation conference in Southwestern Ontario.

The agenda this year was fantastic which is thanks to my wonderful conference co-chairs: Anne Marie Frauts of Frauts lawyers, Dara Lambe of Lerner LLP, and Dagmara Wozniak of Siskinds LLP. We had a new chair join us this year, Elizabeth Harding of Lerner LLP. Thanks to Evelyn ten Cate of Foster Townsend LLP for her input too!

Finally, special thanks to our sponsors for helping us make this event a success. In particular, thank-you to our sponsors for their on-going sponsorship, as well as their generous door prizes. (The "wheel of names" was a success!) We are fortunate to have such committed legal service providers in our community.

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A big thank you to Cynthia Simpson and Shabira Tamachi for their assistance behind the scenes: registering members, refunding members, responding to questions, updating the multiple registration lists, keeping track of multiple schedule changes, editing my newsletter articles, posting ads on the website, emailing members, managing newsletter article requests and dealing with all of the payment issues. Phew! I am so lucky to have you both on my team!

Finally, this event would not be possible without the tremendous support of our members. Thank you for attending our local programs and for saying "yes" to my requests for speakers or help.

The 15th Annual Wills, Estates & Trusts Conference

Forty-seven lawyers attended the 15th Annual Wills, Estates & Trusts Conference held virtually on Wednesday, November 4, 2020.

Thank you to our co-chairs Lou-Anne Farrell, Justin Newman and Ian Wright for organizing another excellent program and to Dan McNamara, Kimberly Cura, Paul Morrison and Susan Fincher-Stoll for presenting at the conference.

Lou-Anne and Kim delved into the benefits of mediating estate litigation matters, particularly given the backlog of the courts right now. They provided a checklist on how to prepare for the mediation, tips for a successful mediation, and a review of different styles of mediation. As an experienced mediator, Lou-Anne also provided advice from a mediator's perspective.

Ian delivered a case law update on two cases. In *Kent v. Kent*, 2020 ONCA 390, the court addressed how family law considerations affect real property being held on a resulting trust for a deceased parent. The case of *Trezzi v. Trezzi*, 2019

ONCA 978 addressed whether a testator can effectively bequeath corporate assets held by his company.

Dan and Justin reviewed the law of undue influence as it pertains to drafting a will. They shared two cases with quite divergent views on a solicitor's duty to understand and investigate the testator's circumstances to ensure no undue influence! This poses quite the dilemma for solicitors!

Finally, Susan and Paul touched on changes and solutions implemented in their practices that have assisted them during the pandemic. They spoke about software, virtual commissioning and virtual will signing.

CPD Award of Excellence



The MLA's CPD Award of Excellence 2020 was presented to Daniel McNamara at the 15th Annual Wills, Estates & Trusts conference in early November.

Dan has been one of the co-chairs of the Wills, Estates & Trusts conference for over 15 years. Although he did not chair the program this year, he was still involved in the planning process and presented on undue influence, with Justin Newman. In fact, Dan, along with Lou-Anne Farrell and Kathleen Chapman was one of the instigators of this successful program, over 16 years ago!

Clearly, legal education and mentorship has always been important to Dan. He consistently gives back to the legal community in terms of his time, knowledge, and passion for teaching. He is a leader in this field and humble enough to acknowledge that he still has a lot to learn!

Dan has a long history of teaching Wills. He taught in the bar admission course in London for many years. Dan also teaches the Wills & Succession course at Western Law and has done so since 2001. (That is a lot of students – 2 of which presented at our 2020 MLA Wills' program!)

On behalf of the Chairs, participants at our Wills' programs, and members of the Middlesex Law Association, we express our sincere thanks and appreciation for all of your work, effort, time and leadership dedicated to teaching, mentoring and learning in this area of the law.

Congratulations Dan on being the first recipient of the MLA's CPD Award of Excellence!



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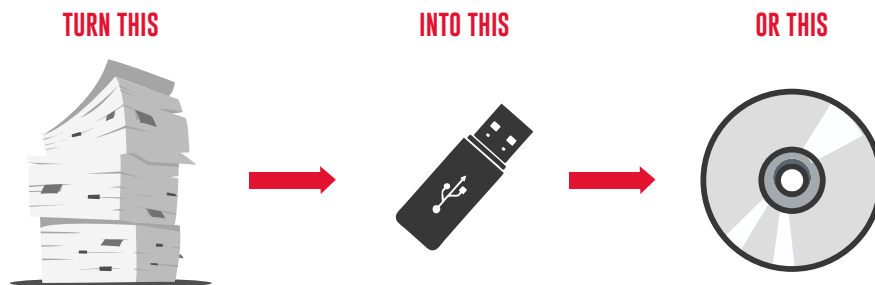


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Tips and Tricks for Virtual Hearings and Proceedings



Contributed by:
Jessica Naujokaitis / Cohen Highley LLP

As a result of COVID-19, it appears that virtual hearings and proceedings are here to stay for the time being.

Many lawyers and paralegals have had to adapt to the changing environment for conducting virtual hearings and proceedings either through various video conferencing platforms or via teleconference. As a litigator, I have participated in a number of virtual hearings and proceedings since COVID-19 began and share some tips and tricks below.

Indicate Who You Represent Beside Your Name

When logging into a video conference platform for a hearing or Examination for Discovery, for example, it is a good idea to indicate who you represent beside your full name. For example, Jessica Naujokaitis – Lawyer for the Plaintiff. This ensures that all of the parties in the virtual hearing as well as the adjudicator or Judge are certain who you represent and there is no confusion. It would not be as beneficial to do this during a larger proceeding with several counsel, such as during motions court or assignment court.

To Robe or Not to Robe?

Although it may be strange for counsel to not robe during a contested motion,

for example, robing requirements have been suspended for the time being during virtual proceedings. It is important to note that counsel must wear appropriate business attire even when virtually appearing before a Judge.

When Motions Court is Conducted Via Teleconference

As you are probably aware, motions court is a bit different now that it is no longer in person. If you are attending Friday motions court and it is conducted via teleconference, you may need to repeat your name and who you represent after the Judge has called your matter number. This is because the phone line will make a loud beeping noise when a party signs in or signs out of the conference.

Another tip is to ensure that you speak clearly and slowly when speaking to the Judge. As well, do not be afraid to pause after you have spoken to ensure that the Judge understands what you are saying and/or has had an opportunity to write down your submissions. This is quite different from in-person motions court where you can watch the Judge to determine if s/he is continuing to write or is looking at you directly while you are making your submissions.

If you are arguing a contested motion with other counsel via teleconference

then ensure that you say your name before speaking so that the Judge knows which counsel is speaking and there is no confusion.

Wearing Patterns on Camera

Try not to wear patterns on camera as this will draw extra attention to your clothing and less attention to your arguments. Patterns do not show well on camera and it is better to wear solid colours, if possible.

Make Sure That You are Familiar with the Video Conferencing Platform

Do you know how to mute your camera or turn off your video? Do you know how to screen share? Prior to your virtual hearing, ensure that you are familiar with all aspects of the video conferencing platform that you will be using to prevent any embarrassing mistakes such as not being muted when you think that you are. For example, with Zoom, you can join a test Zoom meeting to familiarize yourself with the program. As well, when you are in a Zoom meeting, you can test your sound or video.

Best of luck with any virtual hearings or proceedings you have. I hope to see and speak with you all virtually!





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Federation of Ontario Law Associations' Fall Plenary



Contributed by:
Karen Hulan / Beckett Personal Injury Lawyers

The fall FOLA plenary occurred online on November 12, 2020.

FOLA Submissions to MAG

It was immediately apparent that the Executive has had an extraordinarily busy year. It responded to several requests for input from the Ministry of the Attorney General on a wide range of topics including the availability of civil juries and Rules of Civil Procedure regarding the discount rate for future pecuniary damages and pre-judgment interest rate for non-pecuniary damages. Submissions were also made concerning virtual commissioning and notarization, the Estate Law Reform to Modernize Estates Law and Streamline and Expedite Resolution of Estates and regarding the recommendations made in the Law Commission of Ontario Final Report *Defamation in the Internet Age*. [Links to FOLA's submissions can be found here.](#)

The turnaround times for MAG requests for input are often short. FOLA then notifies its member associations. The MLA circulates a call for input through the weekly Wednesday email to our members. We encourage you to contact one of the

MLA trustees on any matter for which you would like to provide input. We will share that with FOLA for consideration as it prepares its submissions on behalf of all of our associations.

FOLA Reports

Real estate, legal aid and the southwest regional reports can be found [here](#). At the time of the plenary, FOLA was finalizing its submissions to the Law Society regarding the Family Legal Services Provider Licence.

LIRN

The Legal Information and Resource Network Inc. (formerly LibraryCo.) held its inaugural meeting in 2020. LIRN is the not-for-profit organization responsible for management of the county courthouse law library system. It is funded by the Law Society. Funding for the MLA Practice Resource Centre is primarily provided by the LSO.

Since the plenary, the LSO announced a substantial reduction in LIRN funding. The MLA Practice Resource Centre's funding will be reduced by 14% which translates into approximately a \$57,000 reduction in funding for the upcoming year. We are already operating at a

shortfall as funding has decreased year over year. The MLA currently supports the Practice Resource Centre with an annual transfer as funding is otherwise insufficient to maintain the number and types of holdings we are required to have as a Regional Library. This issue remains at the forefront of trustee meetings as we determine how to provide services to our members in light of dwindling funding.

Rewards and Awards!

[MLA members can access member awards through FOLA](#) which include discounts with a number of travel, courier and legal education providers.

This is a reminder to recognize your colleagues for their exceptional legal work and contributions to the legal community. Deadlines for Law Society awards are approaching. [Visit the LSO website for more details](#) for criteria for the awards and the nomination process. FOLA also has three annual awards: the President's Award, Distinguished Service Award and Luminary Award. [Deadline for nominations is March 31, 2021.](#) Congratulations to the MLA's Past President, James Zegers, for receiving the 2020 President's Award.



Member Updates

Send your updates to
library@middlaw.on.ca

New directory alert! You have already been notified about the availability of the 2020-2021 MLA Members' Directory, so please make sure to send someone to the library to pick up your firm's copies. The changes below are to the new 2020-2021 directory.

Barbara Hoover – is retiring as of December 31, 2020

Jennifer Hawn – is now practicing at Polishuk, Camman & Steele and her email is jhawn@pcslawyers.com

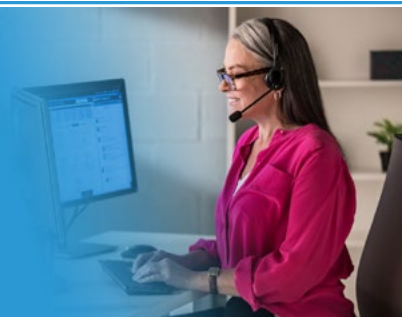
Peter Widz – new member practicing at Vallillee Family Lawyers and his email is peter.w@valaw.ca

Doug Ferguson – is practicing on his own at 21-1800 Sumac Way, London N6K 0G1, phone: 519-670-5761, email: dougferguson@outlook.com

Sarah Bauer – is now Sarah Bauer Cooke and has opened Sarah Bauer Cooke Professional Corporation, 8 Orchard St., London, N6J 2R3, ph: 519-615-1555, email sarahbauercooke@gmail.com

Luigi Circelli – there is an error in his email address in the new directory. It should read luigieircellilaw@outlook.com

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Are Lawyers Creative?



Contributed by:
Daniel Mailer / Cram & Associates

"Every child is an artist, the problem is staying an artist when you grow up"

Pablo Picasso

Are lawyers creative? Should lawyers be creative? Sometimes the extent of our creativity in the office is pulling up a precedent pleading or contract and inserting names of the new parties. And if you are making submissions in open court and the Judge says "That's certainly creative counsel!", then you are probably in trouble. As lawyers, sometimes our responsibilities conflict with our creative nature. I personally have seen my creative musical side dry up while being deeply immersed in some difficult project at work, not to be freed up until my next trip to the cottage. Work can sometimes seem to suck the creative wind out of you. But as lawyers, is creativity something that we need to feel and feed and nurture in ourselves?

I had the pleasure of articling at Lemers in the 1980's when it was a small firm of 12 or so lawyers. I often saw the creative process at work in lawyers who I admired, like Earl Chemiak, Jerome Morse, Robert Seabrooke and Vince Calzonetti (is there a movie that he hasn't seen?), and I can't help but think that the creativity that they displayed was a factor in their success.

As lawyers, we ought to be problem solvers, geared to finding solutions. Yes, our analytical skills, logical thinking and attention to detail are extremely important but it takes creativity to solve problems, and there is no shortage of problems to solve in these times, especially during the COVID era.

Everyone has a spark of creativity somewhere deep inside of them. We

need to nurture it, promote it, feed it and watch it grow because the benefits are immeasurable. These can range from giving you a necessary diversion from the stress of the day to increased effectiveness at work and even to contributing to your community in ways that you never dreamed possible.

When I saw creative London lawyer Alec Richmond host the classic movies program on PBS out of Erie, Pennsylvania every Saturday night, I was personally inspired to take a chance on recording local lawyers on a music CD which we called *"Justice and Music for All"*. This successful effort raised \$5,000 for local needy charities and helped kick start the *"Courthouse Rocks"* event where lawyers raise money by performing live music for their peers. The event has helped raise a few hundred thousand dollars in recent years.

The message then is to free your inner self (but not too much, we are lawyers after all!). Take up a new hobby. Whether it is painting, sculpting, writing, learning a new musical instrument, whatever, it will help distract you from the wear and tear and stress of your daily life by providing a nice positive diversion. You will also no doubt reap positive benefits in your personal life and in your home and community and in your effectiveness as a lawyer. And maybe, just maybe, you will end up as the next John Grisham!

(Watch for my television program on Rogers Cable TV called *"London Lights"* airing Thursday nights at 8:30).

Merry Christmas!

From everyone
here at the
Middlesex Law
Association



Mental Illness Awareness Week (MIAW)

October 4 to 10, 2020



Contributed by:
Teresa Donnelly / Treasurer

As legal professionals who often serve and care for others, we may lose sight of the importance of taking care of ourselves and supporting each other.

Our mental well-being is important every day, but Mental Illness Awareness Week (October 4 to 10), an annual national public education campaign, coordinated by the [Canadian Alliance on Mental Illness and Mental Health](#), provides us with an opportunity to highlight the importance of mental health for lawyers and paralegals and others who are part of the legal and justice sector communities. It's time we end the stigma associated with mental illness.

As Treasurer of the Law Society of Ontario, recognizing and supporting the mental health and well-being of our members is a priority for me. Having worked as a prosecutor for more than 26 years and dealing with cases involving homicide, domestic violence, sexual assault and impaired driving causing death or bodily harm, I personally understand the pressures and stressors that often go hand-in-hand with our work. The constant demands, combined with the impacts that many of us are grappling with now in the face of the ongoing pandemic, make this a particularly vulnerable time.

According to the [Centre for Addiction and Mental Health \(CAMH\)](#), between May and July 2020, the majority of Canadians reported being somewhat to very worried about their financial situation and about the possibility of becoming infected with COVID-19. Many experienced anxiety and reported feelings of

loneliness and depression.

Legal professionals may be particularly at risk. [A study conducted](#) between 2014 and 2019 by the University of Sherbrooke for the Barreau du Québec regarding lawyer well-being found that 49.9% of those lawyers who participated in the study with less than 10 years of experience suffered some psychological distress. This statistic is significantly higher than the Canadian population as a whole, reported as varying between 21% and 25%. The study also revealed that lawyers in private practice are more likely to experience psychological distress than are lawyers in the public sector (49.7% of lawyers in the private sector and 37.4% in the public sector). The areas of law in which lawyers were most likely to experience psychological distress include corporate-commercial and business law (49.4%), family (49.1%), and litigation (51.5%).

These stark numbers speak volumes. Importantly, they underscore the importance of coming together as legal professionals to raise awareness, engage in dialogue and tackle the issue of mental health for our professions; we can't take care of others, unless we take care of ourselves and support each other.

There are supports available for lawyers, paralegals, law students, licensing candidates and judges in Ontario and their family members through the [Member Assistance Program or MAP](#).

MAP provides licensees with personal access to a full range of professional, confidential services, including counselling, peer-to-peer support, crisis management services, substance abuse counselling, lifestyle and specialty counselling, as well as interactive online resources and peer resource tools.

MAP counselling services are offered free of cost, in person, by telephone or online – based on preference. Professional counsellors are available throughout the province to help with practical and effective steps to improve well-being.

The program which operates independently of the Law Society to ensure an appropriate division of responsibility between member assistance and professional regulation, can be accessed at 1-855-403-8922, or visit the MAP website – myassistplan.com.

There are many other resources available to us. [The Ontario government has listed many free mental health, wellness and addiction resources at here](#).

This week as we mark Mental Illness Awareness Week, and every week, I encourage you to challenge the way you think about mental illness and addiction to create a more inclusive and understanding profession and community. We can support each other with patience and compassion. We can check in with our colleagues. We can look out for those who are struggling, and give support to others. Just helping others helps our own mental health and improves vital personal connections in this contactless environment.

I wish you, your colleagues and your families well. Whatever stage you are at in your journey as a legal professional, the Law Society is here to support you with supports and resources. Whether you are opening, expanding or winding down your practice, start here to access programs, tools and information that can [help you meet your goals: www.LSO.ca/YourSource](http://www.LSO.ca/YourSource).

[This article originally appeared in the Law Society Gazette Treasurer's Blog.](#)



Just Keep Swimming: Maintaining a Healthy Active Lifestyle During the Pandemic



Contributed by:
Chelsea Smith / McKenzie Lake Lawyers LLP

My Monday evenings these days have more drills than a dentist's office because I spend them at my Masters swim team practice keeping fit with my friends, doing something I enjoy, and chasing the often-elusive work-life balance.

I have been swimming with the London Silver Dolphins Masters Swim Team since September 2012. Prior to joining the team, I was a synchronized swimmer for a number of years before switching to speed swimming between undergrad and law school. I have also trained with teams in Geneva, Switzerland and at Université Laval in Quebec City.

There is so much to enjoy about masters swimming – way more than I could ever

hope to cover in this short article! One of my favourite aspects is the opportunity to meet new people and build a community and network outside of my normal channels. For example, I met fellow Middlesex Law Association member Dan Macdonald (Family Law Group) through masters swimming. We are in the same lane this year.

The London Silver Dolphins Masters Swim Team currently has approximately sixty-five members who range in age from their early twenties to their late seventies. We are six-time Ontario Masters Swimming Champions (2006, 2007, 2008, 2010, 2013 and 2014) and we won the Canadian Masters Swimming Championship in 2014. Many of our members hold (or have held) provincial, Canadian and/or World masters swimming records; other members are newer to the sport of swimming. We train out of the Canada Games Aquatic Centre

and Thames Outdoor Pool.

Like almost everything else, swimming on the London Silver Dolphins Masters Swim Team looks very different this year because of the COVID-19 pandemic. We are abiding by strict COVID-19 guidelines and protocols established by the Government of Ontario, Masters Swimming Ontario, and the Middlesex-London Health Unit. Team breakfasts, pub nights and swim meets have been put on hold. My five swim practices a week have been scaled back to one or two practices a week per swimmer (to allow everyone the chance to swim at least once a week). While we used to have upwards of fifty swimmers at each practice spread out over eight single lanes, we now have a maximum of sixteen swimmers spread out over four homogeneous double lanes with each swimmer having his/her own corner of the lane and swimmers maintaining a distance of 2m from others


at all times. Dryland stretching and warm-ups have been replaced by temperature checks, and my swimming equipment now includes a reusable mask that I wear on deck until I am in the water.

Before we were allowed back in the pool in September, we were out of the pool for six months and completely missed our popular outdoor summer season at Thames Outdoor Pool. I think this is the first year that I won't have my summer one-piece bathing suit and goggles tan lines last well into the winter.

Although this season looks a lot different than previous seasons, I am so grateful to have this opportunity to safely maintain a place for fitness, friendship, balance and fun at a time where there is so much loss surrounding us. For as long as the COVID-19 guidelines and protocols allow us to keep training, I am going to cherish each opportunity I have to improve my technique and glide through the water, enjoying the swim.

[If you are interested in joining the London Silver Dolphins Masters Swim Team, please visit the team's website at www.londonsilverdolphins.ca.](http://www.londonsilverdolphins.ca)

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Want to contribute to the next issue? **Deadline is January 25, 2021**

The Snail welcomes articles from MLA members. in Word format, along with photos, headshot and headline. For clarity and readability, we encourage submissions in the range of 200-500 words, with a maximum limit of 1000 words for news and opinions, and a limit of 2000 words for articles on law and legal issues. At the request of the contributor, any submissions shortened in this way can also be published with a link to the full article to be obtained directly from the author.

Potential topics for submissions include:

News, the promotion of an upcoming event, a review of a past event
Recognition of someone in the legal community

Opinion and letters to the editor
Discussion of a legal issue & case reviews
Practice tips

Send your submissions to Karen Hulan:

khulan@beckettinjurylawyers.com or Sue Noorloos noorloos@mckenzielake.com

“Which way out of the Lady Barristers room?”



Contributed by:
Yola S. Ventresca / Lerner LLP

I love the law.

More to the point, I love the practice of law - the application of its precepts and principles in tangible and practical ways to solving problems, mediating conflicts, remedying wrongs. I love its commitment to logical reasoning and to the rules of evidence. I love its insistence on sound, persuasive argument, and its commitment to advocacy. I love its capacity to be reflective and self-critical.

All of which demands that the profession confront some uncomfortable truths about itself. Truths about the persistence of systemic barriers – structural and attitudinal – to the recruitment, retention, promotion and inclusion of women in legal practice.

A quick perusal of the websites of law firms, big and small, across Canada appears to indicate that the face of the legal profession is changing. The public role of the former Chief Justice of the Supreme Court Beverley McLachlin, for instance, or of prominent lawyers like Marie Henein doubtless contribute to the perception of some that, as far as the legal profession is concerned, the notoriously resistant glass ceiling not only has cracked but is rapidly shattering to pieces. My personal story lends itself to this conclusion. I was made a non-equity partner after five years of practice, and an equity partner after year seven; just ten months after I returned from a parental leave and without a full year of billings under my belt after my leave.

But look closer. Appearances can be deceiving. Look more closely and you'll see that significant barriers remain to the full and equitable participation of women in the legal profession. Granted, these barriers may be more subtle and less obvious than a generation ago. The profession has encouraged a narrative

that 'times have changed'. It's a narrative that is nurtured by savvy public relations and marketing strategies aimed at promoting what feels like, to some, an optical illusion of sorts.

Precisely because structural, systemic barriers are hidden from view and, worse yet, intentionally denied (or denied through wilful blindness), the work of identifying and removing these barriers is more arduous. In the past, the barriers were in plain view. Consider, for instance, the outright refusal of law firms to hire women. This really happened. Just ask one of my mentors, Janet E. Stewart, Q.C., about it.

So, sure, much has changed. After all, women now represent roughly half of all practicing lawyers in Ontario. Still, barriers remain. Of course, some practices, attitudes and overt biases are still on full display. But for the most part, they have moved behind the scenes, hidden beneath the veneer of diversity, inclusivity and equality. Which makes them all the more insidious and creates obstacles for further change.

I asked on social media for your input about the various issues facing women in law that we need to acknowledge, understand and, where possible, address. My twitter feed (@YolaVentresca) and DM inbox were flooded with ideas, frustrations and some heartbreaking stories. These responses confirmed for me one simple and indisputable fact: notwithstanding the progress that has been made in advancing women in law, much, much work remains. In particular, there is a lot of work to be done to change the attitudes, implicit biases and practices that persist to impede the advancement of women lawyers. Especially to positions of power and influence.

Here are some of the common problems and issues I have heard that you want to

see addressed:

- Challenges related to navigating pregnancy (including assisted reproductive technologies and miscarriage), parental leave and “reintegration” after leaves;
- Frustration that while many women become partners, they are not made equity partners: thereby precluding them from a spot at the table where decisions are made;
- Concerns about a lack of support at home, and what the increasing change from a single “unbound” wage earner (usually a man) to dual income wage earner household has meant for women's daily experiences, responsibilities and freedom vis-à-vis their careers;
- Sexual harassment and inappropriate behaviour at work;
- Frustration at being assigned dead end work or “office housework”; and,
- Implicit biases in common hiring and promotion criteria such as “fit” and “culture” – often to the detriment of racialized lawyers, lawyers from minority groups, LGBTQ lawyers and lawyers from less affluent socio-economic backgrounds.

All of this speaks to the powerful dynamic relationship between structural and attitudinal dimensions of the profession. It's a relationship that can at times be dialectical, even conflictual, with attitudes, norms and values changing long before the formal mechanisms of professional self-regulation or business practices do. At other times, it is the structural aspects that take the lead.

What is clear is that those of us in positions to do something should; and lend a hand, ear and voice to those who don't feel like they are able.



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The Cyclical Issue Faced by Long Term Care Homes



Contributed by:

Katelynn Drake / Legate & Associates

The global population is living longer, presumably as a result of scientific and medical advances.

However, while we may be living longer, we are not necessarily living *healthier* for longer; more and more, our older population requires care in later life. As a result, it is probable that the Ontario long-term care homes (LTCHs), which provide care for this population, will experience an increasing shortage of rooms, resources, and staff. These predicted shortages are concerning because research indicates that LTCHs are already regularly understaffed and under-resourced. Often cited as adding to the problem is the invasive issue of absenteeism, and an associated lack of funding.

Complicating matters is the fact that the LTCH workplace is highly regulated. Workers are required to complete tasks set out by the legislature in the *Long-Term Care Homes Act* as well as the specific LTCH management team. Workers in LTCHs report feeling that compliance with the statute-based requirements is the biggest part of their job (i.e., the tasks become their primary work goals). Unfortunately, when a facility is short-staffed, workers' ability to perform their job is limited. This results in an inability to achieve their work goals and, thereby, experience "goal frustration".

This can be a cyclical problem as stress causes absenteeism, absenteeism results in staff shortages, staff shortages cause goal frustration, and goal frustration results in stress – round and around we go.

As we have seen recently in the news, improper care related to staffing issues

has a devastating effect on resident quality of life, and specifically on infection control. Lack of funding causes not only a deficiency in human resources, but also of the tools that workers rely on when providing care, such as bowel and continence care, mobility assistance, or wound management. The unavailability of these resources and tools adds to poor resident outcomes, and thereby adds to workers' stress and goal frustration.

It is possible that aggressive behaviours that result in abuse or neglect of residents are, in part, the result of the stress that is caused by goal frustration. This is a situation known as the 'frustration-aggression hypothesis', which suggests that when an individual's efforts are frustrated and they are unable to achieve a goal, they are more likely to exhibit aggressive behaviours.

In a LTCH, the fear is not only that intentional abuse or neglect may occur, but also that feelings of aggression may result in 'rapid care'. Rapid care could be defined as the rough or thoughtless care of a resident that has the potential to cause an injury. For example, a worker may pull or push a resident to increase the speed at which the resident is walking, rather than taking time to walk with the resident at their natural pace. There is no malicious intent in rapid care; the worker is only trying to achieve their goal and avoid further goal frustration. However, the result on the resident is the same – skin tears, bruising, emotional impacts, and unmet needs. Unmet needs, in particular when experienced by individuals with cognitive impairments such as dementia, result in responsive

behaviours that make the workers' jobs more challenging again.

Importantly for lawyers and the families of residents affected by LTCH injuries, confirming the existence of a link between under-resourced homes and a lack of infection control, neglect, abuse and resident injuries of unknown origin, is highly important to LTCH litigation. If a link exists, and LTCHs fail to remedy the resource deficit, the LTCH could be liable for the injuries.

Case law has suggested that compensatory damages can be somewhat limited in LTCH litigation. However, there may be a way forward with exemplary damages. I see no reason why such damages would not appropriately attach to a facility whose workers cause an injury, whether intentionally or unintentionally, due to the facility being chronically understaffed. The problems that exist in LTCHs no longer hide in the shadows; they are discussed in the news and with the legislature. LTCHs must take action to ensure the needs of residents *and* workers are met, in order to avoid resident harm.

As a former nurse myself, I have insight into some of the issues facing Canadian residents of LTCHs, as well as the nurses and support workers who care for them. Through research conducted for the purpose of litigation, we sometimes uncover issues that relate to abuse and neglect in LTCHs, or that form part of the barrier to care that is faced by the LTCH system.

Continued on next page 22

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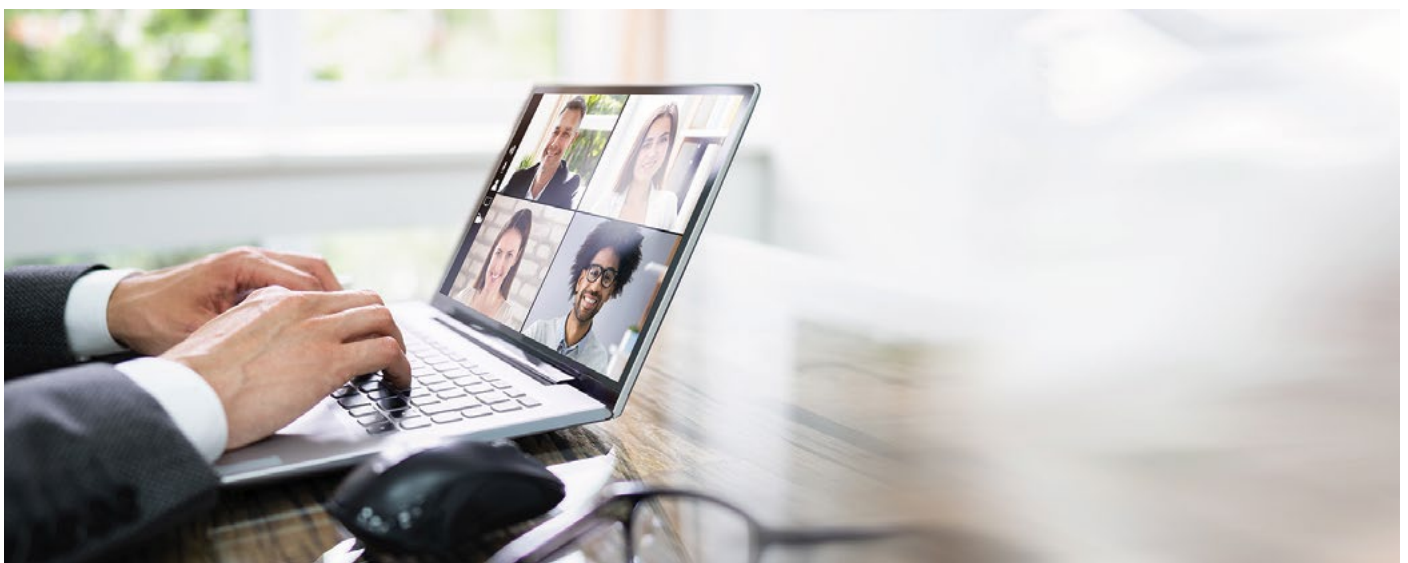
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Predictive Hire and the Ethics of Algorithms



Contributed by:
David Spence / Harrison Pensa

A US based AI company has announced a new product in development that claims it will predict if an interviewee is a job-hopper.

Job-hoppers are individuals who will hold a new job for a short period of time before quitting and starting the process all over again with a new employer. The cost of job-hopping can be significant to a corporation given the time and expense put into recruiting and training new employees who will often not start contributing to the corporation's bottom line until well after their hire date. For employees with little or no past experience, it is not possible for an employer to assess this job-hopping risk on the basis of the candidate's resume.

Enter **PredictiveHire**. They have created an automated "interview" that uses AI to determine a candidate's job-hopping risk on the basis of the phrases they use in response to certain key questions. Although the product has not yet launched it is creating a lot of buzz.

There is a risk with AI of this kind that the bot will inherit the bias of its creator, or

by error in coding, will create unintended biases of its own. The program could, for example, inadvertently flag a class of individuals as job hoppers when the true reason for the responses they provide during the interview is tied to a protected ground under the Human Rights Code (gender, disability, or ethnic identity, etc).

As you likely know, the Ontario Human Rights Code prohibits discrimination in hiring. 'Blaming it on the bot' will not absolve the employer from liability so corporations should be very careful when using this kind of technology and should be aware that unintended biases may arise. It would be prudent for an employer to review the results of such screening to ensure that the program is not flagging classes of individuals who exhibit one or more of the protected grounds under the Human Rights Code.

While this technology is still in development, it is expected that automation of recruitment practices will increase in the coming years. There is nothing inherently wrong with using AI in this way, however, as with any automated process, employers should be careful to review the results from a human perspective.

[The article originally appeared here.](#)

*The Cyclical Issue Faced by
Long Term Care Homes continued...*

An example of this is chronic understaffing, but that is by no means the only issue. In today's climate of a global pandemic that has disproportionately affected LTCHs and our senior citizens, one wonders how these issues will impact litigation for neglect or injuries at LTCHs.

The Ontario government recently revealed their goal for residents to receive four hours of direct care per day while in long-term care. Although the way in which this goal will be realized is not known, it is likely that with the promise of more workers comes the reality of more workplace regulation. It remains to be seen whether or to what extent the efforts undertaken by the Government going forward will have a remedial effect on the issues outlined in this article.

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If you have any issues or concerns regarding the Middlesex court facilities, operations, judiciary, etc., let them be known! Send all concerns to the current MLA Bench & Bar representatives:

Jennifer Wall 519.679.9660

jwall@harrisonpensa.com

Rasha El-Tawil 519.660.7712

rasha.el-tawil@siskinds.com

Will Notices

Barbara Ann Vella

Anyone having knowledge of a Will for Barbara Ann Vella of the City of London, who died on October 9, 2019, please contact Frederick A. Mueller at 519-673-1300 or fred_mueller@rogers.com.

William Paul Balandin

Anyone having knowledge of a Will of William Paul Balandin born on May 9, 1963, died November 2, 2020, of London, ON, is requested to contact: Rebecca Balandin at ph: 226-378-3317.

John Joseph Morin

Anyone having knowledge of a Will of John Joseph Morin born on January 26, 1964, is requested to contact: R. Paul Hosack, Barrister & Solicitor, MHN LAWYERS LLP, Box 528, 39 Colborne St. N. Simcoe, ON, N3Y 4N5, Ph: 519 426 6763, Fax 519 426 2055, email: hosack@mhnlawyers.com.

Theodore Howell

Anyone having knowledge of a Will for Theodore Howell of the City of London, who passed away November 15, 2020 at Victoria Hospital, please contact Richard Howell at 519-851-1940 or rjhowell73@gmail.com.

Patrick Fernandez

Anyone having knowledge of a Will of the late Patrick Fernandez of London, Ontario who died on August 7, 2020 is requested to contact Sue Noorloos, McKenzie Lake Lawyers LLP, 140 Fullarton Street, Suite 1800, London, ON N6A 5P2 noorloos@mckenzielake.com.

Paul Stuart Beaumont

Anyone having knowledge of Powers of Attorney and Wills of Paul Stuart Beaumont (DOB: March 13, 1940) and Carolyn Joan Beaumont (DOB: October 19, 1940) both of the City of London,

in the Province of Ontario, is requested to contact Cindy Ivanitz at Beckett Personal Injury Lawyers, 630 Richmond Street, London, ON N6A 3G6, Tel: 519-673-4994, Fax: 519-432-1660, Email: civanitz@beckettinjurylawyers.com

Ronald Lindsey Bannerman

Anyone having knowledge of a Will for Ronald Lindsey Bannerman, born September 4, 1934, who lived at 112 Glenroy Crescent, London, Ontario N5Z 4H7, please contact Tammy Delmage at tdelimage4@gmail.com, or call 519-686-1216.

Middlesex Law Association By-Law Review: PLEASE APPLY

The Middlesex Law Association is seeking assistance to review and update the Middlesex Law Association's by-laws.

The Middlesex Law Association is a non-profit organization providing services to lawyers in Middlesex County. As part of the Board of Trustees ongoing efforts to modernize the Middlesex Law Association, the Board has elected to conduct a review and update of the MLA by-laws, which were last reviewed in February 2009.

The Middlesex Law Association is seeking the assistance of an experienced and efficient lawyer to oversee and complete this project. It

is anticipated that the project will require 10 to 12 hours of billable time, which will be paid at a competitive rate. The deadline to complete the project is Friday, February 11, 2021.

Applications, including a cover letter and resume, should be submitted to the Middlesex Law Association by email at library@middlaw.on.ca. The deadline to submit an application is December 18, 2020. Only selected applicants will be contacted for interviews.

If you have any further questions about this opportunity, please contact Jake Aitcheson at 519.640.6396 or jaitcheson@lerner.ca.



*Happy
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Thank you to our MLA CPD Volunteers!



Contributed by:

Paula Puddy, MLA CPD Director

Thanks to its volunteers, members, sponsors and supporters, the Middlesex Law Association delivered countless hours of continuing professional development throughout 2020, despite the pandemic!

When I made the decision mid-March to postpone all our spring programming, including Straight from the Bench, I did not believe I would run the rest of our 2020 programming virtually. Thankfully, we transitioned into virtual fairly quickly, beginning in mid-April.

Virtual programming has its benefits of course – lower costs, no commuting and more convenient. However, I miss seeing our members in-person. There are usually a few minor technical issues too with people stuck in the waiting room, forgetting to mute their microphone, or trouble with sharing screens. I know many of you are “Zoomed-out”.

We ran 16 MLA programs in 2020, 2 in-person and 14 virtually!

Most of those were our annual programs: the Mentoring Dinner, Straight from the Bench, the Business Breakfast, the Small Claims Court update, the Provincial Offences seminar, a Real Estate luncheon, the Wills, Estates & Trusts conference, two Personal Injury conferences, two Women’s Networking Event, an EDI seminar. We had a number of new programs in response to the pandemic: Online Dispute Resolution, Federal Programs for Employers & Employees, Practicing Law During the Pandemic, and a Will Update on Virtual Signing.

In appreciation of our presenters and chairs of MLA CPD programs, we donated \$2,500 on their behalf to London Lawyers Feed the Hungry. Thank you to our regular CPD partners for delivering the following programs in London: the Advocates’ Society’s Court House Series and Mentoring Dinner and the MFLA’s annual Family Law Conference. Our success is a direct result of the generosity and enthusiasm of our volunteer members. We thank you, our volunteers, for your commitment to the

practice of law and for sharing your skills and knowledge with the London and Southwestern Ontario bar.

A special thank you to Cynthia Simpson and Shabira Tamachi for their “behind the scenes” assistance with the CPD programs! It is a team effort!

Thank you to the 2019 and 2020 CPD committees consisting of Jennifer Butkus, Jacqueline Fortner, Jennifer Wall and Alex Sharpe for their input and support. Also, thanks to the MLA Trustees for their hard work and dedication to our association and its members.

Finally, a big thank you to all our participants (in Middlesex and the other counties) who attend our in-person programs! We appreciate your local support!

Thank you to all our volunteers including the presenters at the Criminal Law Association too!

My apologies to anyone we inadvertently missed from our 2020 volunteer list. Feel free to forward your names to me for inclusion in future newsletters.

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December 2020 Middlesex Law Association Newsletter

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Help London Youth this Christmas



Contributed by:

Natalie M. Brezden / Brezden Family Law

This year has been an exceptionally challenging year for all of us, and in particular for the young people of our city.

The Youth need our help this Christmas!

As a family law lawyer, I work with families involved with the Children's Aid Society. I learned about WAYS, an organization that supports Youth and their families in London-Middlesex and in Chatham-Kent. At a recent business event, I had the pleasure of getting to know Zannah Brown, a local realtor in London who is passionate about WAYS. A few years ago, the staff at WAYS was there when her family was in crisis. Zannah decided to pay it forward by increasing community awareness of the

organization and how we all can help.

This Christmas, WAYS is asking for your help in making the holidays a little brighter for the Youth living in care – to place gifts under the tree, turkey on the table and some holiday happiness in each WAYS' home. With no funding available and the inability to host a fundraising event this year, WAYS is looking to donors to help make this happen!



WAYS Mental Health Support is an accredited child and youth mental health agency supporting individuals and families in London-Middlesex and Chatham-Kent. Through live-in programs, foster care and transitional-age housing,

WAYS provides stable shelter for vulnerable children and youth who have experienced significant issues including family breakdown, homelessness, sex-trafficking, poverty and addictions. WAYS' community teams deliver 24/7 crisis support, counselling and skill-building groups for individuals living in the community. Homeless and at-risk youth have access to WAYS' free laundry and supportive adult allies.

For Youth that have walked such a difficult path, your gift tells them that they matter – that it's okay to make wish lists and that wishes can in fact come true!

[To make a gift visit their donation page](#) or contact: Dawn Fulmer, Manager, Fund Development and Communications at 226-980-8731; dfulmer@ways.on.ca





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