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MIDDLESEX LAW
ASSOCIATION

Snail



April Issue

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What's inside this issue

- 02 **PRESIDENT'S REPORT** by Bob Ledgley
- 04 **LIBRARY NEWS** by Cynthia Simpson & Shabira Tamachi
- 06 **CAN WORKPLACES FORCE COVID-19 VACCINATION?** by Mana Khami
- 08 **REPORT ON PAST CPD PROGRAMS** by Paula Puddy
- 10 **HOW THE COVID-19 PANDEMIC HAS IMPACTED THE PRACTICE OF LAW** by Sam Puchala
- 12 **ELECTRONIC SPOOFS AND FORGERIES** by John Nicholson
- 14 **FAMILY STATUS AND THE GLOBAL PANDEMIC** by Yola Ventresca and Jane E. Scholes
- 18 **MEMBER UPDATES**
- 18 **WILL NOTICES**
- 20 **EXECUTIVE & COMMITTEES 2021-2022**



President's Report

By: Bob Ledgley / Lerner LLP

When our now past-president, **Erin Rankin Nash**, wrote her first President's Report for the April edition of *The Snail*, the Covid-19 pandemic was fresh on our minds, preoccupying our thoughts but, most of us believed, was a "2020 problem".

None but the wisest of us dared to think that it would still be the focus of our daily lives and our practices a year later. Erin was prescient when she said at that time, "*our landscape is permanently changed*". Indeed it has.

Not all of the change is negative. Once we get past our trepidation about new ways of practising, the rapidly evolving and long overdue modernization of our courts is something to celebrate. Personally, I miss early morning road trips to get to an out of town discovery and more so the late afternoon drives home, reflecting on the day's proceedings or just listening to a guilty pleasure on the radio. On a smaller scale, I must admit to missing my daily commute to the office listening to AM news in the morning and winding down with my own playlist on the way home. However, Mother Earth and my wallet are enjoying how little my

truck leaves the driveway. I also miss my local drycleaner (a sad and permanent casualty of economic change).

I was unable to attend this year's AGM. Your new vice-president, Karen Hulan, expressed the gratitude of the Board of Trustees and the Association to Erin for the remarkable job she did, navigating us through a year of rough waters. Most members are unaware of the countless meetings at which she represented us, the hundreds of emails she processed and her tireless efforts to keep us all informed as the landscape shifted monthly, weekly, daily and I dare say hourly at times. I tip my hat to Erin and note that it is a sign of the times that the plaque and gavel traditionally presented to an outgoing president at the AGM sit in their package in my home office, awaiting a time when there might be such a thing as an in person meeting.

At the time of writing, we have had one meeting of the Board of Trustees since I assumed the role of president. It was a pleasure to meet and welcome our new trustees and to share some optimistic discussion. When you hear from me next, the newly minted committees will be well into their work and I will be able to update you on their visions and progress.

The coming weeks will see the unveiling of a new website, a bench and bar

meeting and, no doubt, ongoing reaction and response to pandemic-driven changes. As always, our library staff will keep you on top of these things through the weekly email blasts.

I will conclude with a nod to the library. Our association has been blessed with a dedicated and hard-working staff. Cynthia and Shabira have worked from home for most of the time since the world changed and yet our library remains a valuable resource for all of us. The strength of our library and the other law libraries around the province has been shaken by significant funding cuts implemented in late 2020. I encourage members to look at the work being done by the Federation of Ontario Law Associations, led by its chair, London's own Bill Woodward. For those who value the role libraries play in our ability to serve our clients and to advance the law through our daily practices, it is worth investing some time in reviewing the advocacy efforts of FOLA on your behalf (www.fola.ca) and to add your own voice where you can.

As the month of St. Patrick concludes, I optimistically declare: *Go mbeire muid beo ar an am seo aris!* (may we all be alive this time next year!).

Bob Ledgley
PRESIDENT

Questions & Comments

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:

Rasha El-Tawil 519-660-7712
rasha.el-tawil@siskinds.com

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Library News



Contributed by:

Cynthia Simpson and Shabira Tamachi
library@middlaw.on.ca

New Summer and Articling Students

It's almost that time of year again when the articling and summer students start at the various law firms in town. These students enjoy full library privileges and most association privileges during their work term. As such, it is important for you let us know they have arrived so we can get them registered in our system. Once we are back working on-site we can give the students a tour of our space and fill them in on what services and resources are available to them here. There is no charge to register with the MLA and it guarantees they will receive all our communications while they are working for our members. Please [email us](#) their names and email addresses. When we are back working in the library, please encourage them to drop in and we generally do not need advance notice of their arrival to give a quick tour.

Library Catalogue – Book Available?

We introduced you to the new library catalogue, [InfoLocate](#), in our last two articles. Today we want to explain the note in the catalogue that says the book is “Available.” Our library catalogue is actually hosted by the Great Library at the LSO and shows the holdings in all 48 county and district law association libraries plus the Great Library’s holdings also. As you know, from our quaint book sign out cards, our circulation system is not automated. So, what exactly does “Available” mean when you see it listed under one of our books in the catalogue?

Well, frankly, it means we have purchased the book for our collection. The “Available” comment, we assume, is a default of the catalogue program and we would prefer that it didn't say that on our holdings record for the title. You should always contact us by phone, [email](#) or MLChat first to see if the book is in the library before coming over to get it. If we are working on-site that day, we will happily put it on hold for you, and even sign it out in your name, so you can just pick it up or send someone else in to get it for you. Bottom line: Available does not necessarily mean available.

Have you been hearing from us?

We send out a weekly MLA Update email every Wednesday with a summary of information pertinent to our members and the practice of law. We also send out obituary notices and periodic emails about association events and CPD seminars. If you haven't been getting these or if you were getting them and somehow aren't now, please contact the MLA PRC at library@middlaw.on.ca to update your email address. We may have an outdated email address for you, or you may need to check your email settings to give permission for any @middlaw.on.ca email to get through to your inbox (we also send emails from the cle@middlaw.on.ca address). We use a third-party site called MailChimp to circulate our emails now and we do try to monitor the addresses that bounce back. However, if your email is registered as a hard bounce, MailChimp automatically strips it from

our system and does not allow us to re-input it, due to anti-spam rules. We can easily direct you to how you can re-subscribe from your end. We are sending out more frequent communications as court procedures and protocols are amended throughout the pandemic, but you normally wouldn't get more than a couple of emails a week from us. Please let us know if you aren't hearing from us so we can get you set up again.

New Books

We promised in last month's article that there would be a big list of new books in this month's article, so here you go!

- Babe, Jennifer. **Sale of a business --13th ed.**, LexisNexis
- Cabel, Lisa. **Ontario litigator's guide to human rights practice - 2nd ed.**, LexisNexis
- Carter, Hoffstein, Parachin. **Charities legislation & commentary -2021 ed.**, LexisNexis
- Chambers, Robert. **Law of property**, Irwin Law
- David, Lawrence. **Stare decisis, the Charter and the rule of law in the Supreme Court of Canada**, LexisNexis
- Davies, Michael et al. **Guide to mental disorder law in Canadian criminal justice**, LexisNexis
- Dee, Garth. **Ontario Workplace Safety and Insurance Act and commentary -2020/2021 ed.**, LexisNexis
- Duggan, Anthony. **Ontario Personal Property Security Act: Commentary and analysis, 3rd ed.**, LexisNexis
- Fasken. Canada **Business Corporations Act & commentary -2020/2021 ed.**,



LexisNexis

Fridman, GHL. **Fridman's law of torts in Canada --4th ed.**, Thomson Reuters

Glaholt Bowles LLP. **Bidding and tendering: what is the law? --6th ed.**, LexisNexis

Goslett and Caruso. **2021 annotated Immigration and Refugee Protection Act of Canada**, Thomson Reuters

Hall, Geoff R. **Canadian contractual interpretation law -4th ed.**, LexisNexis

Hann, Jeremy. **Ontario employment law handbook: an employer's guide -13th ed.**, LexisNexis

Hilliker, Gordon. **Liability insurance law in Canada --7th ed.**, LexisNexis

Kessler, James. **Drafting trusts and will trusts in Canada --5th ed.**, LexisNexis

Killeen, The Hon. Gordon. **Annotated Canada Pension Plan and Old Age Security Act --17th ed.**, 2018, Wolters Kluwer

Lee, Kyla. **Cross-examination: the pinpoint method**, LexisNexis

Leger-Riopel, Nicholas. **Legal responsibilities of health care facilities in Canada**, LexisNexis

LexisNexis. **Commercial tenancies in Ontario**, LexisNexis

LexisNexis. **Duties and liabilities of Ontario real estate professionals**, LexisNexis

LSO. **Annotated will 2021.**

LSO. **Six-minute criminal lawyer 2020.**

LSO. **9th human rights summit.**

LSO. **Six-minute municipal lawyer 2020.**

LSO. **Six-minute employment lawyer 2020.**

LSO. **Family law refresher 2021.**

LSO. **Estate accounting and passing of accounts 2021.**

LSO. **25th Intellectual property law: the year in review.**

LSO. **Six-minute debtor-creditor and insolvency lawyer 2020.**

LSO. **17th real estate law summit.**

LSO. **21st employment law summit.**

LSO. **Impaired and 'over 80' 2020.**

LSO. **Six-minute labour lawyer 2020.**

LSO. **Six-minute family law lawyer 2020.**

LSO. **Civil appeals: the year in review (2020).**

LSO. **Six-minute estates lawyer 2020.**

LSO. **Practice gems: administration of estates 2020.**

LSO. **Practice gems: Probate essentials 2020.**

LSO. **14th family law summit.**

LSO. **3rd motor vehicle litigation summit.**

LSO. **28th immigration law summit day 1 & 2.**

LSO. **Six-minute real estate lawyer 2020.**

LSO. **23rd estates and trusts summit --day 1 and 2.**

McLeod, Kilpatrick, Madsen & Tobin. **McLeod's Ontario family law rules annotated 2020-2021**, Thomson Reuters

Morris, J.J. et al. **Law for Canadian health care administrators --3rd ed.**, LexisNexis

n/a. **Federal & Ontario corporate & business legislation 2020-2021 ed.**, Thomson Reuters

Rouleau, Sylvain and Bar-Moshe, Ophir. **Ontario Municipal law: a user's manual 2021**, Thomson Reuters

Ruby, Clayton. **Sentencing --10th ed.**, LexisNexis

Rudder, Andrew. **Catastrophic impairment law in Canada**, LexisNexis

Segal, Murray. **Annotated Ontario rules of criminal practice 2021**, Thomson Reuters

Tyhurst, John S. **Canadian competition law and policy**, Irwin Law

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

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

Oosterhoff, Albert H. **Oosterhoff on wills --7th edition (2011)**

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

Other Missing Books:

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

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:

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



Can workplaces force COVID-19 vaccination?



Contributed by:
Mana Khami / Harrison Pensa

As Ontario employers await the rollout of COVID-19 vaccines, they are also questioning whether they can implement a mandatory COVID-19 vaccination policy at their workplace, and whether they can require their workers to be vaccinated.

Although employers have an obligation to take all reasonable measures in order to protect the health and safety of their workers, employers will also have to balance this against other factors, such as the worker's contractual rights, human rights, and privacy rights.

The Type of Workplace

Whether an employer can implement a mandatory COVID-19 vaccination policy will depend in part on whether the policy is reasonable in the employer's specific workplace. For example, employers in the health care profession may have an easier time justifying a mandatory COVID-19 vaccination policy at their workplace because of the nature of their work, as compared to workplaces that are at a lower risk. For example, where the workers are not in close or direct contact with others. There are also additional considerations to consider in unionized environments including, for example, whether such a policy is prohibited by a collective agreement.

Applicable Legislation

There are currently no government

legislations or public health guidelines regarding whether a mandatory COVID-19 vaccination policy is reasonable, and whether this is something that employers should implement or encourage. It is unclear whether there will ultimately be any guidelines from the government or public health. Employers should continue to monitor this in the event that any legislations or guidelines are released.

Privacy

Employers should also keep in mind privacy laws that address and limit the disclosure, collection, and the storing of personal information. In Ontario, most workplaces have no legislated privacy requirements with respect to an employee's personal information, unless it is health information. Some workplaces in Ontario are under federal jurisdiction and are subject to legislated privacy requirements for any employee information.

There are also legal obligations outside privacy legislation to ensure an employer does not impact a person's privacy. Employers should be cautious and sensitive to employee health information when sending out communications to the workplace, and when collecting and storing employee health information (including employee vaccination status and history).

Human Rights Legislation

Employers are required to accommodate an employee to the point of undue hardship (pursuant to both provincial and federal legislations) if an employee cannot be vaccinated for reasons related

to any of the enumerated grounds under the human rights legislation. Examples of the enumerated grounds that may apply include creed (including religious beliefs), sex (including pregnancy), and disability. Examples of accommodation may include allowing a worker to work from home, requiring workers to wear personal protective equipment, and continuing to implement physical distancing rules and guidelines. Employers will have to review accommodation requests on a case-by-case basis and take into account the specific circumstances of each employee. "Undue hardship" is a high threshold to meet.

Employers will have to consider a number of factors before determining whether it will be appropriate to implement a mandatory COVID-19 vaccination policy at their specific workplace. Factors to consider include human rights concerns, privacy concerns, as well as the employer's obligation to take all reasonable measures to protect the health and safety of its workers.

Our team at Harrison Pensa is here to help if you have any questions about your specific situation.

[Mana Khami](#) is a partner at Harrison Pensa and one of the company's most active community contributors. Mana provides practical advice and careful guidance to individuals, corporations and municipalities on a wide range of legal topics. She can be reached at mkhami@harrisonpensa.com. Mana is also Vice-Chair on the Ontario Bar Association [Alternative Dispute Resolution Board](#). Connect with her on [LinkedIn](#).



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Report on Past CPD Programs



Contributed by:
Paula Puddy, MLA CPD Director

The MLA/FOLA Court of Appeal Advocacy Program

We were delighted to welcome the Honourable Mr. Justice David Brown and the Honourable Mr. Justice Grant Huscroft to share their advice, tips, and best practices at the Court of Appeal Advocacy program on Thursday, February 25, 2021. We had 50 lawyers and students in attendance.

There were many takeaways from the program including somewhat of a “behind-the-scenes” view of the Court of Appeal. Here are some of the tips I noted:

- Focus on the big errors that justify appellate intervention rather than every issue
- The factum is more important than oral argument
- Stick to the maximum page length or, even better, shorten your factum
- Use bookmarks in pdf documents
- Meet the timelines for filing your factum
- Civil litigators should consider an agreed statement of facts
- Answer questions right away during the appeal rather than deferring them
- Be aware of your Zoom background (i.e. an unmade bed, wandering pets and background noise)
- Treat the Zoom hearing like an in-person hearing
- Be prepared for questions/agreement regarding the costs of the appeal

Thank you to Bill Woodward for recommending this program to us and

introducing the speakers. We are lucky to have such a strong connection to FOLA!

The Middlesex Law Association was pleased to make a donation to London Lawyers Feed the Hungry as a small thank you to Justice Brown and Justice Huscroft for their presentation.



A Valuable Partnership – Part 2

CPDonline.ca just paid the MLA \$19,344.86 to the MLA for royalties, news subscriptions and subscription renewals! This is almost twice as much as last year!

I am proud that we entered into this partnership in 2016 with the expectation that online CPD would grow in the future

and we would benefit as a provider of content with a nominal impact on our attendance at in-person programs.

Middlesex Law Association Videos Available on [CPDonline.ca](https://www.cpdonline.ca)

A list of this year's past programs is available on the website at this link: [On-demand Law CPD CPE CLE Videos | CPDonline.ca](https://www.cpdonline.ca/On-demand-Law-CPD-CPE-CLE-Videos/)

How to Sign-Up:

[Click here to register:](#)

1. [Register | CPDonline.ca](#)

2. Scroll down to the “Middlesex Law Association” where it asks, “to which association do you belong”

3. Click on the box where it asks, “were you referred by your law association?” (which triggers the \$100 to the MLA, and \$100 for renewals)





Continuing Professional Development Programs & Events 2021

The Semi-Annual Real Estate Update

Friday, April 9, 2021 – 1:00pm to 2:30pm

Chairs & Presenters: Matthew Wilson and Casey Hayward

The Quick & Dirty Personal Injury Update

Thursday, May 6, 2021 – 1:00pm to 3:00pm

Chairs:

Alysia Christiaen, Kerry Figliomeni and Lucy Lee

The 14th Annual Mentoring Event: What you didn't learn in law school about the path to becoming a judge!

Wednesday, June 2, 2021, 4:00pm to 6:00pm

Featuring Keynote Speaker:

the Honourable Madam Justice Lynne Leitch will share her experience as the recent Chair of the Judicial Advisory Committee

Chairs:

Jennifer Butkus and Jacqueline Fortner

The 16th Annual Straight from the Bench Conference will be held via Zoom

Monday, November 1, 2021

Tuesday, November 2, 2021

9:00am to 12:30pm

Guest Speaker:

Professor Thomas Telfer on "Mindfulness & Lawyer Well-Being"

Chairs:

Anne Marie Frauts, Elizabeth Harding, Dara Lambe,
Evelyn ten Cate, and Dagmara Wozniak

How the COVID-19 Pandemic Has Impacted the Practice of Law



Contributed by:
Sam Puchala, J.D. / Conron Law Professional Corporation

It has been over a year since the COVID-19 pandemic shut down the regular operations of the courts and forced us all to modernize the practice of law from a distance.

This was an unprecedented and daunting time for all those involved with the criminal justice system. As a new call who has been around the courthouse since in 2016 when I was a student, I have learned a lot both personally and professionally from this experience. I have done some reflecting on the good, the bad, and the Kafkaesque of the pandemic that I wanted to share. If you feel you have been on a roller coaster ride through this journey, you are not alone!

Remember when we used to jam into the criminal lawyer's room on the second floor of the courthouse that now only has a one-person capacity per COVID-19 regulations? I am not sure what is crazier, the thought of being at court all the time, or the thought of interacting with colleagues regularly (especially in a confined space!). If you have struggled to adapt, be easy on yourself. Radical change is tough, especially when it has to happen overnight. I remember going to the office for the last time on March 16, 2020 when we agreed we would close the office and work remotely after seeing a flurry of news updates over the weekend regarding COVID-19.

That same week, the London courthouse was completely closed, even to counsel. Matters were heard for some time in St. Thomas. The local defence bar mobilized thanks to the collective and collegial

efforts of my colleagues. Matters were adjourned for months at a time as we waited for provincial direction. Remote courts were eventually set up. Dozens of emails outlining procedure were sent. Notice after notice was issued. It was dizzying to say the least. More than a year later, we have more understanding of the virus and vaccines on the horizon, and yet, I feel more tired and frustrated than anything. There is something exhausting about looking at a screen for a large part of the day. Pre-COVID me wished for more office time, but this is not exactly what I had in mind!

When feeling lost in the endless correspondence and procedures, I try to remember the many benefits to this strange new world. In the beginning months of the pandemic, I had brunch most mornings and dinner most evenings with my family. This was something we only ever had time to do on weekends when work schedules permitted same. Or maybe, we were more inclined to make time for quality time like that now COVID-19 brought us back to the basics of what matters most. I worked less and found a better balance. Now, even though I still battle to keep my inbox clear as those late-night emails keep trickling in, I remember that there's more to life than work. I find it refreshing that COVID-19 has instigated more discussions about values surrounding the economy, health, and well-being. Speaking of which, I am happy to report that I finally lost the last of that stubborn solicitor exam weight I gained in 2019!

Also, there's nothing like getting a client out of jail from the comfort of home! I swapped my Barrister robes out for my

silk ones, and who doesn't love sipping some coffee while waiting in virtual court? It has taken a bit of getting used to not meeting my clients face-to-face or making arguments before judges via audioconference without the ability to gauge reactions from the bench, but I have adapted. We at Conron Law Professional Corporation have had a cloud-based practice for years as we would often work on the go. We use Clio, DropBox, Xero, phone forwarding, and all the benefits of synching programs and apps between devices to work seamlessly no matter where we are. That being said, I had no idea how much I would come to appreciate the lack of Zoom-fatigue of real-life, in-person meetings with clients. Criminal law is so personal—sometimes that face-to-face conversation can make all the difference.

Sure, the business and the practice of law have certainly been impacted, but I have had and continue to have important matters proceed in person. Sometimes, contentious and high-stakes litigation require the focus and interaction I believe we can only achieve in-person. Is remote work the future of the practice? I think it is for most routine matters, and that's a good thing. Will all trials and contested sentencing hearings be run on a platform such as Zoom? I do not have that answer, but when I participated in various townhalls put on by different associations to discuss the issue, several practitioners shared my concerns. My view is that many matters have good reason not to proceed remotely, and that this very important decision should be centered around the particular circumstances of each case and the client's instructions.

If you do find yourself frustrated with technical difficulties somewhere along the line of your remote court realities, just think about the lawyer who couldn't turn off his cat filter in Zoom, or that awkward moment I personally witnessed during a lengthy murder trial in the GTA happening by Zoom a few weeks ago: just before one of the defence lawyers was about to start her cross-examination of an expert witness, a chat-bot participant with a spam-like name started loudly playing explicit, X-rated sounds as well as loud dubstep music, completely disrupting proceedings for some time.

We're not out of the woods yet, but with phase 2 of vaccinations coming, I see the light at the end of the tunnel. I am not sure what the future will bring, but I know I am grateful to be part of this profession during this crazy ride.



Conflict of Interest?

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Electronic Spoofs and Forgeries



Contributed by:

John Nicholson / Cohen Highley LLP

The Internet Tricks of the Duplicitous, and a Warning from the Family Court Bench

“Text messages, emails and social media postings have become leading sources of evidence across a wide array of criminal, civil and family disputes. Judges have before them actual words and deeds of the parties, written or posted in the parties’ own hand. Or do they?”¹

Justice Heather McGee recently began her judgment in a child custody case with this rhetorical question and warning.

We have all become accustomed to myriad ways in which deceitful and duplicitous characters attempt to manipulate the uninformed, desperate and unwary out of their money. Fishing emails, text messages offering a refund of money, and threatening phone calls purporting to be from the CRA are common fraud tactics with which we are accustomed and ignore with ease. However, the recent case of *Lenihan v. Shankar* 2021 ONSC 330 provides a strong reminder to be watchful for the tricks and lies of the deceitful in our practices.

Lenihan was a high conflict child custody,

access and mobility case. Although the child was resident in Canada, one parent had no immigration status in Canada and the other was a permanent resident and citizen of India. One parent made allegations of egregious conduct toward the children, while the other parent alleged there had been a campaign of lies and parental alienation. As it was abundantly clear that effective co-parenting would be impossible and that custody would determine the child’s country of residence, the stakes could not have been higher for the parents or the child.

Justice McGee found one parent to be reasonable, credible and child-focussed. The other parent, however, was found to have created an array of forged documents, emails, text messages and the like in a failed attempt to cast aspersions on the other parent. A forged paternity test, sperm donor agreement, and email correspondence between counsel and the deceitful party were some of the low-lights of the deception. Fortunately, the deceitful parent was undone by the poor quality of the forgeries and her incredible testimony.

Even though the truth in this case came to light through careful examination of the proffered documents, and the dogged determination of the innocent parent

and counsel, the toll this behaviour takes on children, litigants and the court is enormous. The only part of that toll that could be measured with a number in *Lenihan* was the costs award: Justice McGee ordered full recovery in the amount of \$475,000 as a result of bad faith², which will almost certainly never be recovered from the parent who had fled to India in the later stages of the trial.

As counsel we are all accustomed to document-heavy cases, in which we must examine not only the text of an email or other document, but also the metadata showing information such as the precise time a message was sent, to whom it was copied or if it was blind copied, and whether there was an attachment and its size. Not infrequently, electronic original copies will need to be requested and carefully examined, sometimes by IT forensic professionals.

Lenihan stands as reminder to us to ask ourselves when examining productions, not only “*what does this document tell me?*”, but also “*is this document even real?*”.

¹ *Lenihan v. Shankar* 2021 ONSC 330, paras. 1 and 2.

² *Lenihan v. Shankar (costs)* 2021 ONSC 1537.



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Family Status and the Global Pandemic - *Kovintharajah v. Paragon Linen and Laundry Services Inc* 2021 HRTO 98



Contributed by:
Yola S. Ventresca & Jane E. Scholes

Despite repeated assurances from employers in these pandemic times of understanding and patience, pledges of flexibility, and a professed openness to imagining new ways to sustain and encourage fair and equitable workplace practices, the reality is that substantive change to the majority of organizational structures is slow in coming, if at all.

One front in the battle for equity is engaged by the question of accommodation of an employee's work schedule on the basis of family status. A recent decision of the HRTO affirms that where an employee's work schedule had previously been adjusted to accommodate childcare responsibilities, the adoption of new scheduling systems that deprive the employee of the flexible arrangements amounts to discrimination. Specifically, the applicant in *Kovintharajah v. Paragon Linen and Laundry Services Inc.* [2021 HRTO 98] had been granted an accommodation allowing him to leave early from work to meet childcare responsibilities. The respondent employer unilaterally revoked this accommodation under the guise of new managerial

policies that sought to enforce a uniform workday schedule for all employees working a set shift. When the applicant continued to exercise the granted accommodation, he was terminated. The HRTO found that this amounted to a failure on the part of the respondent employer in the duty to accommodate on the basis of family status.

The important takeaway is that the protected ground of family status includes caregiving obligations – be it child or elder care –and that a refusal to continue with a previously recognized accommodation amounts.

Perhaps the most notable aspect of this decision, as we navigate work-life balance issues in the midst of a pandemic, concerns how childcare obligations engage the *Code*. The HRTO found that while the requirement of a uniform shift was on its face a “neutral rule,” its blanket

application to all employees adversely impacted anyone who previously relied on an accommodated flexible arrangement. The HRTO held that if the adverse impact arises because of the employee's membership in a *Code*-protected group, then the constructive discrimination provisions of the *Code* (s. 11 (1)) are engaged.

The important takeaway is that the protected ground of family status includes caregiving obligations – be it child or elder care –and that a refusal to continue with a previously recognized accommodation amounts to discrimination. To be clear, the facts of this particular case arose well before the start of the global pandemic. But the issues it raises are being amplified and multiplied by the pandemic, given the obvious challenge of finding manageable, mutually workable arrangements that accommodate wholly unprecedented kinds and levels of caregiving demands on workers. Indeed, the stresses and strains of a protracted global pandemic have laid bare the persistence of outdated assumptions, expectations, and practices that pose formidable structural barriers to full and equitable participation in the workplace.



Wallace Smith LLP is pleased to welcome Greg Robson to the partnership.

Greg is an experienced civil litigator who joined Wallace Smith as an associate in 2014. He was called to the bar in 2009. Greg's practise focuses on personal injury, insurance disputes, and employment law. Greg has represented clients in Ontario court proceedings before the Superior Court, Divisional Court, and Court of Appeal. He has also appeared before the Workplace Safety and Insurance Appeals Tribunal (WSIAT), Financial Services Commission of Ontario (FSCO) and the Licence Appeal Tribunal (LAT).

Greg enjoys representing both insurers and injured persons in personal injury matters, and to providing counsel to those involved in employment disputes.

For more information about Greg, please visit: <https://www.wallacesmith.ca/greg-robson>.

Want to contribute to the next issue? Deadline is April 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:

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

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What's inside this issue

- 1 PRESIDENT'S REPORT by Bob Lodgey
- 2 LIBRARY NEWS by Cynthia Simpson & Shabira Samadhi
- 3 CAN WORKPLACES FORCE COVID-19 VACCINATION? by Maria Elwan
- 4 REPORT ON PAST CPD PROGRAMS by Paula Paddy
- 5 HOW THE COVID-19 PANDEMIC HAS IMPACTED THE PRACTICE OF LAW by Sam Ibrahim
- 6 ELECTRONIC SPOOLS AND FORGERIES by John Nicholson
- 7 FAMILY STATUS AND THE GLOBAL PANDEMIC by Yula Vostreva and Jane E. Scholer
- 8 MEMBER UPDATES
- 9 WILL NOTICES
- 10 EXECUTIVE & COMMITTEES 2021-2022

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Alice Van Deven – as of April 6th has opened her own practice at 305 Oxford St. E., London, ON N6A 1V3, ph: 519-672-1075, fax: 519-672-1292, email: a.vandeven@vandevenfamilylaw.com

Will Notices

Lillian Hennessy

Anyone knowing of a Last Will and Testament for Lillian Hennessy, born March 5, 1938 of London, Ontario, please contact Mark Hennessy at 519-630-1166, email: markhennessy19@gmail.com

Patricia Louise Cole

Anyone knowing of a Last Will and Testament for Patricia Louise Cole, born June 4, 1953, lived on Kipps Lane and last known address 1371 Commissioners Rd W., London, Ontario, please contact Christine Cole at 519-204-0197, email: chriscole@rogers.com.



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