

THE MIDDLESEX LAW ASSOCIATION

Snail



June Issue

Thank you to all the contributors and advertisers for supporting this month's edition of the Snail.

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to the next issue?

The deadline is
June 25, 2021

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President's Report

By: Bob Ledgley / Lerner LLP

In last month's report, I mentioned the moon in reference to the passage of time.

This month, I write as we experience a "Super Flower Blood Moon". Music historians like our own Dan Mailer (featured in this month's issue) will note that Super Flower Blood Moon was also the name of one of The Grateful Dead's roadies around the time of Woodstock.

Association Vice-President **Karen Hulan** and I attended the full day **FOLA Plenary** on May 13, 2021, chaired by MLA member and **FOLA Chair, Bill Woodward**. We were treated to remarks from **LSO Treasurer, Teresa Donnelly** and heard updates from FOLA, LIRN and the LSO. **Attorney General, The Honourable Doug Downey** spoke (notwithstanding a Covid presser by the Premier happening at the same time) and **Beth Beattie**, senior counsel at the **Ministry of the Attorney General** delivered a thoughtful presentation entitled "Mental Health in the Legal Workplace – A Story from the Inside". It was both impressive and rewarding to take some time away from daily practice to learn about the important work being

done in and around our profession throughout the province.

On May 12, 2021, The **Honourable Mr. Justice Grace** led the discussion at the spring **Bench and Bar** meeting, organized by **Trustees Rasha El-Tawil and Jennifer Wall**. The virtual turnout was excellent and hopefully the comments from **Justice Grace, Joy Beattie, Catherine Bates and Kelsey Vaughan** (all of whom volunteered their time to attend) eased some of the anxieties being felt by all as we negotiate the ever-shifting landscape of the Ontario courts.

On the **CPD** front, early May saw the MLA personal injury conference held with over 40 registrants and excellent substantive content. I was honoured to sit as a mock judge with **Lisa Gunn** for the mock trial exercises, held on May 19. **The 14th annual MLA mentoring event** is scheduled for June 2 to feature **Madam Justice Leitch** speaking about the **Judicial Advisory Council**.

The Trustees on your entertainment committee continue to monitor public health guidelines and provincial mandates in the hope that we might see the return of one or more social events before the end of the calendar year. At this point,

no large events are planned but if we do some re-opening, there will be ongoing consideration of scheduling some means to get together safely and appropriately.

As we prepare to scroll our calendars from May to June, I hope you were able to mark Asian Heritage Month, Mother's Day, Cinco de Mayo, Victoria Day and, for the truly aware, World Tuna Day (May 2 – circle the calendar for 2022). I conclude with some simple wisdom from the Scottish poet, James Thomson:

*A dry May and a leaking June
Make the farmer whistle a merry tune.*

*A snowstorm in May
Is worth a wagonload of hay.*

*Among the changing months,
May stands confessed
The sweetest, and in fairest colours dressed!*

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

HeinOnline

Do you need to see some Ontario legislation from the 1930's or an old British case report out of The English Reports? Or maybe you need to see an article from **The Advocate's Quarterly** or **The Canadian Journal of Family Law**. Well, you can get all these things from your office, wherever that office is. The Law Society of Ontario has contracted for the provision of [HeinOnline](#) free of charge to all members directly from their offices. The LSO needs to confirm that you are a member in good standing, so you do need to contact them for the login information by emailing refstaff@lso.ca. HeinOnline gives you access to a wide variety of **US, Canadian and International law journals, current and historical federal and provincial legislation, Canada's Supreme Court Reports** and the full reprint of the aforementioned English Reports case reporter series. There's even an iPhone/iPad app so you can access it from your portable device. Contact the **Law Society's Great Library** today to get your login information or [ask us](#) to find and send you items available through this service.

New Students

We've already heard about some of the new summer students that have started at our member law firms and encourage any firms who have not yet contacted us to [let us know](#) who your students are so we can add them to our email communications for both library and association matters. This goes for articling

students also as some of them will be starting their terms.

We also invite students to reach out to us for assistance with finding resources to answer their research questions. You can search our online catalogue, [InfoLocate](#), to find out what we have in our collection and see what resources are available throughout the entire library system. You can also search remotely for any LSO continuing professional development papers that have been published since the early 2000's through the [Law Society's AccessCLE](#) collection. Our library computers are set up with direct, free access to **Lexis Advance Quicklaw**, our **WestlawNext Canada package** (including **FamilySource**, **CriminalSource** and **Estates&TrustsSource**), **O'Brien's Encyclopedia of Forms** (now available through our **WestlawNext Canada subscription**), and our **Thomson Reuters ProView** collection, which contains the e-versions of all our active TR loose-leaf publications. This is all, of course, in addition to our extensive print collection. [You can email us](#) or use our MLACHat service from our [website](#) to reach us. We are here to help you have a successful student experience, whether for the summer or for your articling term.

New Books

Stay tuned for a list in next month's article as (fingers crossed) we should be able to do some on-site work to process our new arrivals after the stay-at-home order is lifted.

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.

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.

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**.



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Want to contribute to the next issue? Deadline is June 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

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Prove it or lose it: Protect your trademark



Contributed by:
David Canton / Harrison Pensa LLP

If you have any registered trademarks, or even if you use trademarks you have not registered, there may be times when you need to prove you have used it.

That may not be as simple as it sounds and may require some thought into what records to keep.

Here are a few reasons you may have to prove use.

- If someone claims your mark infringes theirs, showing you used it first can save the day.
- If someone initiates a Section 45 proceeding of the Trademarks Act

trying to expunge your trademark registration for non-use, showing use in the last 3 years can make sure you keep the registration.

- If you apply for a trademark registration that gets rejected for not being distinctive, proving use to show people are aware of your trademark can overcome that objection.
- If you apply for a trademark registration that gets rejected for being someone's name or surname, proving use to show people are aware of your trademark can overcome that objection.
- If you apply for a trademark registration that the examiner requires proof of distinctiveness for — such as for sound, scent, taste, or texture —

proving use to show people are aware of your trademark can overcome that objection.

Trademark and Packaging

“Use” under trademark law is a narrower test than you might think. To show use, you have to show examples of where the trademark is shown on the product or its packaging, or where the trademark is shown when a service is being provided or advertised. The trademark has to be the same as it is registered, or if unregistered, as it is generally used. If it is an image or logo, it can't have any significant changes. If it is a wordmark, it has to be clearly set out on its own.

The use has to be connected with the goods or services it is registered for. If

you can only show use for some of the things you sell, it might lead to only partial success for those uses, and not others.

Just saying you have used it for X years doesn't help much. Helpful evidence includes advertising material, websites (including how they change over time), images of products and packaging, and invoices.

Geographic Reach and Volumes

Proof of distinctiveness goes beyond showing actual use, as you are trying to show that people know your brand in connection with your goods or services. Helpful evidence includes third-party mentions in print and online. Since you are trying to show familiarity with the mark, it is important to show geographic reach by province, and volumes. For example, print circulation, or social media follower numbers. Even invoices from packaging suppliers showing how many labels were printed and when they were printed can be helpful. You also want to show dates for these uses.

The prudent approach is to keep whatever records you can showing use of your trademark, as well as third-party mentions of your trademarks, including volumes, locations, and dates.

For more information about the registration and use of trademarks, you can download our **Trademarks Guide**.

[DOWNLOAD GUIDE](#)

[David Canton](#) is a business lawyer and trade-mark agent with a practice focusing on technology issues and technology companies. Connect with David on [Twitter](#) and [LinkedIn](#).



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Report on Past CPD Programs



Contributed by:
Paula Puddy, MLA CPD Director

The Quick & Dirty Personal Injury Update

This personal injury program for plaintiff and insurance defence lawyers was held on May 6, 2021 with 60 lawyers, presenters and sponsors in attendance.

Thanks to Alysia Christiaen of Lerner LLP, Kerry Figliomeni of Shillington McCall LLP and Lucy Lee of Cohen Highley LLP for chairing this program.

Thank you to the following presenters at the conference:

- Andrew Spurgeon of Ross & McBride LLP
- Brendan Farrer of Economical Insurance
- Kieran Dickson of Evans Philp LLP
- Jim Mays of Siskinds LLP
- Dagmara Wozniak of Siskinds LLP

We are pleased to donate to London Lawyers Feed the Hungry on behalf of the chairs and all the speakers.

Thank you to our sponsors for supporting this conference: Casemark Financial, Davis Martindale LLP, Hoare Dalton, Marcus & Associates, McKellar Structured Settlements, MDD Forensic Accountants, Navigator Financial, Pursuit Health Management, Rehab First Inc., Spencer Experts Inc., The Judge and TVA | The Outsourcing Network. Xpera Risk

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Here is a brief summary of each presentation:

The Contingency Fee Agreement

Andrew Spurgeon will discuss the nuts and bolts of the new standard form Contingency Fee Agreement. Points of interest will include:

- The Fee calculation formula
- Role of "Costs"
- Mandatory use
- Flexibility
- Required disclosure of maximum rates on the firm's website
- Provision of the Consumer Guide
- Explanation of Reasonableness
- Disclosure of client's right to assess

Occupier's Liability Act Update and FLA Limitation Periods

Brendan Farrer will provide an update on the new notice period for injuries caused by snow or ice under the Occupiers' Liability Act and an update on recent case law regarding the limitation period for Family Law Act claims.

The Virtual Trial

Jim Mays, Dagmara Wozniak and Kieran Dickson shared their experience from one of the first virtual trials in the southwest region. They commented on logistics,

particularly managing lay witnesses, equipment, the benefits of a pre-trial management conference, and other strategies such as one person managing the shared "cloud" folder of documents (exhibits, pending exhibits etc.) In the likely event that judge alone trials could proceed on Zoom in the future, these are helpful considerations for your future court appearances and trials.

Mock Trial Exercises with PWC LLP

A huge shout-out to the one lawyer who conducted a direct examination and cross-examination for the mock trial exercises with PWC LLP in May 2021. (You know who you are! Great job!)

Thank you to Melissa Reid, Caitlin Chown of PWC LLP for assisting us with this important and practical program in a world where there are few opportunities to gain advocacy experience.

A big thank you to our final round "judges", Lisa Gunn, and Bob Ledgley for their insightful, practical and constructive feedback. We all learned a lot from the experience.

The Middlesex Law Association was pleased to make a donation on behalf of the volunteers to London Lawyers Feed the Hungry.





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3. Mention your Middlesex Law Association on the registration page as well as check the box that says "were you referred by your association"!

Continuing Professional Development Programs & Events 2021

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

Mentors to date: Andrew Camman, Joni Dobson, Tino Kasi, Mana Khami, Jim Mays, Ryan Steiner, Maura Thompson, Jeff Van Bakel, Yola Ventresca, Doug Wallace, Bill Woodward

Sponsors to date: Beckett Personal Injury Lawyers LLP, Dyer Brown LLP, Harrison Pensa LLP, Kasi Law, Legate Personal Injury Lawyers, Lerner LLP, McKenzie Lake Lawyers LLP, Polishuk, Camman & Steele, Scott Petrie LLP, Siskinds LLP, Shillington McCall LLP, and Wallace Smith LLP

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

Court of Appeal Keynote Speaker:

The Honourable Mr. Justice Benjamin Zarnett

Guest Speaker:

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

EDI Presentation:

Professor Michael Coyle
on "Aboriginal Rights and Dispute Resolution Theory"

Chairs:

The Honourable Madam Justice Lynne Leitch, Anne Marie Frauts, Elizabeth Harding, Dara Lambe, Evelyn ten Cate, and Dagmara Wozniak

Presenters:

Regional Senior Justice Bruce Thomas, Jacob Damstra, Peter Kryworuk and more!



Tips for New Lawyers During Lockdown



Contributed by:

Victoria A. Gordon / Cohen Highley LLP

Transitioning from being a student to an associate lawyer is an exciting and at times challenging step in any lawyer's career.

Mentorship

It's essential for all lawyers to have mentors. This is especially true for new calls who are just starting their careers. Your firm may have formally paired you with a mentor while you were a student. This person has been assigned to you and they have willingly made a commitment to be available to mentor you. They want to help! They are a great resource to connect with on a regular basis. For many new calls, this initial formal mentorship relationship can act as a foundation upon which you can build a network of lawyers and professionals across different practice areas. Over time, this network of mentors will expose you to a broad range of practice styles and experiences. Not only will this network provide you with lasting connections that will assist you throughout your career, it will enable you to explore both new and existing interests within the profession.

Networking

While working remotely, social media is a great tool to use to engage with your network. LinkedIn can be used to connect with people you know and respect. You likely already have a network of people who are either in the legal world, or who are connected to people in the legal world that you can tap into. Sharing periodic updates on LinkedIn can help you to connect with people who are engaged in the type of work that you would like to become involved in.

Joining associations, like the Middlesex Law Association, or attending virtual networking seminars can help you connect with speakers or attendees. Lawyers in your growing network are likely already members of associations and attend events. Your mentors may be able to point you in the direction to find associations and events that interest you. They may be recruiting new members.

Attending virtual events or happy hours can help maintain connections and foster meaningful connections. Following up with speakers or attendees after a virtual event via LinkedIn or email can help forge new connections.

It is also very helpful to maintain the

relationships you built with classmates and peer mentors from law school. You can learn from new calls who are in a similar position as you, and you can help each other through the similar challenges you face as you start your careers.

Skill building

Although learning how to be a lawyer during lockdown is challenging, you can use this time to build key skills. The transition from student to lawyer comes with increased responsibility for client and file management. Practice taking notes on calls, sending follow up emails, documenting communications and docketing your time accurately. Soon enough, these practice management skills will become second nature.

Lastly, above all, prioritize taking care of yourself. It is important to protect and maintain your health and wellness. Consider going for a walk at lunch and calling a coworker while walking. A few minutes of fresh air and conversation can help you feel less isolated.

While it takes time to build a network and relationships with mentors, there are lasting benefits, and lawyers of any seniority should prioritize each of these things in their practices.

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Employees retain right to claim constructive dismissal at common law: *Coutinho v. Ocular Health Centre Ltd.*, 2021 ONSC 3076



Contributed by:

Jeff Risdon and Debbie Boswell / Lerner LLP

On May 29, 2020, the Ontario Government enacted O. Reg. 228/20 Infectious Disease Emergency Leave (“IDEL Regulation”) under the *Employment Standards Act* (“the ESA”).

The IDEL Regulation appears to have been enacted to provide clarity and predictability for employers who, as a result of the COVID-19 pandemic, were required to temporarily reduce or eliminate hours of work for their employees. The IDEL Regulation also addresses constructive dismissal. Section 7(1) of the IDEL Regulation states that, a temporary reduction or elimination of an employee’s hours of work by the employer for reasons related to COVID-19 does not constitute constructive dismissal if it has occurred during the COVID-19 period. The “COVID-19 period” was retroactively defined as the period beginning on March 1, 2020 and ending six weeks after the declaration of emergency ended. However, the COVID-19 period has been extended several times however and is currently set to expire on July 3, 2021.

Since coming into effect, there has been significant uncertainty surrounding the implications of the IDEL Regulation and an employee’s right to claim for constructive dismissal at common law. However, we have now received the first judicial pronouncement regarding

the impact of the IDEL Regulation on constructive dismissal in the case of *Coutinho v. Ocular Health Centre Ltd.*, 2021 ONSC 3076. In this decision, dated April 27, 2021, Justice Broad concluded that the IDEL Regulation did not take away a laid-off employee’s common-law right to sue for constructive dismissal.

The plaintiff was employed as an office manager by the defendant ophthalmology clinic, Ocular. In the months leading up to April 2020, the principals of Ocular had been engaged in a dispute over various corporate and business issues with the ophthalmologists practising at the clinic.

In the midst of this dispute, the principals of Ocular changed the locks to the premises. When the plaintiff attended for work on May 1, 2020, she was advised to go home and that she would continue to be paid. On May 29, 2020, the plaintiff received a letter from the principals of Ocular notifying her that the clinic was closing and that she was being placed on a temporary layoff.

A few days after receiving the letter giving notice of the layoff, the plaintiff commenced an action against Ocular, claiming damages for constructive dismissal along with punitive or aggravated damages. In the Statement of Claim, the plaintiff sought all of her common law and statutory entitlements. Shortly after issuing the claim, the plaintiff found employment at another ophthalmology clinic.

Ocular defendant against the plaintiff’s claim and pleaded that the plaintiff resigned or alternatively, that Ocular

had just cause to terminate her. Relying on the IDEL Regulation, Ocular argued that the plaintiff was deemed to be on emergency leave, as her hours of work were temporarily reduced or eliminated for “reasons related” to COVID-19, and therefore did not amount to constructive dismissal. Additionally, Ocular argued that the plaintiff had fully mitigated any damages she may have incurred through her prompt re-employment. Ocular brought a motion for summary judgment.

The plaintiff took the position that her hours of work were not temporarily reduced or eliminated for “reasons related” to COVID-19, but rather the clinic was closed due solely to the business dispute between the Ocular’s principals and the ophthalmologists practising at the clinic. Furthermore, the plaintiff submitted that the IDEL Regulation did not affect her common law right to pursue a civil claim against Ocular for constructive dismissal.

In dismissing Ocular’s motion for summary judgment, Justice Board distinguished between constructive dismissal under the ESA and constructive dismissal at common law. Justice Board held that the scope of s. 7 of the IDEL Regulation is constrained by s. 8(1) of the ESA, which provides that, subject to one exception which was not applicable, “no civil remedy of an employee against his or her employer is affected by this Act”. In support of this interpretation, Justice Board considered extrinsic evidence in the form of an online publication of the Ontario Ministry of Labour, Training and Skills Development, which stated

that the IDEL Regulation only affects what constitutes constructive dismissal under the ESA, not what constitutes constructive dismissal at common law.

Justice Board was of the view that the plaintiff was entitled to treat Ocular's unilateral imposition of the layoff as bringing the contract of employment to an end and had the immediate right to sue for constructive dismissal, citing the well-established principle that "at common law, an employer has no right to lay off an employee and that absent an agreement to the contrary, a unilateral layoff by an employer is a substantial change in the employee's employment, and would be a constructive dismissal".¹

Justice Broad ordered that the matter would proceed to trial on the limited issues of whether Ocular had just cause

to dismiss the plaintiff and if so, whether Ocular was relieved of its obligation to pay the plaintiff termination pay under the ESA.

Comment

This decision represents the first time that an Ontario court has interpreted the IDEL Regulation to determine its effect on claims of alleged constructive dismissal at common law. This decision underscores the challenges that employers face in navigating both statutory and common law principles while dealing with the unfortunate economic realities that have led to unprecedented temporary layoffs during the global pandemic. For many employees impacted by the pandemic, the decision in *Coutinho v. Ocular Health Centre Ltd.* is a welcome one.

However, the decision in *Coutinho v. Ocular Health Centre Ltd.* is unlikely to be the last interpretation of the IDEL regulation. Given the far ranging implications that this decision may have on employers and employees, we can expect further litigation on this particular issue, and most likely, the involvement of the appellate courts. In addition, it remains to be seen whether other arguments that could be brought by employers (for instance, the defence of frustration, arguments about the development of the common law, or further arguments about interpreting the ESA and IDEL Regulation) could be more successful.

¹ *Coutinho v. Ocular Health Centre Ltd.*, 2021 ONSC 3076 at para. 50, citing *Elsegood v. Cambridge Spring Service (2001) Ltd.*, 2011 ONCA 831.

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To Zoom or not to Zoom, that is the question



Contributed by:
Daniel R. Mailer / Cram & Associates

The Covid-19 pandemic ushered in a long delayed technological revolution in Canadian courts.

New Zoom technology has allowed the courts to continue to operate remotely rather than grind to a halt and that has been a good thing. There is now however, a push to return to in person hearings as soon as possible. This effort is being led by Judges and other legal experts who have identified the drawbacks associated with virtual hearings. Are remote virtual hearings the wave of the future or should they be considered only a temporary stop gap measure? That's a good question worth discussing.

As with all things in life, there are pros and cons to Zoom hearings and virtual trials. In some respects, zooming has improved access to justice for many, but certainly not all. If for instance, a party or witness lives in a rural area with poor or limited internet access, zooming can be problematic. Zooming may also be impossible for the poor and homeless. Furthermore, on Zoom, lawyer and client interaction is limited and during contested hearings where credibility issues come in to play, important verbal cues can easily be missed. And what about the off camera third party who may be influencing or coaching a witness? These can be problematic and difficult to control.

And there are also the inescapable technological limitations and quirks like cross talk, zoom bombing, drop outs and freezing that can heighten frustration, distract from the issues and stymie the process.

At the macro level, every day now, we see an ongoing erosion of respect for law and order and authority is being constantly challenged and undermined. There is a good argument that maintaining



solemn decorum in and around the court process, is essential to protect the proper administration of justice. It is no secret, that signs and symbols can have a powerful effect on people. These can further support the high regard that we as a society place on the administration of justice. The courtroom seal, the Judge's black robes, the elevated dais, pew seating and hushed courtroom

etiquette, all combine and contribute to the uniqueness and sanctity of the process. An in person hearing is arguably much more solemn and important to the participants than a hearing conducted in front of a cold, insulating video screen recently used to watch Netflix.

It was recently reported that a Judge appearing before a Justice Committee in the House of Commons spoke of how she had heard about a witness ordering a

double double coffee while that witness was giving evidence in a family case. While this is somewhat humorous, it displays a certain lack of respect for the process. Our courts are regularly on a daily basis, making decisions that have significant, oftentimes life altering impacts on people's lives. Certainly, we should try where possible, to strive for excellence during the delivery of the process along each step of the way.

There is much to consider for and against virtual hearings involving the public.

Certainly there are advantages to them and they have their place but moving forward, what should their place be in regard to the contested hearing and trial process involving public participants? We can be sure that this debate will continue for months to come.



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Spring 2021 Bench and Bar Meeting Minutes



Contributed by:

Jennifer Wall, Harrison Pensa LLP / Rasha El-Tawil, Siskinds LLP

**May 12, 2021 at
4:30 pm via Zoom.**

Introduction (MLA representatives:
Robert Ledgley/Jennifer Wall/Rasha El-Tawil):

- Justice D. Grace,
Local Administrative Judge
- Joy Beattie,
Civil Trial Coordinator
- Catharine Bates, Kelsey Vaughan,
Court Services Division

State of the Courts

1. Update from Justice Grace

Several weeks ago court operations were rolled back due to public health restrictions. This amounted to about seven business days, as part of the deferral of court operations occurred over a scheduled judicial conference. The court apologizes for the delay to counsel and litigants, but thankfully it has not been extended.

In-person matters are only being heard where absolutely necessary and this is discouraged whenever possible. Courtrooms have been retrofitted with plexiglass and fitted for cameras, but almost no courtrooms are in use (most recently, criminal assignment court was heard, the judge and court staff were in the courtroom but litigants and counsel attended by teleconference). The court is conscious that there are many unvaccinated people and many people with concerns about a return to in person operations. The problem with returning to the courthouse is not courtroom availability, it is the concerns caused by the pandemic.

The only judicial vacancy in the region right now is a relatively recent one in Windsor, which we are hoping to be filled soon. That will bring the region to full complement. There is a judge in London on medical leave right now, which has created some scheduling concerns, including matters that are seized.

The backlog in criminal and family matters will affect civil resources. The criminal backlog is significant – some matters may resolve, but courts are fully committed for 2021 and 2022 to criminal matters. There will likely be very little civil availability in the fall and those will be shorter and non-jury matters. The family backlog is significant and there are hundreds of trials on assignment court lists. There is no doubt that the family bench will be looking for assistance from the civil bench. The same scheduling protocol continues – civil matters are prioritized behind criminal and family matters. Even in cases where a criminal case does not proceed, that judge may be reassigned to a family matter rather than a civil matter.

RSJ/LAJ meeting last week – there are backlogs everywhere in this region and throughout the province. It is unlikely that we will be able to borrow judges from other regions.

Civil jury trials – *Weaver v. Clunes* – motion to strike jury notice for a matter on the May list. In that decision Grace J. indicated that civil jury trials would likely be unavailable until the second quarter of 2022 and he is still of that opinion. If we can get to civil jury trials earlier we will.

Philosophy has been to work in two-month increments and update memos

every two months or so as appropriate, the last memo has not been updated since nothing has really changed.

CaseLines – on track for a July 5, 2021 launch in this region. In the meantime the court will continue to use OneDrive. CaseLines will not replace document filing systems or handle scheduling but it has the potential to facilitate the hearing of matters.

There is no information right now about the return to in-person operations. Grace J. is hopeful that we will be in a position to return to some in-person operations but we know nothing for sure right now.

2. Update from Court Services

Kelsey Vaughan will be overseeing the SCJ civil/criminal portfolio and Catharine Bates will be overseeing the family portfolio. They will be working on separating the counter to reflect this division once the filing office reopens.

Court staff are working towards the implementation of CaseLines.

Construction is underway for a temporary jury assembly area on the ground floor and will begin next week. This will combine safety measures for social distancing and technology. This is expected to be completed at the end of June.

Questions

1. *Will there be any further guidance issued by the local court, further to the Chief Justice's new Notice to the Profession dated May 12, 2021?*

The new Notice to the Profession doesn't change anything in London, as we had already cancelled juries until at least July 5, 2021. If the lockdown is

extended into June this will jeopardize criminal jury trials for July, four of which are currently scheduled. The notice doesn't change anything so no new local notice is anticipated.

2. *Can courts post their practice directions/ memos on a central site such as the Superior Court of Justice's site?*

This should be done, and there have been ongoing discussions asking with the SCJ to put all of the region's memos online from all court locations. The court recognizes that putting the responsibility of dissemination onto counsel creates difficulties for counsel and court staff. The court is working on it and they have spoken to the RSJ. The RSJ will continue his work with the RSJ Council and the Chief Justice's office to get things changed. The SCJ's website in general needs some updating.

3. *Will non-jury matters on the trial sittings proceed as scheduled, or are they likely to be traversed to the fall sittings or another Assignment Court?*

Right now, this is an opportunity for civil cases to get tried. As long as we understand that virtually everything will proceed by Zoom, we will proceed as scheduled. The court has tried to maintain as many hearings as they possibly can.

4. *Can we get the civil assignment court list and pre-trial dates on the Monday before assignment court to give us some time to confer prior to Assignment Court?*

No, we are still operating under a system where you're put on the next civil assignment court 60 days after the trial record is filed. It should not be a surprise to be on the assignment court list. The court staff do their best and will provide the list as far in advance as possible.

5. *When will administrative dismissals resume? We've had a handful of matters that have now passed their 5 year limitation both in the normal course and again if you add 6 months for the time*

the limitation periods were suspended and we're still being told that courts are simply not administering administrative dismissals for delay at this time.

Administrative dismissals are still suspended at this point and we have no information about the date of resumption.

6. *Most of the time (about 75%) basket motions come back with the order signed but not issued and entered. Since every order needs to be issued and entered, could this be done all at once when the order on the basket motion is made, rather than having to resubmit through the portal?*

Timeliness of basket motions was a previous concern. In order to expedite the process, Justice Grace and management were supportive of having the judicial secretaries send out the orders rather than the general email address, which frequently has backlogs. The timeliest way to get orders issued and entered is through the portal under the current system.

7. *To whom should electronic filing inquiries should be directed where neither the online portal nor the London. Courthouse@ontario.ca address have worked for a specific filing request (the request being one that probably falls outside the filings permitted by email). Is it appropriate to send an inquiry to the London.Courthouse email address.*

As an alternative to electronic filing, am I able to send the materials by regular mail to the Court for filing? I don't want to attend the Courthouse in person or have someone else attend in person for this particular item, which is not urgent.

If you have inquiries about filing, call the court and select the appropriate option in the directory. Inquiries can go through the London.Courthouse email, but there is a likelihood of delay. The filing procedures are set out on the SCJ website. Regular mail would

not be accepted and the procedures as outlined on the SCJ website need to be followed.

8. *Counsel wishing to log into virtual trials as observers are sometimes getting caught in the waiting room and not admitted. This has been a problem over multiple days and with several firms.*

a. Is there a way for the registrar to admit observer lawyers?

b. Should they be indicating that they are counsel in their Zoom names in order to be admitted?

Ultimately, all parties are to be admitted to courtrooms, as they are open to the public (subject to witness exclusion orders or in camera proceedings). Delay is likely a result of registrars juggling multiple tasks. Please be patient. A message will be sent out to all staff indicating that everyone in the waiting room should be admitted to all proceedings subject to the restrictions above. It would be helpful if lawyers would change their Zoom names to indicate that they are counsel, but all parties should be admitted.

If this is an ongoing problem, get word to CSD that there is a problem, or if the observer is from one of the firms representing a party have the counsel on the case mention it in court so the registrar can admit the observer. The court is working on improving its own protocols for public access to virtual hearings.

9. *Is there a potential that civil jury trials will all be adjourned for the remainder of 2021 as they have in other jurisdictions?*

Yes – there is nothing firmly known yet and nothing is decided. The objective is to get civil jury cases started up again as soon as possible. The court will make best efforts to get memos out far enough in advance to avoid the necessity of preparation for trials that will not proceed.

Continued on Page 18

3. Confirmations

Reminder from the court – send Confirmations to both addresses sent in the memo. These are the London Courthouse and the London.SCJ email addresses. It is imperative that the memos are followed.

Do not duplicate filing methods where not indicated by the memos – this is causing confusion and compounding the problem. If there is an ongoing systemic problem with documents being lost or not filed let CSD or Justice Grace know, but don't take it on yourself to send materials to every possible filing avenue.

4. Guide to Virtual Hearings

The Guide to Virtual Hearings at the Superior Court of Justice was released today. This is new enough that the judges have likely not had the opportunity to read it. This is a guide and not a practice direction, intended to help everyone turn their minds to the issues that will arise.

5. Documents filed pre-COVID

Materials filed on paper before COVID need to be re-filed electronically if needed for upcoming hearings. A memo should accompany the electronic filing indicating that the fee has already been paid.

6. New trial dates

The trial lists are not closed. If there is an agreement between counsel on a trial date in 2021 the matter will be added to the list, subject to the availability of pre-trial dates. The majority of civil cases settle, so the civil trial list is overscheduled.

7. Is there a general email address for the Sheriff's Office?

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Are Local Law Associations Under Attack?



Contributed by:

William Woodward / Dyer Brown LLP and FOLA Chair

On May 13, 2021 the Federation of Ontario Law Associations conducted its spring Plenary and as Chair, I provided some opening comments.

This article is a summary of what I shared and I hope it is of some interest to you and perhaps, will provoke some thought about the nature and composition of our governing body.

In 1879 a group of lawyers gathered in Middlesex County and established the Middlesex Law Association. One of its primary purposes was to fund a library for the use of its members as the Great Library in Toronto was the only courthouse library. This development is not unique to Middlesex as by 1884 seven associations had formed including Brant, Bruce, Frontenac, Hamilton, Ontario (now Durham & Northumberland) & Peterborough. Shortly thereafter the County of Carleton Law Association was formed in 1888 and their first employee, a library staff person, was hired the following year at a salary of 75 cents per hour.

I am sure you may be wondering why I am going down this path or whether I have been working from home too long. There are two things that I think stand out in looking at this history. First, in 1879 the Law Society of Upper Canada provided some start-up funding to be matched by local associations to meet the needs of local practitioners in what is described as the hinterlands of Ontario where legal resources were not available. It seems

that anything outside of Toronto was considered the hinterlands and it appears that after over 140 years, that view seems to continue. Secondly, the foundation of every law association is to provide legal resources to its members that they could not otherwise obtain individually. Legal education and the provision of legal resources to ensure the development and competency of our profession is the lifeblood of our associations and it cannot be lost that this responsibility is shared by the Law Society.

Up until 2001, the Law Society, to varying degrees, and local associations continued to fund local association libraries to support the local bar. In 2001 Libraryco was incorporated in an effort to establish a stable funding base for libraries across the province while maintaining the ability of local associations to manage the operation of the library and the acquisition of resources to meet local needs. In 2007 there was an overhaul of Libraryco which primarily involved the Law Society taking over the administrative and technical support for the library system. As early as 2012 there was a recognition that funding for libraries was at a critical point and since that time funding has not kept pace with the costs of legal resource materials. As a result of a number of issues within the Libraryco framework a new entity was formed as the Legal Information Resources Network (LiRN) whose shareholders are the Law Society, The Toronto Lawyers Association and FOLA to operate libraries in cooperation with the local associations.

To be very blunt, our associations and

the Law Society are under attack. We have felt the sting of budget cuts at a time when there was some cautious optimism that with the formation of LiRN we would see a recognition that the cost of maintaining a collection has increased well beyond the rate of inflation while funding has stagnated. As some of you may know, that did not occur and FOLA and some associations have worked hard since November 2020 to lobby and educate the benchers on the importance of local law libraries. A working group was formed and continues with its efforts. Regular shareholders meetings have opened a dialogue with LiRN to work in a more cooperative manner and to avoid working at what may be perceived as cross purposes. These positive steps are perhaps helpful but the threat remains and the fate of local association libraries are intertwined with that of the Law Society.

I am sure that you are aware that there is a group of benchers who have stated quite clearly that their goal is to slash the budget of the Law Society and in turn the funding for libraries. They do not see the value we provide to our members and seem to ignore the ongoing need to ensure the highest level of competence to protect the interests of the people we serve. They appear to be unaware of the value added to our members through networking, informal mentoring and the development of civility and collegiality that our association provides. They question the value of self-regulation and seem to believe that if regulation was placed in the hands of the government, that would be a satisfactory outcome.



Member Updates

Send your updates to library@middlaw.on.ca

Madeline Hofford – is now practicing at Lazar Law and her email is mhofford@lazarlaw.ca

Chris Hubley – New Call practicing at Jeff Conway Law and his email is chris@jeffconwaylaw.com

Julie Lee – is now practicing at Millars Law, ph: 519-657-1529 x104, email: julie@millarslaw.com

Andre Rady – has re-joined the MLA and is practicing at 478 Waterloo St., London N6B 2P6. His phone number has changed to 519-851-8355, email: ajrady@radylaw.com

Will Notices

Jeanette Mary Stevens

If you have knowledge of a will for Jeanette Mary Stevens, date of death February 2021, age 78, late of London, ON, born on please contact James W Dunlop Law, jameswdunlop@rogers.com, ph: 226-268-8099.

Jane Gacheri Muriuki

Anyone knowing of a Last Will and Testament for Jane Gacheri Muriuki, born December 23, 1964, and died on March 30, 2021, of London, Ontario, please contact Taiwo Emovon, Thomson Mahoney Delorey LLP at 519-673-1151, email: temovon@londonlawyers.com.

Bruce Albert Chuck

If you have knowledge of the whereabouts of the Last Will and Testament of Bruce Albert Chuck, late of Sarnia, ON, born on November 24, 1932 and deceased on January 15, 2021 please contact Raha Mohammad, Nelligan O'Brien Payne LLP, email: raha.mohammad@nelliganlaw.ca, ph: 613-231-8210.



June 2021 Middlesex Law Association Newsletter

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