

THE MIDDLESEX LAW ASSOCIATION **Snail**

Summer Edition!



Summer Issue

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

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The deadline is
August 25, 2021

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President's Report

By: Bob Ledgley / Lerner's LLP

We are getting there. Many of us are "double vaxxed".

Case counts are dropping. It's even acceptable to gather a little. I miss my in-person friends, colleagues and clients and am truly excited that we might soon be able to revive our pre-corona relationships and even start some new ones. I'm sure I'm not the only one who has a certain number of newer clients whom I've never actually met in person. Our world has been a truly awful place for many reasons over the past month or so. We can't and shouldn't shy away from what that means. But just for a moment, even if it's only to give you the shot in the arm (pun fully intended) to address the horrors in the news, take some joy from the optimism of better weeks and months close at hand.

June had fewer Association items on the calendar than did the last couple of months. The **Board of Trustees** met on June 10. We discussed supporting the

Federation of Ontario Law Associations in its discussions with the **Law Society** concerning the ever-present issue of library funding. The functions of your library/practice resource centre have evolved an incredible amount in the last decade and it is imperative that the necessary financial support keeps pace with that evolution. Please lend your voice whenever you can. Tell your Benchers the importance of your library to your practice and to your ability to serve our community.

It might take some scrambling, but we are hopeful that as the province progresses through each step of reopening we might see the return of some of our more social Association events. As soon as those opportunities arise, the entertainment committee will be exploring ways for us all to get reacquainted. Watch this space.

Please help yourselves and the local court staff by checking and double-checking current courthouse procedures before taking steps. Things continue to change

frequently but irregularly and reliance on "the way we've always done it" might cause you to run afoul of current directions. Much of what you may need can be found on our website at www.middlelaw.on.ca/local-court-information/. Practices vary, sometimes significantly, in different locales and it's worth a call to a local practitioner if you're dealing with out of town matters.

June is ending and summer has arrived. Although the **Board of Trustees** will take a brief hiatus from formal meetings, we will continue our ongoing work in representing and supporting you, our members, to the best of our collective ability. On behalf of the Trustees, I wish you a pleasant, healthy and rejuvenating summer.

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

Jennifer Wall 519-661-6736
jwall@harrisonpensa.com

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Library News



Contributed by:

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

CALL/ACBD Conference 2021

We attended the annual **Canadian Association of Law Libraries/Association Canadienne des Bibliothèques du Droit** conference virtually in late May and it was informative and inspiring as always. The one benefit of a virtual conference is the ability to draw speaker talent from across the country and around the globe to impart their wisdom on delegates. The conference started off with a bang with its first keynote featuring **Greg Brown and Mitch Moffit** from [AsapSCIENCE](#) discussing effective communications in a world full of misinformation. The closing keynote featured **Maria McKay** from the global management consulting company, [McKinsey & Company](#) discussing Resilience & Reinvention and was an incredible analysis of pandemic work modifications and what forms our future office environments might take.

Packed between these two keynotes were a combination of library and law-related sessions such as: keeping abreast of legislative changes, engaging with Indigenous laws, finding and using archives and other non-traditional information resources, automating knowledge work, right to be forgotten legislation, and systemic discrimination through the lens of a global pandemic. In addition, there were vendor sessions for both print and online resources, lightning talks featuring innovative initiatives in libraries across the country, and even an exhibit hall for one-on-one discussions with publishers.

There is no comparison to an in-person conference where much of the learning takes place during informal discussions with other delegates and exhibitors, but CALL/ACBD showed that a high-calibre educational conference is still possible in a virtual setting. We are hoping, however, that next year's conference in Montreal will return to an in-person event as planned.

Articling Students – Have you told us yet?

We'd like to remind any firms who have not yet contacted us to [let us know](#) who your incoming articling students are so we can add them to our email communications for both library and association matters. We set students up with a no-charge limited category that will give them access to an online membership card to use with photo ID to enter the courthouse more easily, plus they get discount registrations for all our CPD programs..

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 MLChat 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

Hassan, Sayeh. **Practitioner's guide to preparing and presenting bail hearings.**, LexisNexis

Houlden, L.W. **2021 Annotated Bankruptcy & Insolvency Act**, Thomson Reuters

n/a. **Canadian Income Tax Act with regulations, annotated 111th ed. 2021 Spring**, Wolters Kluwer

Olivo and Gonsalves. **Debtor-creditor law and procedure, 6th ed.**, Emond

Régimbald, Guy. **Canadian administrative law, 3rd ed.**, LexisNexis

Reiter, Barry. **Directors' duties in Canada - 7th ed.**, LexisNexis

Strigberger, Daniel and Andrew Mercer. **Auto insurance coverage law in Ontario - 2nd ed.**, LexisNexis

Williams, Christopher J., et al. **Expropriation law in Ontario**, LexisNexis



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.

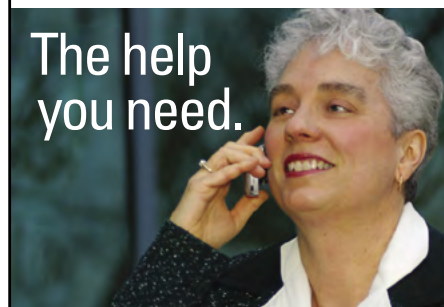
Johnston, David. **Canadian securities regulation** --3rd ed.

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 August 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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What will workplaces look like after COVID?



Contributed by:
David Canton / Harrison Pensa LLP

As we see the light at the end of the pandemic tunnel, many are turning their minds to what the new office workplace environment will look like.

The only certainty is it won't be the same as before the pandemic. Many of us are now used to working from home, and many employers realize they can function perfectly well without everyone in the office all the time. On the other hand, work from home jobs have been a challenge to those who don't have a dedicated workspace away from others in the home, or who have to balance it with childcare.

The changing reality and attitudes will raise issues that my employment law colleagues will have to ponder. Things like employer responsibility for home workspace health and safety, and how to deal with employee performance monitoring and discipline.

Surveys are showing some interesting perspectives on the workplace going forward.

Great Resignation

In what some are calling "[the great resignation](#)," somewhere between 25% and 40% of employees are thinking about quitting their jobs or switching careers for a number of pandemic-driven reasons.

Many people say they would quit their jobs if their employers forced them to

return to the office full time. A [survey in the United States](#) said 39% would consider quitting if their employers were not flexible about remote work.

I know of one company that sold its office building. The company found it functioned just fine remotely and getting together is as easy as renting meeting space for a day.

I've heard of another company that is assuming most of its staff will work from home at least some of the time and is reconfiguring its office into a hoteling office space where many of its staff won't have dedicated desks.

The days are waning where most office workers are in a dedicated cubicle with personal pictures around them, or in a dedicated office with furniture and

artwork they chose.

The pandemic did not invent working from home. But, like many other changes, it accelerated the trend.

Challenges of Working Remotely

However, having a total remote or hybrid workforce raises challenges.

We rely on chance meetings in the office to discuss both work and non-work issues. It can sometimes be easier to poke your head in a colleague's office for a minute to get a second take on something rather than do that remotely. It can be a challenge, especially for new hires, to get noticed for promotion or to evaluate their performance. It is easy to feel disconnected from the office, and for others in the office to forget about you. While some view casual conversations amongst staff as non-productive, it helps foster collaboration and shared problem-solving, and gives a sense of belonging.

Onboarding new hires can be more difficult. It has been pointed out that "A lot of [onboarding in a physical workspace](#) is...ambient awareness based. You come in, you see the workplace, you meet people...there is a period where you learn from others. That's how you [were] mentored and how you get on board."

Ian Holloway, Dean of Law at the University of Calgary, [recently wrote](#) of law firms: "Once a firm is just a collection of its parts, the claim to be a learned profession may disappear." His thought, which could be applied to many office situations other than law firms, is that remote or hybrid work can have a negative impact on organizational culture.

We will have to find ways to deal with these issues. Organizations may have to consider how to recreate the missing bits virtually, and how human resources management needs to change.

Video Conferencing Innovations

Video conferencing services are already working on making their tools more useful for hybrid workplaces and trying to put those who remote into meetings on the same playing field as in-person attendees.

For example, [Google recently announced](#) updates to its collaboration platform.

Microsoft is bringing [new Teams features](#) to make hybrid meetings work better. If you are curious what that might look like, take a look at the [short video in this article](#).

Of course, a new hybrid office work model will have many side effects. How will it affect office building space demands, businesses like restaurants that depend on office workers, traffic patterns, car sales when commuters don't drive as much, where people want to live, new home designs (builders are already marketing designs as two bedrooms plus office rather than three bedrooms), and the list goes on.

Or are we making too big of a deal about this change and exaggerating its effects? Are those survey results inflated by pandemic burnout? Will interest in remote or hybrid work wane once the pandemic becomes a memory?

Are you an employer with questions about Employment Law or technology around remote, hybrid, and office work spaces?

[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 Fourteenth Annual Mentoring Event, held on June 2, 2021, was a fun evening with over fifty mentees and mentors in attendance. This year's theme was "What you didn't learn at law school about the path to becoming a judge!"

The **Honourable Madam Justice Lynne Leitch** shared her insights on the Judicial Advisory Committee in terms of its composition, process and workload. Interestingly, Justice Leitch shared that the bench should be representative of the communities they serve. As such, it is important for candidates to be socially aware and involved in community as well as having exceptional professional credentials.

As always, we invited senior lawyers to share their insights as mentors to the junior lawyers in attendance on integrity, ethics and reputation. We were delighted to welcome so many mentors:

- **Ryan Steiner of Beckett Personal Injury Lawyers LLP**
- **Gord Cudmore of Cudmore Law**
- **Bill Woodward of Dyer Brown LLP**
- **Mana Khani of Harrison Pensa LLP**
- **Joni Dobson of Legate Personal Injury Lawyers**
- **Yola Ventresca of Lerner LLP**
- **Matthew Villeneuve of McKenzie Lake Lawyers LLP**
- **Andrew Camman of Polishuk Camman & Steele**
- **Jeff Van Bakel of Scott Petrie LLP**
- **Maura Thompson of Shillington McCall LLP**

• **Jim Mays of Siskinds LLP**

• **Doug Wallace of Wallace Smith LLP**

We appreciate the mentors taking time to attend this event, and their firm sponsorship.

Thank you to Jennifer Butkus and Jacqueline Fortner for co-chairing the event this year.

We are pleased to make a donation to London Lawyers Feed the Hungry on behalf of all of the volunteers for their behalf for their participation.

Fall MLA CPD Programming

We decided that all our fall CPD programming will be online via Zoom. (Hopefully we will see each other in person in 2022!) Please pencil in the following dates and times:

- The Small Claims Court seminar, Thursday, September 9, 2021, 9:00am to 11:00am
- The HTA/POA seminar, Wednesday, September 15, 2021, 4:00pm to 5:15pm
- The 16th Annual Straight from the Bench Conference, Monday, November 1, 2021 and Tuesday, November 2, 2021, 9:00am to 12:30pm
- The Personal Injury Conference, Wednesday, December 2, 2021, 1:00pm to 3:00pm

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Continuing Professional Development

Programs & Events 2021 held by Zoom

The Small Claims Court Seminar

Thursday, September 9, 2021
9:00am to 11:00am

The HTA/POA Seminar

Wednesday, September 15, 2021
4:00pm to 5:15pm

The 16th Annual Straight from the Bench Conference

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:

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The Personal Injury Conference

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1:00pm to 3:00pm



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Ontario (Labour) v Sudbury (City): Who is the Employer Under the Occupational Health and Safety Act?



Contributed by:
Andrew C. Murray / Lerner LLP

Prosecutions under Ontario's Occupational Health and Safety Act ("OHSA") do not see appellate review by the Court of Appeal with the same frequency as do civil or criminal law matters, so when the Court of Appeal does speak, it is always notable. In [Ontario \(Labour\) v Sudbury \(City\), 2021 ONCA 252 \(CanLII\)](#), a unanimous panel comprised of Fairburn A.C.J.O., David Watt J.A., and Grant Huscroft J.A., revisited the issue of "who is an employer?" by looking back to and adopting the seminal 29-year old decision from the Court of Appeal in *R. v Wyssen* (1992 CanLII 7598).

Overview and Judicial History

The Court of Appeal for Ontario's decision was penned by Associate Chief Justice J. Michal Fairburn.

The underlying case related to a fatality that occurred after a woman was struck by a road grader completing roadwork repairs. The grader driver worked for a private company, Interpaving, which was contracted by the City to complete the repairs. Interpaving was charged with violations under the *Occupational Health and Safety Act* ("OHSA") and regulations, but so too was the City, both as a "constructor" and as an "employer" under the OHSA.

Interpaving was convicted at trial in the Provincial Offences court. Its conviction was not the subject of the appeal. The City was acquitted in separate proceedings, with the trial judge

concluding that the City was neither an employer nor a constructor and so owed no duties under the OHSA. The trial judge went on to find that, in any event, the City had a due diligence defence to the charges.

An initial Crown appeal to the Superior Court of Justice was dismissed and leave was granted by the Court of Appeal to determine whether the appeal judge erred in concluding that the City was not an employer under the OHSA.

Who is Employer Under the OHSA?

Beginning with the end, the Court of Appeal concluded that the City was in fact an employer within the meaning of the OHSA and, as a result, was liable for violations of the construction regulation found by the trial judge unless it could establish a due diligence defence. The appeal was allowed and, owing to the fact that the Superior Court appeal judge did not address the Crown's appeal on the issue of the due diligence, the matter was remitted by the Court of Appeal, back to the Superior Court appeal judge, for a hearing of the due diligence appeal.

In interpreting the OHSA, the court began with this observation:

"At the outset, the Crown reminds the court that the OHSA is public welfare legislation, and as such "should be read liberally and broadly in a manner consistent with its purpose". There is no doubt that this is so; this court has consistently instructed that the Act must be interpreted generously, rather than

narrowly or technically, in order to allow it to achieve the purpose of protecting employees' health and safety".

The court then addressed the specific question before it, observing that under the OHSA, "employer" is defined broadly:

"Employer" means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services; ("employeur") ...

The Court explained that this definition embraces both employing and contracting for the services of workers, but that the appeal could be resolved at the first branch of the definition, based on adoption of the Court of Appeal's decision in *R. v. Wyssen*.

In *Wyssen*, the Court of Appeal, held that "[t]he definition of 'employer' in the [Act](#) covers two relationships: firstly, that of a person who employs workers and secondly, that of one who contracts for the services of workers." A person "who employs one or more workers" is therefore an employer for the purposes of the [Act](#) and is responsible for ensuring compliance with the [Act](#) in the workplace.

The Act establishes overlapping responsibility for health and safety and contemplates the possibility of multiple employers in a workplace. In *Wyssen*, the court noted that the relevant enforcement provisions in the OHSA put employers "virtually in the position of

an insurer who must make certain that the prescribed regulations for safety in the work place have been complied with before work is undertaken by either employees or independent contractors.” This very strong language was not disturbed and indeed was re-emphasized by the court.

Not only do the duties of the workplace parties overlap; one person or entity may also meet the definitions for several different workplace parties and therefore be required to assume the duties of each of those parties at the same time. For example, a person or entity might be subject to duties as an owner as well as an employer and a constructor.

The court concluded that “plainly, the City employed one or more workers at the project site within the meaning of [s. 1\(1\)](#) (of the OHSA). It is therefore an

employer for the purposes of the [Act](#) and, as *Wyssen* makes clear, that is sufficient to dispose of this appeal.” The exemption in s. 1(3), which precludes an owner from becoming a constructor by engaging a person to oversee quality control, does not preclude owners from becoming employers.

Take Away Points

All owners, constructors, and employers should look to this case to be reminded of the broad and sweeping obligations imposed upon them by the OHSA. It remains easy for an “owner” to inadvertently become an “employer”, or for an “employer” to become a “constructor”, given the language used by the court in describing the overlapping responsibilities in play.

The Court of Appeal has not shied away from the notion that employers can be very nearly in the position of an insurer who must follow detailed safety regulations. Indeed, it was with purpose that the court specifically referenced its own prior decision in *Wyssen*.

The duties and obligations imposed upon those who hire workers are considerable. In public welfare legislation, that obligation should always be viewed as broadly as possible.

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Will Notices

Frederick Charles Smith

Anyone knowing of a Last Will and Testament of Frederick Charles Smith born November 17, 1939, of London, Ontario please contact Michael Smith at 519-851-2765, email: mpsmith66@gmail.com.

Garrard (Gary) Hugh Seale

Anyone knowing of a Last Will and Testament for Garrard Hugh Seale, born November 22, 1952, died May 22, 2021, last known residence 1770 Birchwood Ave., London, ON, please contact Sharon Owen at Siskinds LLP at 226-213-7426, email: sharon.owen@siskinds.com.

Ronald Larry James McTavish

Anyone having knowledge of a Will of the late Ronald Larry James McTavish, City of London, County of Middlesex, in the Province of Ontario, who died on May 6, 2021, is requested to contact Cate

Grainger, Harrison Pensa LLP, 450 Talbot St., P.O. Box 3237, London, ON N6A 4K3
Tel: 519-661-6751, Fax: 519-667-3362,
Email: cgrainger@harrisonpensa.com.

Madiha Salman

Anyone having knowledge of a Last Will and Testament for Madiha Salman, born September 19th, 1976 who passed away on June 6, 2021, please contact Laura Geddes at Siskinds LLP, 519-660-7714 or laura.geddes@siskinds.com.

Salman Afzaal

Anyone having knowledge of a Last Will and Testament for Salman Afzaal, born May 2nd, 1975 who passed away on June 6, 2021, please contact Laura Geddes at Siskinds LLP, 519-660-7714 or laura.geddes@siskinds.com.

Anthony Brian Chapman

We are searching for the last Will and Testament of Anthony Brian Chapman, late of London, who was born on December 20, 1943 and passed away on May 24, 2021. Anyone having any knowledge or information with respect to a Will for the deceased is requested to contact Wendy Peters, Law Clerk, Chinneck Law Professional Corporation, phone: (519) 679-6777 ex. 116; email: wendy@chinneck.ca.

Gerald Roy Higgins

Anyone with knowledge of a Will for Gerald Roy Higgins, 75 years old, who passed away on February 26th, 2021, and last lived at 1572 Mickleborough Dr., London, is asked to please contact Casey Hayward at Carlyle Peterson Lawyers LLP at 519.432.0632 x 226, or by email: chayward@cplaw.com.

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Andrea Levstik – new call at McKenzie Lake LLP, direct ph: 519-281-8364, email: andrea.levstik@mckenzielake.com

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