

THE
MIDDLESEX LAW
ASSOCIATION

Snail



December Issue

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President's Report

By: Karen Hulan / Beckett Personal Injury Lawyers

It has continued to be a busy fall at the MLA.

In last month's message I referenced the hard work from Board members this year. They are closing 2021 with the same commitment to this organization as they have demonstrated throughout the year. It is not just Board members who I thank but also the law firms where they practice. Volunteer work has taken time away from our practices and is only possible for us to do when we have the support of colleagues.

Changing Board Structure

On December 1 the **Board of Trustees** will host a virtual meeting for the membership. Trustee, **Joel Belisle**, will present the new board structure which includes hiring an Executive Director. The meeting will be recorded and made available to members. Details were circulated in the weekly MLA email and are available from the **MLA Practice Resource Centre**. As indicated in last month's edition of the Snail, the decision was made last winter to move in this new direction for 2022. I can report that as I write this, the hiring process is nearly complete and it is expected that the position will begin in the New Year. We look forward to seeing you on December 1, 2021.

Practice Resource Centre Funding

The Law Society approved the **Legal Information and Resource Network (LIRN)** 2022 budget and as a result

funding to the **MLA Practice Resource Centre** is being restored to 2020 levels with a retroactive percentage increase for 2021 and a further increase for 2022. **Cynthia Simpson and Shabira Tamachi** provide more details about this announcement in the PRC report elsewhere in this newsletter. We needed this good news. The announcement of cuts to PRC funding in the fall of 2021 demonstrated that adequate funding from year to year is not guaranteed and we must continue to plan with this in mind.

Bench and Bar

Regional Senior Justice Thomas and Local Administrative Justice Grace recently attended the civil bench and bar meeting to provide an update on court resources and challenges in our region and to answer questions submitted by members. We appreciate the ongoing communication provided by our local bench and court staff including **Joy Beattie, Rebecca Nagy and Kelsey Vaughan**.

Please continue to reach out to Jennifer and Rasha with questions you have about local court procedures. We post local daily dockets on the MLA website. I commend to you the [FOLA website](#) as well as it includes court notices for the **Ontario Court of Justice, Superior Court and Court of Appeal**. There is also an abundance of other information relevant to your practices including updated content about **CaseLines** and documents regarding best practices for virtual proceedings.

FOLA Updates

I attended the **FOLA Plenary** on November 18. Resources and videos of the sessions are now available from the [FOLA website](#). **MLA Past President, Bill Woodward**, is now also Past President of FOLA, having completed his term in November. While his presidency has come to end, his contributions to the legal community continue. Bill and the FOLA board remain focused on representing lawyers' interests through submissions to the **Law Society, Legal Aid Ontario** and government. Current submissions pertain to Legal Aid Ontario rules and policies and responding to the LSO's **Call for Comment on its Competence Task Force Report**. Visit the [FOLA website](#) for future submissions.

FOLA's second provincial **Lobby Day** will occur virtually on February 23, 2022. It is an opportunity for you to speak with provincial cabinet ministers, staff and opposition MPPs about issues impacting the practice of law. I participated in the Lobby Day in 2020 at Queen's Park that was organized in a similar fashion, albeit in person. It was a well-organized event that provided lawyers with an opportunity to speak directly to ministers and staff about our areas of practice. [Registration for the 2022 Lobby Day is now open.](#)

I am optimistic about a return to some level of normalcy in 2022 including some of the social events that we have enjoyed with our colleagues in past years. There are tentative plans for an in-person

Opening of the Courts in the fall. In the past the MLA has hosted annual dinners, roasts, golf tournaments and a family ice skating day. There have been bowling nights, art and film events and holiday parties. I know from conversations with many of you that we all miss seeing our colleagues in person. Please share your ideas with our entertainment committee, **Joel Belisle and John Nicholson**, about events that you would like the MLA to organize.

On behalf of the Board, I wish each of you a peaceful holiday season and the very best for 2022.

Karen Hulan
PRESIDENT



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Library News



Contributed by:

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

Convocation passes LIRN 2022 Budget

The county library system, overseen and managed by the Legal Information and Resource Network (LIRN), was hit with a significant budget cut for 2021 due to a rushed campaign to reduce Law Society fees seemingly without a proper review of the effects these cuts would have on all aspects of the governance of the profession in Ontario.

The MLA Library was dealt a 14% budget cut that resulted in your library staff having to do a last-minute, comprehensive review of our collection and operations to meet the new, reduced grant allocation. We were able to amend an existing contract with one of our publishers to significantly reduce our loose-leaf subscription commitments, and many of the titles we cancelled were already fully available in electronic form through Westlaw and Lexis Advance Quicklaw. However, this cut was still a significant blow to both our operations and those of the other county and district law association libraries.

We are thrilled to announce that the LSO approved the 2022 LIRN main and transitional budgets as presented, restoring grants to 2020 figures, plus two years of annual increases and other system-wide adjustments due to planned centralized purchases. We encourage all members to review the [Audit and Finance Committee's 2022 Budget](#) package, especially the LIRN budget portion.

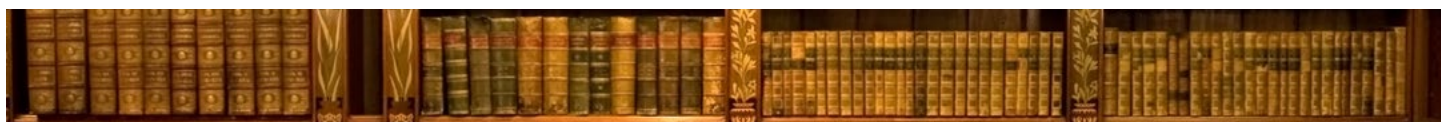
Law Association Centralized E-Resources

Clearly, libraries of the future will increasingly provide resources electronically as we move away from some of the traditional print versions. The 2022 LIRN budget submission includes a chart of e-resources available in several other provinces through law society fees, and Ontario is woefully behind compared to what your colleagues in some parts of the country can access. For the sobering visual on that, please see page 9 in the LSO's Audit and Finance Committee's budget link above. We currently have Lexis Advance Quicklaw available on our user computers funded centrally by LIRN and HeinOnline which all LSO members can access directly from their offices. Other e-resources are covered under our local library budget. In addition, the MLA funds our Westlaw subscription through your local dues. We were thrilled, and frankly stunned, to hear of some of the plans for centralized provision of electronic resources in the county law association library system planned for 2022. We are unable to elaborate at this time as contracts still need to be signed but we do know that this will result in both significant savings to the MLA in 2022 and improved services to our lawyers. In addition, LIRN will also be providing special computer equipment grants to assist with bringing library technology up to required standards. Stay tuned for further details about the implementation of these services and training sessions.



Free Books! (and binders)

That's right, there are free books for the taking as a result of the collection review currently occurring at the library. Many of the items removed from the collection were immediately discarded as they were of limited value (like the 1987 text Computer Technology and the Law in Canada or the 1995 Preparation of Domestic Contracts book with the 3.5" disk of forms in the back pocket...), but other items might be of interest to some of our members. These items have been set up on the large table in the legislation area of the library and you are welcome to take whatever you can carry. Please note that these are older items, mostly pre-2011 materials, and may not follow current legislation or practice. The current selection is mostly from the real estate section but stay tuned wills and trusts practitioners because those sections are next! Items will be available for about two weeks and will then be discarded, so pop in soon! In addition, we have a pile of empty binders in good condition from discarded items that are also available to anyone interested.



New Books

Due to our reduced 2021 LSO Grant, we had to severely cut back our book purchase budget and have run out of funds to expand the collection this year. As noted above, our funding has been re-established and increased for 2022, and we have proposed a much larger texts figure in our draft budget.

Archibald & Echlin, **Annual review of civil litigation 2021**, Thomson Reuters

Auerback, Stephen. **Annotated Municipal Act -volume 3 missing**, Carswell.

Bourgeois, Donald J., **Charities and not-for-profit administration and governance handbook -2nd ed.**, LexisNexis, 2009.

Bullen & Leake & Jacob's precedents of pleadings -14th ed. -volume 1 missing, Sweet & Maxwell, 2001.

Harris, David, **Law on disability issues in the workplace**, Emond Montgomery Publications, 2017.

Hull Ian M. **Challenging the validity of wills -2nd ed.**, Thomson Reuters, 2018

Hull, Ian M. Macdonell, **Sheard and Hull on probate practice**, 5th ed. Thomson Reuters, 2016

LSO. **Accommodating age in the workplace**, 2015

LSO. **Duty to accommodate in the workplace**, 2016

LSO. **Six-minute administrative lawyer 2018**.

Oosterhoff, Albert H. **Oosterhoff on wills -8th ed.**, Thomson Reuters, 2016

Osborne, Philip H. **Law of torts -5th ed.** Irwin Law, 2015.

MacFarlane, Bruce A., **Cannabis law**, Thomson Reuters, 2018

Rolls, R.J. **Williston and Rolls court forms -2nd ed.**, -volume 2 missing, LexisNexis Butterworths

Missing Books

As always, there's a disturbing trend in missing wills & estates materials, plus workplace accommodation.



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Fair dealing allows use of copyrighted work



Contributed by:

David Canton / Katie Warwick / Harrison Pensa LLP

Copyright exceptions allow limited copying for specific purposes.

Some exceptions require the person copying to mention the source and author. A question that comes up is whether a hyperlink to the source satisfies those requirements. The answer, based on some recent cases, is it depends.

Canada's copyright laws are relatively clear: Do not use another person's original creative or artistic work without their permission. A basic principle of the *Copyright Act* is that creators of works ultimately decide how their work is used and who can use it.

But of course, nothing is quite that simple. The "fair dealing" exceptions in the *Copyright Act* give some leeway to copying without permission. The purpose of these exceptions is to strike a balance between ensuring creators have exclusive rights over their original creations and allowing the general public to benefit from those creations without incurring undue bureaucratic or financial hardship.

Fair Dealing Exceptions

Fair dealing exceptions set out in [section](#)

[29 of the Copyright Act](#) recognize that people who want to use a copyrighted work without the creator's permission have some rights to do so. If someone is using a copyrighted work for research, private study, education, parody, or satire, then it will likely be subject to the fair dealing exception, and no copyright

the source and the author, performer, maker, or broadcaster depending on what is being copied.

The *Copyright Act* does not explain how to properly attribute a piece of work to its creator. Given modern realities, it would be logical to think a link or other method might be sufficient.



Recent cases help clarify what will meet the test.

This was an issue the Conservative Party of Canada experienced in the 2021 case [Canadian Broadcasting Corporation v. Conservative Party of Canada](#). In a political advertisement, the Conservative Party used brief clips from CBC news reports without obtaining the CBC's consent. The CBC sued the Conservative Party for copyright infringement. The

infringement will be found.

We should point out that this assumes the use is fair and not excessive. The 2004 [CCH case](#) set out tests to decide where the "fair" line is drawn.

Those fair dealing exceptions don't require any attribution. However, there are two other fair dealing exceptions — criticism or review, and news reporting — that are only allowed if the user mentions

Court ultimately ruled in favour of the Conservative Party, holding that its use of the CBC's clips fell under the fair dealing exception.

However, in the recent decision of *Stross v. Trend Hunter Inc.*, the Court came to a different conclusion. In this case, photographer Stross sued Trend Hunter Inc. on the grounds that Trend Hunter Inc. incorporated several of his original

photographs on its website without Stross' permission. Unlike in the CBC case, the Court in Stross determined that Trend Hunter Inc. had infringed copyright and that their use of the photographs did not fall under the fair dealing exception.

Does Linking Satisfy the Attribution Requirement?

So why did the Court in the CBC case determine the Conservative Party's use of CBC's original clips did fall under the fair dealing exception, but the Court in Stross determined Trend Hunter Inc.'s use of Stross' photographs on its website did not? The answer comes down to the Copyright Act attribution requirement.

The Court concluded in the CBC case that, while it was clear the Conservative Party used a substantial portion of the CBC's work in their political advertisement without CBC's permission, the CBC maintained its ownership over the clips "by having its name, logo, and/or brand appearing on the clips clearly and repeatedly." In other words, a "reasonably informed watcher" would be able to view the clips presented in the political advertisement and easily attribute the clips as the property of CBC. The CBC logo was clearly displayed on the screen, and the Conservative Party made no efforts to hide this fact. Thus, the attribution requirements of mentioning the source (CBC news) and the broadcaster (CBC) were satisfied.

In Stross, Trend Hunters Inc. argued that they satisfied the attribution requirements of mentioning the source and author because they linked the photographs to the source website where the Stross name was credited as the photographer. The Court did not agree. It determined that merely linking the source did not satisfy the second attribution requirement. Unlike CBC, a viewer would not know the photographs on the Trend Hunters Inc. website belonged to Stross simply by viewing the images. To determine ownership, they

had to go further and be redirected to Stross' website, where he was credited as the photographer and thus owner of the photographs.

If the source and author, performer, maker, or broadcaster are clearly visible and identifiable at first glance by the viewer, it appears that the attribution requirements of the fair dealing exception will be met. Stross, however, tells us that while linking to the source may satisfy the first attribution requirement, it is unlikely to meet the second.

So if you want to copy something and rely on the criticism or review, or news reporting fair dealing exceptions, you can link directly to the source, but the safe approach is to mention the author, performer, maker, or broadcaster directly.

[Katie Warwick](#) is an articling student at Harrison Pensa. She has an undergraduate degree in history and communication studies as well as a master's degree in communication from Wilfrid Laurier University. She completed her dual law degree at the Universities of Windsor and Detroit Mercy, and during her time there spent a summer working as a judicial intern in the United States District Court.

[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](#).

This article was originally published on the [HPTechlaw blog](#). To get HPs Tech Law Weekly Newsletter - which includes a blog post and other top stories at the intersection of tech and law - delivered to your inbox each week, [sign up here](#).



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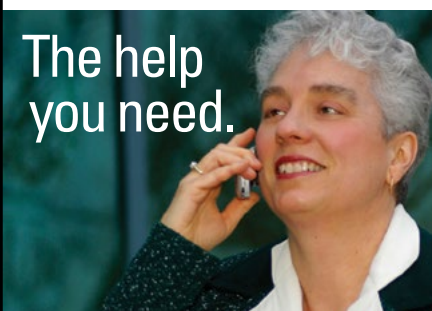
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Report on Past CPD Programs



Contributed by:

Paula Puddy, MLA CPD Director

CPD Hours Clarification on EDI, and Professionalism

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

- EDI is part of professionalism. As such, any EDI hours obtained in 2020, count towards your professionalism hours for this year as well as your 3 hours of EDI by 2020;
- Any additional EDI or Professionalism hours in 2020 count towards your Substantive hours for that calendar year. (You can never have enough professionalism!)
- Due to COVID-19 and to support public health best practices of physical and social distancing, the LSO removed the six-hour maximum limit that applied to watching an archived program without a colleague, teaching, and professional writing for 2021 and 2022.

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

The Sixteenth Annual Straight from the Bench Conference

The Middlesex Law Association held its Sixteenth Annual Straight from the Bench Conference on November 1, 2021 and November 2, 2021. This year's Conference welcomed over 80 lawyers, judges and sponsors. We enjoyed interesting presentations, panel discussions and even an opportunity to meditate!

Thank you to the **Honourable Madam Justice Lynne Leitch** for being our judicial

chair of this conference for the sixteenth year in a row. Clearly, her Honour is committed to delivering a high quality and practical litigation conference in Southwestern Ontario.

The agenda this year was fantastic which is thanks to my wonderful conference co-chairs: **Anne Marie Frauts of Frauts lawyers, Dara Lambe of Lerner LLP, and Dagmara Wozniak of Siskinds LLP, Elizabeth Harding of Intact Insurance and Evelyn ten Cate of Fosters Law LLP.**

Thank you to our Day 1 presenters: **The Honourable Mr. Justice Benjamin Zarnett of the Court of Appeal, Peter Kryworuk, Jacob Damstra, Alayna Jay, and Professor Thomas Telfer.**

Thanks to our Day 2 presenters: **Professor Michael Coyle, Regional Senior Justice Bruce Thomas, Peter Osborne, Deborah Palter, Mike Robb, Carolyn Conron and Jennifer Butkus.**

We are pleased to make a donation to **London Lawyers Feed the Hungry** on behalf of our chairs and all of our speakers.

Finally, special thanks to our sponsors for helping us make this event a success by continued sponsorship, as well as their generous door prizes. We are fortunate to have such committed legal service providers in our community.

Thank you to our generous **Gold Sponsor: Henderson Structured Settlements LP.**

Thanks to our **Silver Sponsors: MDD Forensic Accountants Ltd., and Hoare Dalton | Marcus & Associates.**

Thanks to our **Bronze Sponsors: 30 Forensics Engineering, CPDonline.ca, Davis Martindale LLP, DMAREhabilitation Inc., McKeating Actuarial Services Inc., McKellar Structured Settlements Inc., Rehab First Inc., Spencer Rehabilitation Experts Inc., TVA | The Legal Outsourcing Network, The Advocates' Society, and Xpera Risk Mitigation & Investigation.**

A big thank you to **Cynthia Simpson and Shabira Tamachi** for their assistance behind the scenes. I am so fortunate to have you on my team.

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

Here is a summary of the SFTB presentations:

The Honourable Mr. Justice Benjamin Zarnett from the Court of Appeal shared his views on the differing skills sets of a trial lawyer and an appellate lawyer. His articulate remarks and thoughtful analysis included a discussion of whether the trial lawyer should be or could be the lawyer on appeal. Justice Zarnett suggests that there are overlapping skill sets and obvious arguments for both situations. He emphasizes that a trial lawyer with an appellate skill set will be a better trial lawyer. Justice Zarnett's remarks included some interesting stories while he practised law, as well as his role on the Court of Appeal.

Building on Justice Zarnett's keynote address concerning "*What Trial Lawyers Can Learn From Appellate Lawyers*" and



Peter Kryworuk and Jacob Damstra's paper on "*Appeal Proofing Your Trial: Positioning for (or Protecting Against) the Appeal from a Trial Judgment*", the panel consisting of Justice Zarnett and Peter Kryworuk, moderated by Jacob Damstra, will unpack the interrelationship between the trial and the appeal. They will discuss how trial lawyers can incorporate the important skills of effective appellate advocates, the role of written argument at trial and on appeal, what steps counsel can take at trial to improve their chances of success on appeal, the role for outside counsel and young lawyers in developing and presenting arguments on appeal, and important procedural considerations that distinguish appeals from trial and motion advocacy.

Alayna Jay reviewed the decision in *R. v. G.F.* Essentially, Incapacity to consent prevents consent; it does not vitiate consent. To be more specific, in order to have capacity to consent a complainant must understand four things: (i) the physical act; (ii) that the act is sexual in nature; (iii) the specific identity of their partner(s); and (iv) that they have the choice to refuse to participate in the sexual activity. Capacity to consent is a precondition to actual consent.

Professor Thomas Telfer presented on *Mindfulness & Lawyer Well-Being*. Professionals often overlook the impact of mounting workloads, multiple demands and highly stressful environments on their ability to perform. Mindfulness can turn these workplace challenges into opportunities by helping us to work with our innate qualities, be less reactive and appreciate different perspectives for healthier workplace interactions. The benefits of mindfulness are even more important in this age of COVID-19.

The workshop will be facilitated by Professor Thomas Telfer, Western University Faculty of Law. Professor

Telfer has experience with bringing mindfulness into the classroom and the workplace. The workshop will feature some Mindful@Work materials developed by leading mindful educator *Mindfulness Without Borders*. The program was developed to mitigate the challenges and stresses of the modern workplace. The Mindfulness Without Borders curriculum draws from the scientific expertise and collaborated works of a variety of internationally-respected leaders.

Professor Telfer will introduce participants to mindfulness, the positive benefits of being mindful and why mindfulness is relevant for the legal profession and how it can help improve lawyer well-being. The session will focus on mindfulness practices and strategies and how these practices can work with emotional intelligence topics. The Law Society of Ontario has recommended incorporating daily mindfulness practices in its Personal Management Guideline.

Professor Michael Coyle delivered a wonderful, informative presentation entitled, *Advancing Indigenous Rights Claims: Embracing the Challenge*. He shared 9 items from his experience, successes and blunders in order for us to be more respectful, and more successful when communicating with indigenous clients or litigating, mediating or negotiating indigenous matters.

1. Keep an eye open for cultural difference and be respectful of them.
2. Make space for weighting of indigenous values, world views and laws.
3. Be mindful of the age of many First Nations grievances
4. Be patient. The process is likely going to be long and protracted.
5. Ensure there is an advisory council in the community to guide lawyers.
6. Make full space for your clients.

7. Ask for impasse breaking mechanisms to be built into the process.
8. Strengthen your negotiation alternatives
9. Focus on the parties' interests.

Regional Senior Justice Thomas delivered a Southwest Regional Update which, as always, was comprehensive and informative, including the complement of judges, the increase in matters in 2021 compared to 2020, the status of civil litigation trials, and more.

The Modern Advocacy Task Force (MATF) of The Advocates' Society released its [Final Report](#) in June, 2021, following a year of research, consultation and discussion among both stakeholders across the spectrum of the justice system and thought leaders from around the world. The Task Force looked at the jurisprudential history and origins of the rate to be heard in our justice system, the rich tradition of orality and storytelling in the context of dispute resolution within Canada's Indigenous communities, pedagogical and psychological concepts of learning and how humans process ideas and are persuaded, all as against the accelerated transition to remote hearings as a result of the Covid 19 pandemic, to come up with a series of recommendations and a model rule for use by courts and tribunals across Canada about modes of hearing and factors to be taken into account to determine which mode of hearing is appropriate and efficient for each step in a proceeding. **TAS President Deborah Palter, TAS Practice Groups Committee Chair Michael Robb and MATF Chair Peter Osborne** took attendees through the MATF Final Report and the recommendations.



Carolynn Conron delivered a criminal law update. It's all fun and games until you're horny, drunk and driving. A whirlwind overview of recent developments in the areas of sexual assault and impaired driving laws.

Jennifer Butkus delivered a case comment on *Sherman Estate v. Donovan*. Her presentation included an overview of the Supreme Court's analysis in *Sherman Estate v. Donovan*, which focuses on the court's redefinition of the test to be met for a party seeking a confidentiality order, as previously established in *Sierra Club*, and its decision as to whether the interest of privacy could amount to a public interest sufficient to justify a limit on public access to a court proceeding or file.

The Fourth Annual EDI seminar: Keep Calm and Check your Privilege!

We were delighted to welcome 20 lawyers to our fourth annual EDI seminar on Thursday, November 18, 2021. Deirdre Pike of Queer Positive Power delivered another engaging presentation entitled "*Moving Beyond Shiny Diversity*". Her main message is that we should take action, not just put up a flag, wear a button or attend a parade in order to create space where everyone, not just 2SLGBTQ+, has an opportunity to thrive. She introduces a relatively new concept of cultural IQ. Deirdre outlines the obvious benefits of being more diverse, inclusive and equitable. She refers to the fact that we need to "unlearn" some of the things we have learned such as stereotyping, making assumptions, and labels. She encourages everyone to be curious, develop relationships, and keep the conversation going, in your personal life and work life.

As a token of our appreciation, we made a donation to **London Lawyers Feed the Hungry** on her behalf.



CPD Award of Excellence

The MLA's CPD Award of Excellence 2021 was presented to **Anne Marie Frauts** at the 16th Annual Straight from the Bench conference in early November.

Anne Marie has been a chair of *Straight from the Bench* since its inception. She has been integral to identifying relevant topics and speakers and has worked diligently to ensure it is the amazing program it is today.

Clearly, legal education, mentorship and giving back have always been important to Anne Marie. She was a past president of the Middlesex Law Association. She consistently gave back to the legal community in terms of her time, knowledge, and passion for continuing education.

At the Straight from the Bench conference, **Adrien Cameron** commented as follows:

- Paula Puddy, CLD Director, asked me to assist her in presenting the Association's Continuing Professional Development (CPD) Award of Excellence to Anne Marie Frauts.

- Needless to say, I was very happy to do so. It allowed me an opportunity to say a few nice words about her.
- I have worked with Anne Marie my entire career as a lawyer. She has been my mentor and trained me up right (as she herself would say). I therefore hold her in very high esteem.
- Anne Marie introduced me to the Association's Board of Directors immediately, and I followed in her footsteps. In 2005, when she sat as President of the Association, Anne Marie became a founding Chair of Straight from the Bench. The first conference was held in April, 2006. Since then, over 16 years, Anne Marie has continued to co-chair the conference. She has been a presenter and moderated panel discussions. Importantly, Anne Marie, who is always aware of the recent changes in the law, has strived to ensure that the topics covered each year are relevant and practical to all litigators.
- It is for these reasons and others that the Association bestowed this award of excellence on Anne Marie.



On behalf of the Chairs, participants at our Straight from the Bench conferences, and members of the Middlesex Law Association, we express our sincere thanks and appreciation to Anne Marie Frauts for your dedication, commitment, time, energy and leadership making this a successful conference each and every year.

Congratulations Anne Marie on being the 2021 recipient of the MLA's CPD Award of Excellence!

Do you need a few more CPD hours before the end of 2021?



Our partners at CPDOnline.ca have hundreds of hours of content available for reasonable prices, available 24/7. [Check out our past MLA programs here.](#)

As you know, CPDOnline.ca is giving the MLA \$100 for every MLA association member who signs up for an individual subscription for \$399.00. This offer is for each new subscriber. We also receive royalties from CPDOnline.ca based on our viewed programs.

How to Sign-Up:

1. Go to <https://www.cpdonline.ca/purchase-options>
2. Get Started... Individual Subscription or Pay as you Go
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 held by Zoom

The 16th Annual Personal Injury Conference

Thursday, December 2, 2021, 1:00pm to 3:00pm

The Impact of the Pandemic on Personal Injury Litigation

Guest Speaker: The Honourable Mr. Justice Grace

Speakers: Sarah Kirshin-Neilans, Lindsay Campbell, and more!

Chairs: Alysia Christiaen, Kerry Figliomeni, Lucy Lee

[Register Here](#)

The 17th Annual Wills, Estates & Trusts Conference

Wednesday, December 8, 2021,
9:00am to 12:00pm

Solicitors and estate litigators
– pencil in this annual program!

Our annual wills conference features
relevant topics for your practice.

Registration forms, and a draft agenda will be available soon.

Chairs: Lou-Anne Farrell, Justin Newman and Ian Wright



Thank you to our 2021 MLA CPD Volunteers!

Thanks to its volunteers, members, sponsors and supporters, the Middlesex Law Association delivered countless hours of continuing professional development throughout 2021, despite the ongoing pandemic!

In fact, I organized 17 virtual MLA programs in 2021 – a record number!

Most of those were our annual programs: the **Mentoring Dinner**, **Straight from the Bench**, the **Small Claims Court update**, the **Provincial Offences seminar**, two **Real Estate updates**, the **Wills, Estates & Trusts conference**, two **Personal Injury**

conferences, two **Women's Networking Event**, two **EDI seminars**. The other programs included the **Court of Appeal Advocacy**, **Mock trial exercises with PWC LLP**, **Common Human Rights Pitfalls**, and a **Commercial Litigation seminar** most of which were accredited with CPD hours from the LSO.

In appreciation of our presenters and chairs of MLA CPD programs, we donated **\$2,800 on their behalf to London Lawyers Feed the Hungry**.

Thank you to our regular CPD partners for delivering the following programs in London: **the Advocates' Society's Court House Series and Mentoring Dinner** and the **MFLA's annual Family Law Conference**. Thank you to the volunteers of our **Criminal Law Association** too!

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

Thank you to the 2020 and 2021 CPD committees consisting of **Jacqueline Fortner, Jennifer Wall, Alex Sharpe and Tinashe Madzingo**.

Our success is a direct result of the generosity and enthusiasm of our volunteer members. Thank you for your commitment to the practice of law and for sharing your skills and knowledge with the London and Southwestern Ontario bar.

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

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Indecent Exhibitions: Where is the line drawn?



Contributed by:

Jim Dean, Natalie Wakim / Jim Dean Law Professional Corp.

Over the last twelve months, displays of graphic horror have been appearing at main intersections across London, Ontario.

If you have been unlucky enough to drive past them, you've seen just how just gruesome they are. If you have not yet seen them, you are quite fortunate.

These displays show billboard-sized images of allegedly aborted, non-viable fetuses. They are being displayed by local anti-abortion activists in pursuit of "making abortion unthinkable". The billboards are extremely gory and triggering to people from all walks of life.

In response to these graphic displays, the **Viewer Discretion Legislation Coalition (VDLC)** was formed. Countless Londoners have approached the organization with stories of their own adverse experiences after seeing the display. These images have induced panic attacks in drivers, lead to physical altercations with passers-by and created traffic hazards in busy intersections.

All Canadians are entitled to the freedom of expression as guaranteed by the *Charter*, but when the harm caused is so clearly identifiable, it begs the question: how is this legal? Our organization is dedicated to creating legislation surrounding the use of this imagery, but is there legislation that could already apply?

In our research, we considered section 175 of the *Criminal Code*:

175 (1) Every one who

- (a) not being in a dwelling-house, causes a disturbance in or near a public place,
 - (i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,
 - (ii) by being drunk, or
 - (iii) by impeding or molesting other persons,
 - (b) openly exposes or exhibits an indecent exhibition in a public place,
 - (c) & (d) Omitted for length
- Is guilty of an offence punishable on summary conviction

The *Code* does not provide a set definition for the term 'indecent'. It is our

understanding that if the word 'indecent' is open to interpretation when laying the charge, the essential elements of the offence are met. The hypothetical accused in this circumstance is displaying indecent imagery, is not in a dwelling house, and is causing a public disturbance with the display.

Traditionally, this section of the *Code* has been applied to sexual offences and there has not yet been any affirming caselaw that applied to images of this nature. However, just because it hasn't been done before, doesn't mean it can't be done.

These displays have become a pervasive issue in the London community and the VDLC would like the input of members of the legal community on this issue! Please feel free to contact them at vdlc.ontario@gmail.com if you would care to provide your interpretation of this section of the *Code*.

**This is an opinion piece written by a member of the MLA, the MLA does not endorse the content and any replies should be directed to Jim Dean and Natalie Wakim at jim@jimdeanlaw.com and or vdlc.ontario@gmail.com*





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Sterling v. Heartland Farm Mutual



Contributed by:

Louis DelSignore / McKenzie Lake Lawyers LLP

This decision, upheld on reconsideration, helps expand the definition of accident under the Statutory Accident Benefits Schedule.

On May 13, 2021, the Licence Appeal Tribunal ("Tribunal") released its decision in *Sterling v Heartland Farm Mutual Inc.*, 2021 ONLAT 20-000672/AABS – PI ("Sterling"). The Respondent ("Heartland") then requested a reconsideration of the Tribunal's decision, which was dismissed on October 7, 2021. The decisions together consider the often contentious definition of "accident" under Section 3(1) of the Statutory Accident Benefits Schedule – Effective September 1, 2010 ("Schedule"). Accident is defined under the Schedule as:

"...an incident in which the use or operation of an automobile directly causes an impairment or directly causes damage to any prescription eyewear, denture, hearing aid, prosthesis or other medical or dental device."

Ultimately, the Sterling decision, upheld on reconsideration, has broadened this definition by expanding what may be considered "use and operation" of an automobile. As a result, incidents such as this that would not have been defined as accidents in the past may now be deemed as such. This decision will help support similar future Applicants get access and entitlement to Accident Benefits.

Background

The dispute arose out of an incident which took place on February 13, 2019. The Applicant lifted her young son into his car seat in the back of her vehicle, walked around the vehicle to the driver side door, got into the vehicle, fastened her seatbelt, started the car and drove away. The Applicant first experienced

pain in her back upon lifting her son and then again, more excruciatingly, after pressing her foot down on the vehicle's accelerator. She required back surgery two months later.

As a result, she sought accident benefits from her insurer pursuant to the Schedule. The insurer denied the Applicant's claim for benefits and took the position that the incident did not constitute an accident under Section 3(1) of the Schedule. The Applicant applied to the Tribunal for resolution.

First Instance Decision

In *Greenhalgh v ING Halifax Insurance Company*, the Court determined that in order for an incident to meet the definition of an accident under the Schedule, the insured must satisfy both the "purpose" test and the "causation" test, as outlined below:

- (a) The purpose test: did the incident arise out of the ordinary and well known activities for which automobiles are used?
- (b) The causation test:
 - i. Did such use and operation of the automobile directly cause the impairment?
 - ii. Was there an intervening act or acts that resulted in the injuries that cannot be said to be part of the "ordinary course of things"?

At the Tribunal, the Applicant submitted that the incident constituted an accident as she was engaged in an activity normally associated with the use and operation of a vehicle, thereby meeting the purpose test. She further submitted the causation test was met as her injury was caused by a combination of lifting her son into his car seat and pressing her foot on the vehicle's accelerator, both of which are part of the "ordinary course of things".

In response, the insurer submitted that no incident could be established by medical

evidence, that it could not be said that "but for" the incident her impairment would not have occurred and that there was not an actual connection between the Applicant's use or operation of her vehicle and her impairment.

The Tribunal found in the Applicant's favour.

While Vice Chair Boyce acknowledged that the incident did not have the conventional "feel" of an accident, both the purpose and causation tests, as outlined above, were met. The incident therefore met the definition of an accident under Section 3(1) of the Schedule.

Of importance, Vice Chair Boyce noted, in agreement with the Applicant, that there is no active use component to the purpose test, and lifting as well as securing a child into a car seat are ordinary and well known tasks for which automobiles are used. After securing her son, the Applicant then proceeded to get into the vehicle and drive away. Vice Chair Boyce determined there could be no dispute that this chain of events was uninterrupted and that the Applicant's actions certainly fell within the "use or operation of a vehicle".

To that end, it was determined that the incident arose out of an ordinary and well known activity associated with the use of automobiles. The incident therefore constituted an accident.

Reconsideration Decision

On reconsideration, Vice Chair Boyce asserted that "the reconsideration process is not an invitation for the Tribunal to reweigh evidence or an opportunity for a party to re-litigate its position where it disagrees with the decision or the weight assigned to the evidence", stating that the Respondent's request was precisely that.

The Respondent's assertions essentially expressed disagreement with the weight assigned to the evidence at first instance. Vice Chair Boyce expressed that it is, in fact, the function of an adjudicator to assess and assign weight to the evidence before them and to arrive at a determination on the basis of such evidence. On reassessment, he found that the evidence presented by the Applicant continued to support her claim and no error was made in the Tribunal's reliance on hearsay or Examination Under Oath evidence.

The Respondent's reconsideration request was dismissed.

Conclusion

The decisions in this matter mark a clear expansion of the definition of accident under the Schedule. Taken together, the decisions will help similarly situated Applicants get access to Accident Benefits required for treatment and recovery.

It will be interesting to see how jurisprudence at the Tribunal evolves following these decisions.

If you have any questions about this matter, [please contact Louis J. DelSignore](#).

Will Notices

Marillian Louisina MacDougall (O'Neil-Van Herten)

Anyone having knowledge of a Last Will and Testament dated after February 20, 2014 for Marillian Louisina MacDougall also known as Marillian Louisina O'Neil - Van Herten, born December 24, 1953, died October 14, 2021, last known address 416 Norwich Avenue, Woodstock ON, N4S 3W5, please contact Laura Geddes at Siskinds LLP at 519-660-7714, email: laura.geddes@siskinds.com.

Harjinder Singh Mann

Anyone having knowledge of a Last Will and Testament for Harjinder Singh Mann of London, Ontario, born February 4, 1975, who died on October 18, 2021, please contact Erin Rankin Nash at 519-963-0162 ext. 6, email: erin@fplaw.ca.

Ruth Gladys May Eastlake

Anyone knowing of a Last Will and Testament for Ruth Gladys May Eastlake, prepared around 1994 by Wendy Stevens then practicing law at 557 Talbot St., London, Ontario is asked to contact her brother George Logan at 519-951-9838, email: addyplace9p@bell.net.

Barbara Elizabeth Dyer

Anyone knowing of a Last Will and Testament for Barbara Elizabeth Dyer, born December 7, 1936 and died June 5, 2021, formerly of London, Ontario, please contact Audrey Blair at 519 539 1234, email: ablair@nesbittlaw.com.

Gertrude Drouin (nee Simpson)

Anyone knowing of a Last Will and Testament for Gertrude Drouin (nee Simpson), born March 4, 1936, who has been a resident of London for many years, and who passed away on October 23, 2021 is asked to contact her granddaughter Christina Carey-Herbert at phone: 289-385-2572 or by email at christina_careyherbert@kprdsb.ca.

William Bruce Bennett

Anyone knowing of a Last Will and Testament for William Bruce Bennett, born May 4, 1940, died November 4, 2021 of London, Ontario, please contact Christine Meath at ph: 519-473-7925 c: 519-200-1874, email: cmeath-bennett@hotmail.com.

Want to contribute to the next issue?

Deadline is January 25, 2022

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, or practice tips

Nicola Circelli

519.601.9977

nicola@nicolacircellilaw.com

John Nicholson

519.672.9330 x385

jnicholson@cohenhighley.com

Member Updates

There are some delays with printing, but we hope that we will have our print 2021-2022 Members' Directory available for pickup soon, so stay tuned for an email announcing its availability. These updates below came in after the directory files were sent for printing so will not be reflected in the new edition. However, you can also search the [MLA's online Members' Directory](#) for updated information.

Phillip Dinis – has rejoined the MLA at Dominion Criminal Defence, 6-458 Queens Ave, London N6B 1X9, ph: 226-700-0752, fax: 519-601-8799, email: pdinis@dominioncd.com

Vikas Sharma – has opened VS Law, 747 Hyde Park Rd., London, N6H 3S3, ph: 226-977-5205, fax: 226-526-4701, email: vikas@vslawpc.ca

Yulia Rodionova – has rejoined the MLA at the Law Office of Yulia Rodionova, 211-747 Hyde Park Rd., London N6H 3S3, ph: 519-472-9195, fax: 226-270-0393, email: contact@loyr.ca

Alex Bondarenko – is now at The Ross Firm, 101-206 Ontario St., Stratford ON N5A 3H4, ph: 519-567-4917, fax: 519-524-8438, email: abondarenko@rossfirm.com



LONDON ONTARIO SOLICITOR'S PRACTICE FOR SALE

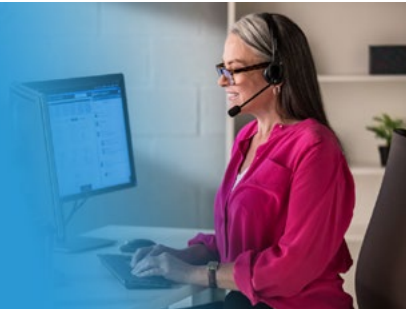
This practice has operated in London for approximately 45 years. The selling lawyer and his staff enjoy a sterling reputation in the community. The practice is 80% real estate, 15% Wills and Estates and 5% corporate commercial work. The practice has long lasting clientele and referral sources.

There is the potential to expand into other areas of practice, such as family and litigation. The modern premises accommodates one lawyer and four assistants. Extra space can be leased in the building depending upon availability.

*For further details please contact Kathleen Geiger,
at Geiger Law Practice Sales:*

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**December
2021**

**Middlesex Law
Association Newsletter**

Editor

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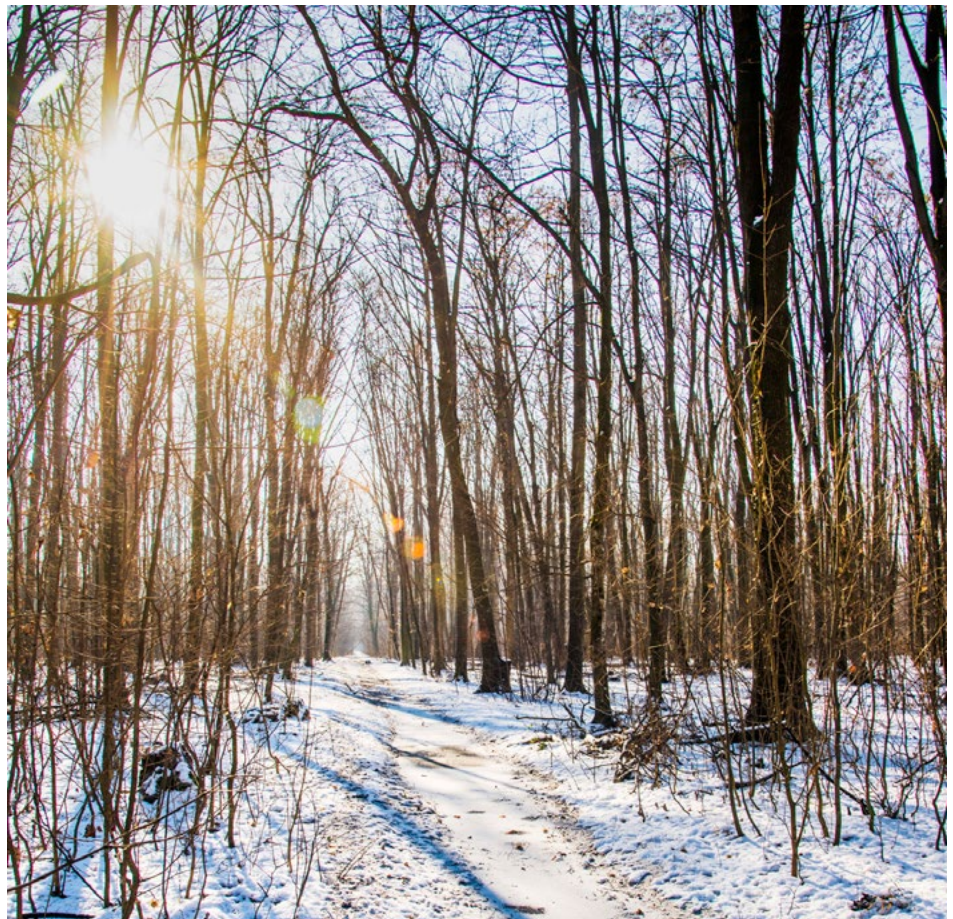
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? Questions & Comments ?

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



MLA BOARD OF TRUSTEES NOMINATION FORM 2022

TAKE NOTICE that candidates for the office of Trustee shall be nominated in writing by a qualified member of the Association and said nominated candidates shall signify in writing their willingness to serve if elected; such written nomination and undertaking to serve shall be filed with the MLA Practice Resource Centre on the Ground Floor of the Courthouse, 80 Dundas St., London, Ontario on or before the hour of **4 p.m. on Friday, January 28, 2022**. Nomination forms may be delivered to the Practice Resource Centre in person or by email (library@middlaw.on.ca). If **8** candidates have not been nominated by the foregoing procedure, the Chair of the Annual Meeting shall open the meeting to nominations from the floor. The **8** candidates having the highest number of votes shall be declared duly elected Trustees for the current year; in case of a tie, the presiding officer shall have a casting vote.

The undersigned, being a duly qualified member of The Middlesex Law Association does hereby nominate:

PLEASE **PRINT** NAME OF CANDIDATE

to stand as a candidate for the office of Trustee of the Middlesex Law Association commencing March 1, 2022 for a period of two years.

DATED at _____, Ontario this _____ day of _____, _____.

Name of Nominator (please print)

Signature of Nominator

UNDERTAKING OF CANDIDATE

The undersigned, being the candidate herein before nominated to stand for the office of Trustee of the Middlesex Law Association commencing March 1, 2022 for a period of two years hereby confirm that I have had the opportunity to review the job descriptions for those elected as Trustees, that I agree to allocate time as necessary to fulfil the duties of a Trustee and signify my consent and willingness to serve as a Trustee to the Middlesex Law Association for such period, if elected.

Signature of Candidate

NOTE: The nomination form and undertaking must be filed with the MLA Practice Resource Centre on the Ground Floor of the Courthouse, 80 Dundas St., London, ON, on or before the hour of **4 p.m. on Friday, January 28, 2022**. Forms may also be delivered by email at library@middlaw.on.ca.

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