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MIDDLESEX LAW
ASSOCIATION

Snail



February Issue

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President's Report



Contributed by:

Karen Hulan / Beckett Personal Injury Lawyers

And...we're off! 2022 is already shaping up to be a productive year at the MLA.

Executive Director

The MLA has its first **Executive Director and Director of the Practice Resource Centre** (known to many of you as the courthouse library). **Jennifer Foster** dove into this role on January 10 with vigour. She has a wealth of experience helping organizations transition to new models. We are excited about the energy that Jennifer brings to this role and what this will mean for the organization in 2022. You can read more about Jennifer's background and some of the ideas she has for the year ahead in the article at page 14 of this newsletter.

CPD and Social Events

Jennifer will be reaching out to members and past chairs of CPD in the coming weeks as we plan social events and CPD programming for the year. **The Women's Networking event** will be held in March. Look for details in the coming weeks.

Scheduling of in person events at this time is, of course, a little more challenging as a result of current community health concerns and restrictions. We will plan for an event in the spring or summer and hope that we will see you then. In the meantime, we are pleased to announce that **Opening of the Courts will be held at Museum London on Thursday, September 15, 2022** with a dinner to follow at the River Room later that evening.

Annual General Meeting

The **AGM will be held on February 24 at 4:30**. Details will be circulated by email to the membership. Nominations for the Board of Trustees closed on January 28 and the new Board will be announced at the AGM.

Judicial Appointment

Justice George's appointment to the Ontario Court of Appeal was recently announced. Justice George is known to many in our local bar through his appointments to the OCJ and later the SCJ. We wish Justice George well as he transitions to the appellate court.

The Snail

I want to thank our many newsletter contributors. There are some who submit articles each month and we look forward to updates about their areas of practice. Over the last few years we have also received many articles from members on a wide range of topics including **employment law, insurance law, privacy and technology law, commercial law, human rights, family law**, to name a few. We have published opinion pieces, case comments and personal articles about leisurely pursuits. Past editions of the Snail are on the MLA website. Please take a look and consider whether you have something that you would like to share in the next newsletter.

I hope that outside of your busy practices you will find some time this month to explore some of the trails around the Forest City. For those of you who do not like these frosty temps, the days are getting longer and spring is merely double digits away.

Karen Hulan
PRESIDENT



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Library News



Contributed by:

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

Book Donation

Our thanks go out to **Stephen Adams, Q.C.** for donating a copy of *Federal & Ontario Corporate & Business Legislation 2021-2022* to us. It's a handy, portable collection of pertinent law in the area. Years ago, Stephen also arranged for a copy of his loose-leaf work, *The Annotated Ontario Business Corporations Act*, along with its updates, to be provided to us at no charge. We greatly appreciate donations from any of our members who may have been involved in the publication of a law text.

Court Attire Donations for New Calls

A few of our members have retired recently and they have generously donated their clean court attire for us to pass on to individuals about to be called to the bar or who are recent calls and do not have their own attire yet. We have a men's complete set including tabs and a court shirt (all dry-cleaned except for the shirt), two additional sets of men's vests and robes, and a women's vest and robe. We also have a couple of spare tabs. Please email us at library@middlaw.on.ca to arrange a time when you can come by to see if they would suit your needs.

Free Books! (and binders)

Our collection review continues, and items removed from our shelves are still going on display in the library for members to review and take if interested. 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. Items are 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.

Got a Question? We're Here to Answer!

Yes, regular readers will know we have run this piece before, but it bears repeating. We are here for you! Our research services are fully operational even though we are not in the library every day during this never-ending pandemic. **We can search Lexis Advance Quicklaw, WestlawNext, Thomson Reuters ProView, O'Brien's Encyclopedia of Forms and other resources, along with services to which you have free access but may not know how to use, such as [AccessCLE](#), [HeinOnline](#), and [CanLII](#).** Do you need some Saskatchewan legislation from the late 60's? We might be curious why, but we can get that for you. Think we can't get our hands on a copy of an 1831 statute from the first year of the reign of William IV dealing with the validation of marriages in Ontario? Just try us (it's on HeinOnline). Maybe you have a list of British cases that you think we only have in print at the MLA Library. We've had online access to them for years and didn't resort to messy photocopies from those old books even when we were working out of the library.

You can send your reference questions to us by [email](#) or via MLACat through the link on the [MLA website](#).

New Books

Carthy/Millar/Cowan. **Ontario Annual Practice 2021/2022**, Thomson Reuters

Houlden, L.W. **2021-2022 Annotated Bankruptcy & Insolvency Act**, Thomson Reuters

LSO. **Six-minute family law lawyer 2021**

LSO. **Safeguarding real estate transactions 2021**

LSO. **Impaired and 'over 80' 2021**

LSO. **Practice gems: Probate essentials 2021**

LSO. **22nd Employment law summit**

LSO. **24th Estates and trusts summit, day 1 and 2**

McKay and Foulds. **Ontario Annual Practice 2001/2002**, Thomson Reuters

n/a. **Martin's annual criminal code 2022**, Thomson Reuters

n/a. **Federal & Ontario corporate & business legislation 2021-2022 ed.**, Canada Law Book

Power, Michael. **Law of privacy, 3rd ed.**, LexisNexis

Pozner, Larry S. **Cross-examination: science and techniques, 3rd ed.**, LexisNexis, 2018

Segal, Murray. **Annotated Ontario rules of criminal practice 2022**, Thomson Reuters

Solnik, Robyn. **Drafting wills in Canada: a lawyer's practical guide, 3rd ed.**, Lexis Nexis

Watson & McGowan. **Ontario civil practice 2022**, Thomson Reuters

Watt & Fuerst. **2022 Annotated Tremear's Criminal Code**, Thomson Reuters



Missing Books

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

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

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

Bullen, Edward et al. **Bullen & Leake & Jacob's precedents of pleadings, 14th ed., volume 1**, 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**, LexisNexis



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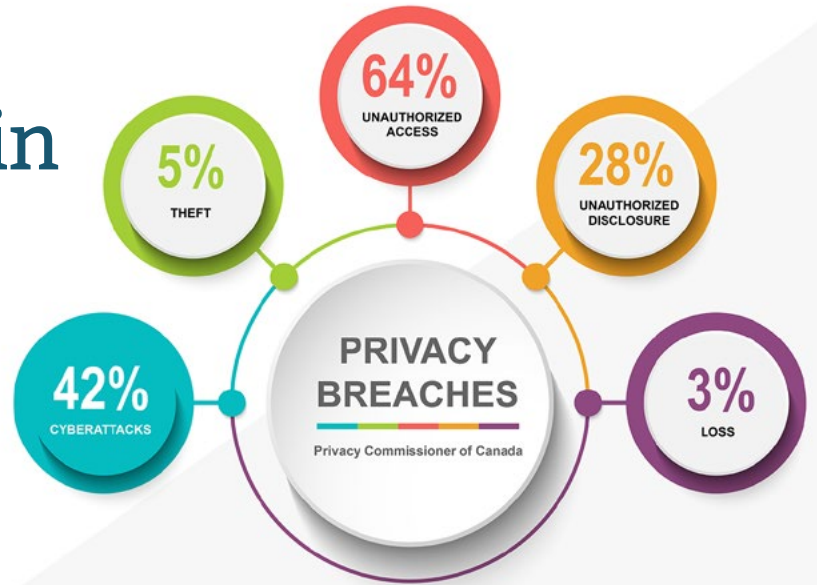
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Top 10 Findings in Annual Privacy Report



Contributed by:
David Canton / Harrison Pensa LLP



SOURCE: HARRISON PENZA PRIVACY LAWYERS

Daniel Therrien, the Canadian Privacy Commissioner, released his [annual report](#) for the period from April 1, 2020 to March 31, 2021 relating to PIPEDA (*Personal Information Protection and Electronic Documents Act*) that governs private sector privacy and the Privacy Act that governs Federal public sector privacy.

Here are some highlights:

1. He doesn't think the proposed Bill C-11 that would reform PIPEDA goes far enough to modernize privacy. He refers to the bill as "a step backwards".
2. "...the threat of surveillance capitalism has taken centre stage. Personal data has emerged as a dominant and valuable asset and no one has leveraged it better than the tech giants behind our web searches and social media accounts."
3. "Digital technologies like AI, that rely on the collection and analysis of personal data, are at the heart of the fourth industrial revolution and are key to our socio-economic development. However, they pose major risks to rights and values."
4. There is a trend toward more joint investigations and collaboration between various Canadian privacy offices, as well as internationally.
5. PIPEDA should recognize privacy as a human right.
6. Public and private sector privacy laws should have common principles.
7. He wants the Privacy Commissioner to have the ability to issue orders and impose monetary penalties.
8. He wants privacy legislation to apply to political parties.
9. Privacy breaches broke down to 64% unauthorized access, 28% unauthorized disclosure, 5% theft, and 3% loss.
10. "Our office continues to see an elevated proportion of incidents

originating from cyberattacks, with 42% (328) of the breaches reported in 2020-21 attributed to malware, ransomware, password attacks, credential stuffing attacks, and other cyber threats. Of particular concern are the ransomware attacks and credential stuffing attacks..."

Bill C-11 died when the election was called. Stay tuned to see if it will be re-introduced as it was, or is changed to reflect the Commissioner's concerns.

[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 HP's 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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Introducing Jim Jaquith

Jim is a native of London, Ontario, and a graduate of the University of Western Ontario. After helping support the family business, Jim sought new challenges in the world of finance and acquired a deep knowledge of a wide array of investment strategies and financial solutions. Jim has since decided to apply his skills to helping those individuals who often need them most – the injured and disabled. In that, Jim joined Hudson Wealth and Trust Planning Group to provide its top-level services to survivors of MVAs and Med-Mal in Southwestern Ontario. Click [here](#) to find out how Jim can help your clients.





Report on Past CPD Programs



Contributed by:

Paula Puddy, HBA, LLB, MBA, Former CPD Director

The Quick & Dirty Personal Injury Update

This personal injury program for plaintiff and insurance defence lawyers was held on December 2, 2021 with 45 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 co-chairing this program.

Thank you to the following presenters at the conference:

- **The Honourable Mr. Justice Duncan Grace**
- **Sarah Kirshin-Neilans of McKenzie Lake Lawyers LLP**
- **Louise DelSignore of McKenzie Lake Lawyers LLP**
- **Jamie Campbell of Rehab First Inc.**
- **Lindsay Campbell of Hoare Dalton**
- **Kelley McKeating of McKeating Actuarial Services Inc.**
- **Heather Spencer Grim of Spencer Rehabilitation Experts**

The Middlesex Law Association was pleased to donate to **London Lawyers Feed the Hungry** on behalf of the chairs and all of the speakers.

Thank you to our sponsors for supporting this conference: **Casemark Financial**, **Davis Martindale LLP**, **DMAREhability**, **Henderson Structured Settlements LP**, **Hoare Dalton**, **Marcus & Associates**, **McKeating Actuarial Services Inc.**, **McKellar Structured Settlements**, **Pursuit Health Management**, **Rehab First Inc.**, **Spencer Rehabilitation Experts Inc.**, **TheJudge**, and **TVA | The Outsourcing Network**.

The **Honourable Mr. Justice Grace** provided an update on the state of the courts in the southwest region including judge complement, the status of the courts, and the priority of civil litigation trials.

Sarah Kirshin-Neilans provided a brief commentary on **McAuley v. Canada Post Corporation, 2021 ONSC 4528**, which deals with Ontario's suspension of limitation periods due to the COVID-19 pandemic, and includes some important takeaways for plaintiff's counsel with respect to naming defendants in claims.

The **service provider panel** commented on the following:

1. How has the pandemic affected how you practice?
2. Has the pandemic impacted what factors you have to consider, questions you need answered or information you require before you can provide your opinion and/or complete your assessment?
3. Do you think those changes are short term or long term? Reasons for your response.
4. Is there anything the lawyers and our teams can do to help you complete your assessments and reports?

Louis DelSignore's presentation on the decision in *Sterling v. Heartland Mutual Farm Insurance* considered the often-contentious definition of "accident" under section 3(1) of the *Statutory Accident Benefits Schedule - Effective September 1, 2010*.

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 that would not have been defined as accidents in the past may now be deemed as such. The decision will help support future Applicants in bringing valid accident benefits claims against their insurers for the benefits necessary to continue their recovery following an automobile accident.

The 17th Annual Wills, Estates & Trusts Conference

40 lawyers attended the **17th Annual Wills, Estates & Trusts Conference** held virtually on December 8, 2021.

Thank you to our co-chairs, **Lou-Anne Farrell**, **Justin Newman**, and **Ian Wright**, for organizing another excellent program. Thank you to **Dan McNamara** and **Matthew Bota** for presenting at the conference.

The **Middlesex Law Association** was pleased to donate to **London Lawyers Feed the Hungry** on behalf of the chairs and presenters.

Lou-Anne Farrell presented on changes to the estate practice due to Bill 245 (the *Accelerating Access to Justice Act*), which received Royal Assent on April 19, 2021 and many of its significant provisions came into effect on January 1, 2022. Changes include remote signing being made permanent, the end of revocation by marriage, several changes to the rights of separated spouses, and more.

Matthew Bota's presentation focused on tax issues affecting estates, specifically: (i) the principal residence exemption and capital gains arising after death; (ii) farm property rollovers; and (iii) an update on



Bill C-208 and upcoming amendments to that legislation.

Daniel McNamara and Justin Newman's case studies highlighting ethical issues in wills and estates reviewed and discussed several fact scenarios that lead to ethical issues in an estate practice.

Ian Wright's case law update focused on: two different cases and their application of the Supreme Court of Canada's decision in *Pecore v. Pecore*, and removing an estate trustee who has "unfettered discretion" according to the will.

Combatting Islamophobia

We were delighted to welcome 15 lawyers to this EDI seminar on December 15, 2021.

Thank you to **Ali Chahbar** for his insightful, eloquent, passionate and informative presentation. Ali discussed the following topics so the audience could learn and understand more and take action:

- A brief introduction to Islam;
- The definition of Islamophobia;
- What has given rise to Islamophobia;
- Who are Muslims in Canada;
- Personal experiences with Islamophobia;
- Recommendations of the National Council of Canadian Muslims; and
- What we can do to combat Islamophobia.

Ali encouraged everyone to be anti-racist and take action to combat all racism and discrimination.

A donation was made to **London Lawyers Feed the Hungry** on Ali's behalf.

Goodbye and Thank you

As you know, my contract with the MLA ended as of December 31. It has been wonderful working with all of you over the years. I would love to stay in touch with you, so please connect with me on [LinkedIn](#) when you have a chance.



Bench and Bar Update



Contributed by:
Jennifer Wall and Rasha El-Tawil

On October 27, 2021 the MLA Fall Bench and Bar Meeting was held, which provided a status update on Court operations.

This is a summary which includes some updates since that meeting. As always, if you have any issues that can be addressed by the Bench and Bar committee, please reach out to the **MLA representatives, Rasha El-Tawil and Jennifer Wall**.

In attendance at the October 27 meeting:

- MLA bench and bar representatives, Jennifer Wall and Rasha El-Tawil
- Justice D. Grace, Local Administrative Judge
- Justice B. Thomas, Regional Senior Justice
- Joy Beattie, Civil Trial Coordinator
- Kelsey Vaughan, Court Services Division

Status update on the state of Court operations in London

Other than civil jury trials, the full range of services are being conducted. There remains constraints related to judges and facilities.

Information regarding in person criminal jury trials

A number of criminal jury trials were conducted in the fall. A new jury assembly area has been established on the ground floor; all jury selection is done remotely. The judge and most staff are in courtroom 21, and prospective jurors are on the ground floor; and once selected they go up to courtroom 21. A few jurors sit in the jury box but most are spread around the courtroom. This is not an ideal setup – the jurors are looking through a lot of plexiglass around the counsel tables. For

breaks and brief objections jurors go to courtroom 20.

Capacity limits were re-assessed, which allowed courtroom capacity limits to be increased. Courtroom 19 was retrofitted to permit a socially distanced jury, with better views without all the layers of plexiglass. Courtroom 19's trials will go to Courtroom 18 for breaks.

Jury trials involve a huge number of staff due to social distancing, requiring six courtrooms in total for two trials. It is impossible for the Court to conduct more than two jury trials at once in the current situation.

Update from RSJ Thomas: We have been able to start four criminal jury trials in the time since we started. There have been twelve jury trials in total in the whole region.

Seven jury trials have started in London since September 6, 2021; some didn't complete due to mistrials.

What are the current/ongoing constraints on court resources? Court staff? Judicial complement?

Health issues have limited London judicial resources – three London judges have had health problems affecting their ability to sit.

There has been huge turnover in court staff, with a consequent need to train new hires. Training needs for all staff have been increased by the huge changes in systems.

There are two current judicial vacancies in London. We don't know the timing of appointments.

Is there an update re: non-jury civil trials?

The court is doing its best to call as many non-jury civil trials as possible. Shorter trials have a better chance of being reached than longer trials.

See *Weaver v. Clunas*, [2021 ONSC 2364](#) for commentary and procedure on adjourning trials.

What is the likelihood of jury trials resuming in 2022?

Jury trials are currently suspended until at least **March 1, 2022** consequent to the Notice of Chief Justice Morawetz, dated January 19, 2022.

When social distancing requirements end, we will have more courtrooms available. COVID continues to create uncertainty for everyone.

Scheduling priorities are:

1. Divisional Court;
2. Family;
3. Criminal; then
4. Civil.

The family court has first priority due to a massive backlog. There have been no family trials other than child protection matters for a long time – at least 400 cases were scheduled for trial in Justice Henderson's assignment courts as we approached September 2021. The current timelines in family court are dates 31 weeks out for case conferences, and 81 weeks out for trials, with the court trying to prioritize child protection cases.

It has been very difficult for CSD to recruit and retain staff throughout the province. This is a real problem to the extent that the court is trying to run with minimal staff. That's a problem that affects many facets of court operations.

Is it realistic to plan for longer civil trials (over a week, whether jury or non-jury) proceeding in 2022?

RSJ Thomas: No one is doing civil jury trials other than Toronto, and they have done only four. They also have a dedicated

facility. Other jurisdictions are trying to do civil non-jury matters but as backups to civil and family lists. Trials reached would likely be relatively short civil cases; the court cannot likely commit resources to three- and four-week civil trials at this time.

Are there issues which can be addressed by counsel with respect to procedural issues (for example, filing, motions court, assignment court)? What can counsel do to assist the Court?

Joy Beattie: Please read everything thoroughly. Please also distribute emails and notices throughout the firm. People are just not reading things but there has been improvement.

There has been a zero-tolerance approach for confirmations effective early September; the court and administration will not tolerate people not sending Motion Confirmations to both email addresses. There are rules, so comply with them or ask for leave not to comply.

Read and follow the memos. Cooperate to the extent possible with opposing counsel, supervise staff, let staff know that if they have questions that relate to the rules, their first question should be to the supervising lawyer, not trial coordination.

If you are going to file a consent/unopposed motion do so but please give the evidence that the motion is on consent/unopposed and include a draft Order. The court can't deal with it until they have this information.

The court and CSD are conscious of the fact that there are a dizzying number of documents out there. There are efforts to try to get the website updated and include local memos on the court website.

When should counsel expect to receive a CaseLines link in advance of a hearing so materials can be uploaded? If counsel do not get a CaseLines link, who should we contact?

Kelsey Vaughan: The opening of bundles in CaseLines is triggered by the filing of certain documents, including pre-trial conference briefs and certificates of readiness. Links should be received soon after those documents are filed, allowing for processing times. If counsel don't receive a link they can contact Kelsey.Vanghan@ontario.ca.

For a **civil pre-trial**, please file in CaseLines the trial record in addition to the briefs.

For **long motions**, include the Confirmation and the Certificate of Readiness.

In one of the court's memos, please note that when you book a special appointment you are supposed to have filed the Certificate of Readiness or do so forthwith. The court is placing trust in counsel to allow it to be done afterwards, but there have been too many incidents where this is missed. If counsel run into someone uncooperative, contact the Trial Coordinator and ask for a R. 50.13 case conference with Justice Grace or a designate at 8:00 a.m. and this will solve the problem.

CaseLines use for trials

CaseLines is not problem-free but we all need to work with it and get better at using it. The court in London is not suggesting that there be a backup platform at the start of a trial. It is expected that CaseLines will be used for trials.

CaseLines is not equivalent to filing – documents must be filed as well as uploading them to CaseLines.

Rebecca Nagy is noticing a large number of electronic copies of the trial record not being filed in the filing system. If you have a pre-trial, please make sure that a copy of the electronic version is filed.

When will administrative dismissals resume?

This is not a local but a provincial decision. There is no date at this point when administrative dismissals will resume. In the meantime, dismissals require a motion.

When does the court anticipate returning to inperson civil hearings (e.g. motions)?

We will not see presumptive return to in person motions, whether short or special appointments, or pre-trials. These will presumptively be heard by Zoom.

Reasons:

- All documents will be electronically filed anyway;
- Some matters can be in person if there is a reason for it or on consent;
- Even after the end of the pandemic, some matters will continue electronically;
- This is not a London-centric policy. This will be the policy of the region and likely the province. The pandemic has resulted in the court being pushed into the 21st century, with more efficient allocation of resources, and less travel time for judges; and
- There is an aim to have an electronic 'wraparound' system to do filing, CaseLines (or the equivalent), and scheduling.

Assignment Court

We do not close trial lists. While there are no trials in July/August or in conference weeks, once you've identified your trial date, which you can do before the pre-trial dates are released, pick pre-trial dates at least three months ahead (mandatory if involving experts); no more than four months out is ideal. Look for dates where you are mutually available in that range. When the list comes out you should have a list of dates that work for both counsel.

The Trial Coordination unit is stretched beyond belief, so changing the assignment court process will not occur. Current assignment court process is efficient and works well.

Is there an opportunity to make a request for longer pre-trials or settlement conferences?

Counsel can make the request, but it is hard to accommodate after the fact if things are scheduled in the next time slot. Many judges indicate at the first pre-trial that they will offer another one, including sometimes outside of normal sitting hours. Many judges are willing to do this, especially if there is progress/headway at the first trial.

Guidelines

- Two actions being tried together: at least two hours
- Medical malpractice: at least two hours
- 5+ week cases: will book more than an hour

Ask for more time through Joy Beattie. This should be done on consent of all counsel.

Are pre-trial memos deleted from CaseLines after the pretrial?

No – nothing is deleted. People have to be invited to specific folders; judges for other events do not get invited to that folder if they are not the pre-trial justice.

What is the procedure for sealed documents/motions for sealing orders?

See the following excerpt from the [Supplementary Notice to the Profession and Litigants in Civil and Family Matters Regarding the Caselines Pilot, E-Filing, and Fee Payment | Superior Court of Justice \(ontariocourts.ca\)](#), updated October 5, 2021:

Do Not Upload Sealed Documents – *Unredacted versions of documents that are or, are proposed to be, the subject of a sealing order should **NOT** be uploaded into CaseLines. Although the notice of motion for the sealing order can be uploaded, the unredacted document proposed to be sealed*

must be emailed to the Trial Coordination Office, identifying the case name, court file number and the hearing date (if assigned), together with a request that the document be forwarded to the presiding judge or associate judge as a sealing order is being sought. If the hearing takes place by telephone or videoconference, immediately following the granting of the sealing order, the moving party must enclose an unredacted version of the document in a sealed envelope, append the court order/endorsement to the envelope, and file it in hardcopy at the court office for inclusion in the court file.

Judicial Complement

Question for RSJ Thomas: How does our complement compare to other regions? Our region's growth is outstripping our judicial complement's growth. Can we assist in securing more appointments?

- We are probably underserved.
- We have been able to add two judges in the time that Justice Thomas has been RSJ – one in Windsor as a result of *Jordan* and getting an addition. In the last budget there was provision for five additional judges in Ontario, with one coming to London.
- An argument is being made to the Ministry of the Attorney General to add a master to London, in part to do the bankruptcy work currently coming to judges. The court is hopeful that London will get a master, and one that can do more than bankruptcy work.
- It is hard to tell from looking only at a population whether changes to judicial complement are required; you also have to look at how litigious a centre is. The Chief Justice recognizes that London is understaffed.
- Everything comes through the federal government, and has to be done through the Minister of Justice.
- Even when we have vacancies the court has no control over the timeliness of the appointment process.

Is there discussion of having a family blitz to resolve the backlog?

Absolutely. There is lots of talk about it, including recent discussion of a case conference blitz, but the court needs the resources (judicial and staff) to accommodate it.

Is there the possibility of asking for a fixed trial date?

The normal process is to set a fixed trial date after discussion with Justice Grace, and then to write to RSJ Thomas with a copy to Justice Grace asking for a fixed date and explaining why it is needed. For example, a 10-week trial was set recently for January 2024.

We do not have the complement to fix many cases, and the court will set trials for selected cases only in compelling circumstances (normally very far down the road). No fixed dates will be available in 2022, and likely not in 2023. Counsel would likely be looking at 2024 for a fixed date, even if available at all, and this date would be peremptory on everyone, with intensive trial management independent of the normal pre-trial process.

Fixing trial dates is exceptional – for obvious reasons, everyone would want one. They may be appropriate for lengthy trials many experts, etc. The court would need details to agree to fix dates for a case, including issues, length, why this length and what is the issue that should give this case priority. Fixed trial dates are meaningful dates to the court and counsel and they need to be exceptional and respected.



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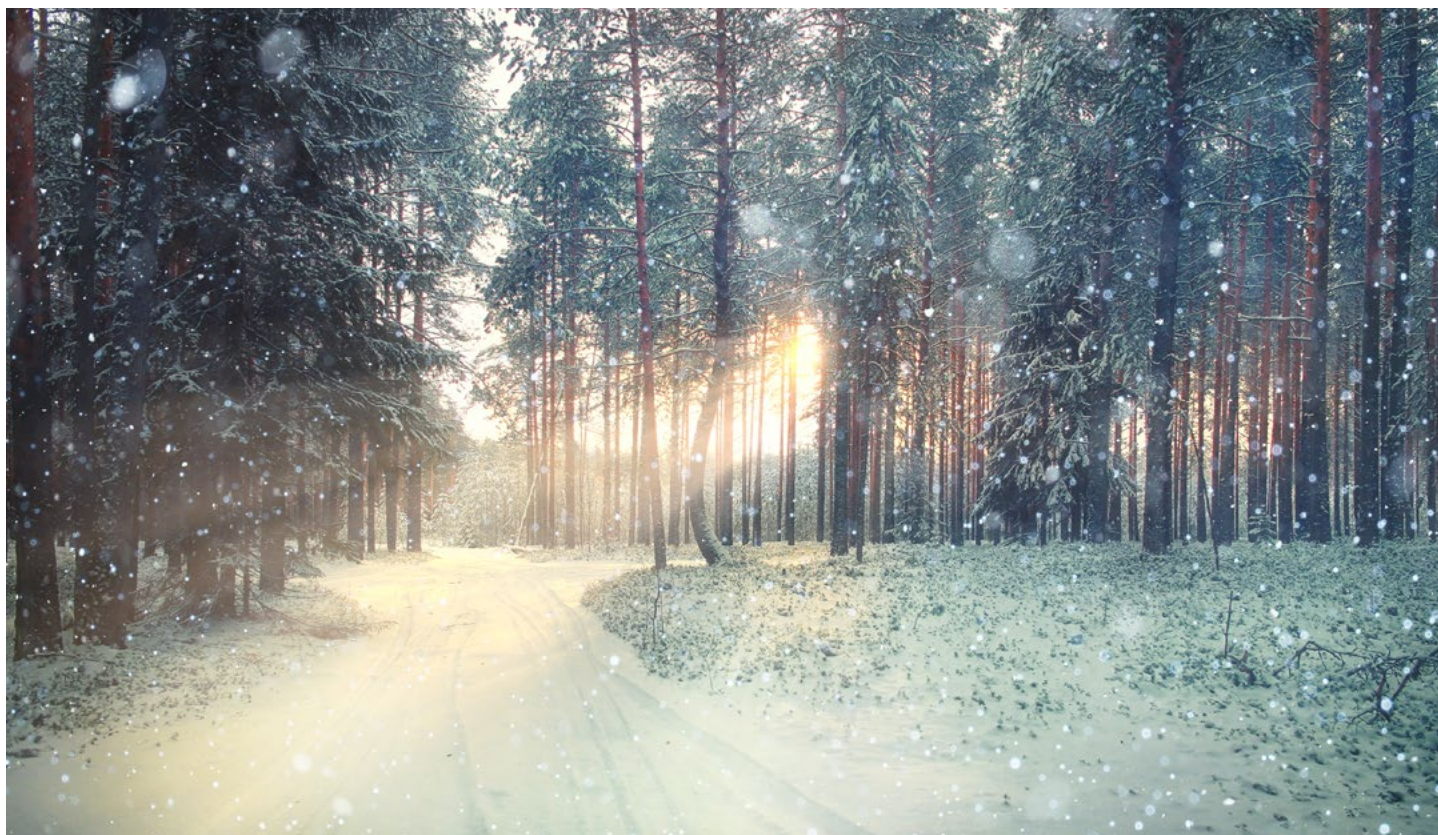
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An Interview with Jennifer Foster New Executive Director of the MLA



Contributed by:
Nicola Circelli and John Nicholson



Board Trustees Nicola Circelli and John Nicholson recently had a virtual ‘sit down’ with Jennifer Foster, the inaugural Executive Director of your Middlesex Law Association, to find out a bit more about her, and what she hopes to bring to her new role to serve the MLA’s members.

Where were you born and raised?

I was born in North Carolina and moved to Ontario as a teen. We arrived in the middle of a huge snowstorm on April 1st and had to stop short of our destination of Fergus, weathering out the storm for three days in Guelph before reaching our new hometown. We then moved to London, where I spent my teen years. I did my undergrad at Western before embarking on a career in marketing and fundraising. Later in life I decided to change career paths and attended law school at Western.

What attracted you to the practice of law?

I had always wanted to be a family lawyer. I learned from my own experience as a child the difficulties of going through the legal system after a marriage breakdown and saw firsthand the positive impact that a good family lawyer can have. My mother worked in a law office with Marg McSorley, and I have always fondly remembered her and her kindness to my mother and our family. In law school I was awarded the James (Jay) McLeod Scholarship in family law, which had been donated by his family and Marg. Writing her a thank you letter for the donation and support was a very meaningful moment for me.

Tell us about your past experiences in leadership with non-profit organizations.

I have filled a number of roles, leading and managing teams for universities and hospitals. Much of my experience has been in marketing, finance, and managing transition and change within non-profits. For example, I came on board at the Robarts Research Institute, which had been an independent medical research organization, to assist with managing its merger with Western University, which at the time was a significant change for Robarts. I later worked at Community Legal Services at Western Law and developed the first family law program for individuals with low incomes, giving students practical experience with file management, drafting, and client relations.

What attracted you to the Executive Director role with the MLA, and what excites you about your new position?

I saw the ED role as a great blend of both

my pre-law experiences in non-profit organizations, and my legal experience as a family lawyer in London. With the inaugural ED role, I hope to use my past experiences to execute the strategic plan the MLA has adopted and to navigate the MLA through this period of transition and change. I am really looking forward to working with the Board Trustees and staff to deliver on the MLA's core purposes and vision for its members. The Trustees and staff have been welcoming and helpful during my first month in the role, which has been indispensable in acquainting myself with the operations of the MLA.

What does the MLA mean to you, and what can the MLA do to support its members?

The MLA provides a great opportunity for networking amongst lawyers in London, bringing together lawyers who might not cross paths in their practices. The MLA can also serve as an advocate for its members, and as a conduit between the lawyers of Middlesex and the Courts and the A.G. – so that changes are not implemented from above without input from the bar about what works, and what doesn't work, for lawyers and their clients. The Practice Resource Centre also provides many opportunities for lawyers to increase their knowledge and pursue professional development to better serve their clients.

What are your interests outside of law?

I still volunteer with the [Family Justice Centre](#), which is overseen by Pro Bono Students Canada. I also sit on the Board of [Wellspring London and Region](#), which provides support to individuals living

with cancer and those who care for them. Sailing is a hobby that I enjoy with my husband – we are heading South soon to get accredited sailing catamarans. I'm also an avid reader. One of my favourite books that I've recently read is *Where the Crawdads Sing* by Delia Owens. It's a wonderful novel that's set in North Carolina, and really evoked memories of my childhood "playground".

Thank you so much for speaking with us today Jenn and welcome to the MLA!

? 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:

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COVID Mandates

Western Law Professor Trosow shares his Opinion and Analysis



Contributed by:

Sam Trosow / Associate Professor, Faculty of Law and Faculty of Information & Media Studies, Western University and Julie Lowe / Research Assistant, Faculty of Law, Western University

It's time for all Canadian colleges and universities to adopt mandatory vaccination policies.

[Many schools here](#) and in the [United States](#) have already taken this step, yet [others remain reluctant](#).

One reason for this hesitancy is the worry that a mandatory vaccination requirement might violate Section 7 of the [Canadian Charter of Rights and Freedoms](#):

"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

Some universities and colleges are concerned that a student or staff member might use Section 7 to challenge a vaccine mandate. Would Canadian courts uphold vaccine mandates in the face of a Section 7 challenge? As legal scholars and educators, [we believe the answer is a resounding "Yes!"](#)

Vaccine mandates are not forced vaccinations

Would-be claimants alleging that vaccine mandates violate Section 7 face multiple hurdles to prove their case. The first obstacle is establishing an infringement of a protected interest in "life, liberty or security of the person."

Two leading cases have looked at the role of individual autonomy in medical decisions: [A.C. vs. Manitoba \(Director of Child and Family Services\)](#) and [B. \(R.\) vs. Children's Aid Society of Metropolitan](#)

[Toronto](#). Based on these decisions, forced vaccinations would violate the rights to liberty and security of the person.

But campus mandates are not forced vaccinations. Mandates offer choices: receive or decline the vaccine. Employees who decline must be reassigned to off-campus work or take a leave of absence. Students who decline must enrol in online classes or take the semester off.

These options may be inconvenient and unappealing to some, but as a recent [U.S. decision](#) denying an injunction against a vaccine mandate stated: "This hard choice doesn't amount to coercion." In short, nobody is forced to undergo a medical procedure against their wishes.

Fundamental justice

The second hurdle is establishing that a campus vaccine mandate is inconsistent with principles of fundamental justice. In other words, the mandate is arbitrary, overly broad or grossly disproportionate.

A measure is arbitrary if it cannot fulfil its objectives. Mandates seek to [protect the health and safety](#) of the campus community. There is a clear nexus between this objective and the vaccination requirement.

The prohibition against being overly broad asks if the measure goes too far by covering situations unrelated to its purposes. An overly broad mandate would sweep a wide range of people and activities into its net, like online students and alumni. But the mandates under consideration are limited to those physically attending classes and meetings, and doing research and other

activities on campus.

[Gross disproportionality](#) examines whether the measure is disproportionate to the institution's interest in ensuring campus health and safety. While claimants might argue that requiring individuals to abide by other precautions, such as masking, testing and distancing is sufficient, there is strong evidence that [vaccines can reduce transmission, in cases where lockdowns, masking, social distancing and testing cannot](#).

Campus vaccine mandates are neither arbitrary, overly broad nor disproportionate. And granting exemptions for individuals with legitimate religious and medical objections reinforces those mandates' consistency with the principles of fundamental justice.

A free and democratic society

A claimant's third hurdle is that even if a claimant establishes a violation of Section 7, this violation can be upheld under [Section 1 of the Charter](#):

"The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

A claim of justification under Section 1 must pass all four prongs of the ["Oakes test."](#) This leading case established how courts should go about resolving issues under Section 1 of the Charter.

The first prong requires the measure — in this case, the vaccine mandate — to be based on a pressing and substantial

objective. This is easily met given we're now in the [fourth wave](#) of the pandemic.

In the recent case, [Beaudoin vs. British Columbia](#), involving public health orders that limited gatherings for religious services, public health was considered a pressing and substantial objective. Another case, [Taylor vs. Newfoundland and Labrador](#), involved a woman who was denied entry to Newfoundland in May 2020 for her mother's funeral in order to protect people from illness and death from the importation and spread of COVID-19. The court ruled that this constituted a pressing and substantial objective.

The second prong requires a rational connection between the challenged measure and its objective. This is satisfied when [scientific evidence regarding the benefits of immunization](#) supports the mandate. Judges in these other cases have accepted COVID-19 modelling and scientific evidence showing that gatherings are routes of transmission for SARS-CoV-2, the virus that causes COVID-19.

The third prong requires that the measure impairs the protected right as

little as possible. Travel restrictions to Newfoundland met this test because of exemptions and because some visitors evaded self-isolation. So did restrictions on religious services, where the health officer made exemptions and avoided restrictions until there was evidence of an exponential increase in cases.

Similarly, a vaccine mandate will meet this prong where it includes human rights exemptions and where less intrusive measures are insufficient to control transmission.

The final prong considers overall proportionality, comparing the negative effects with the positive value of the objectives. Asking whether the infringement is "too high a price to pay for the benefit of the law," it considers "the proportionality between the deleterious and salutary effects of the measures."

In a campus setting, regardless of whether students or staff are personally concerned about catching COVID-19, they may [spread the disease to others](#), and the [now-dominant Delta variant is highly contagious](#), placing individuals at risk of hospitalization and death.

Action is imperative

In the unlikely event a court finds vaccine mandates violate Section 7, Section 1 would nonetheless justify an evidence-based mandate with reasonable exemptions. Put simply, the case for campus vaccine mandates is compelling, and this conclusion is bolstered by recommendations from the [Ontario Council of Medical Officers of Health](#).

It's imperative that Canada's colleges and universities act quickly to adopt campus vaccination policies that are clear, fair [and enforceable](#). Along with masking, social distancing and classroom occupancy limits, vaccine mandates would allow us to return to the traditional campus environment where teachers and students can interact, if not face-to-face, at least mask-to-mask.

This article is republished from [The Conversation](#) under a Creative Commons license. [Read the original article](#).

Want to contribute to the next issue?

Deadline is February 25, 2022

The Snail welcomes articles from MLA members in Word format, along with photos, a headshot and headline. For clarity and readability, we encourage submissions in the range of 200-500 words, with a maximum limit of 1,000 words for news and opinions, and a limit of 2,000 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 and case reviews, or practice tips

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Discrimination and Harassment Counsel



Contributed by:

Teresa Donnelly / Treasurer, Law Society of Ontario

As a prosecutor dealing with domestic and sexual violence cases for 26 years, I know how hard it can be to tell anyone that you are being, or have been, victimized.

It can also be very difficult to disclose that you are being harassed or discriminated against by a lawyer, paralegal or student member of the Law Society of Ontario (LSO). You may be concerned that telling someone may have negative implications for you personally or professionally. You may feel powerless. You may wonder what you should do.

For over 20 years, the LSO has provided the Discrimination and Harassment Counsel (DHC) service free of charge to the Ontario public, including lawyers, paralegals and students. The DHC provides a confidential and safe space for individuals with complaints of discrimination or harassment by an Ontario lawyer, paralegal or student member of the LSO, based on the grounds prohibited by the [Ontario Human Rights Code](#) which are also prohibited by the LSO's [Rules of Professional Conduct](#) and the [Paralegal Rules of Conduct](#).

Individuals who reach out to the DHC can confidentially discuss their concerns with a knowledgeable and empathetic listener with cultural competence skills. The DHC service supports the LSO's statutory mandate to ensure that licensees meet standards of professional conduct.

The DHC provides statistical data to the LSO

so that it can better understand and address systemic discrimination and harassment.

What types of complaints does the DHC address?

The DHC deals with many complaints of discrimination and harassment by LSO licensees and students in different scenarios including individuals reporting on:

- their own lawyer or paralegal;
- opposing lawyers or paralegals;
- LSO licensees or students in the workplace, training or educational programs; and
- LSO licensees or students in other professional contexts.

What can you expect if you contact the DHC?

The DHC will listen and provide information to assist in identifying and evaluating your options. You may also be referred to other agencies or directed to resources.

What options are available if you call the DHC?

You can expect to be informed about the different options available which may include:

- only reporting your experience to the DHC, (for some, speaking confidentially with an objective, knowledgeable outsider is all they want);
- tips and coaching if you want to handle a situation yourself;
- speaking to your union representative;
- filing an internal complaint within your workplace;
- making a complaint to the respondent licensee's employer;
- contacting the Human Rights Legal Support Centre;

- filing an application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
- filing a complaint with the Law Society's Articling Program;
- filing a complaint of professional misconduct with the Law Society;
- contacting the police;
- seeking legal advice about a civil cause of action;
- mediation or conciliation by the DHC; or
- the DHC engaging in education or coaching with the respondent licensee to assist with compliance of professional obligations and best practices.

What other information can you expect to receive from the DHC?

You can expect to receive information to help you assess which option best suits your circumstances including:

- anticipated costs in pursuing an option;
- whether you should be represented by a lawyer or paralegal;
- information on how to obtain legal representation including the Law Society's Lawyer Referral Service;
- how to file a complaint or initiate an application;
- the processes involved in pursuing available options;
- general types of remedies why may be available; and
- the general time limits for each option.

Does calling the DHC mean that you have to follow through on these options?

The choice is yours about what you do with the information you receive from the DHC.

There is no obligation to take any action.

Can the DHC help lawyers, paralegals and students understand their professional obligations?

The DHC engages in educational events to ensure compliance with Law Society codes of conduct and human rights laws. If you are interested in having the DHC present to your legal organization or firm, please contact them directly.

How to contact the DHC

Visit dhcounsel.on.ca or call 1-877-790-2200 to access this free service. Although the DHC is funded by the LSO, the DHC works independently from the Law Society in a separate office and all information is kept in strict confidence.

***Please reach out to the DHC.
You are not alone.***



Member Updates

Copies of our print 2021-2022 Members' Directory are now available for pickup in the library. We are asking that members only take one copy for now until we can offer additional copies, due to our reduced printing this year. Our continued thanks to Davis Martindale LLP for its generous sponsorship of this valuable resource. 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.

Bruce Farnell – is now with BMO Trust Company. All other contact information is the same except his phone number is now 226-374-4704

Jessica Williams – has moved to Bruce Farnell's former position at BMO Private Wealth, 2560-255 Queens Ave., London, N6A 5R8, ph: 519-667-6336, email: jessica.williams@bmo.com

Ryan Amez – is now practicing at McKenzie Lake LLP and email is ryan.amez@mckenzielake.com

Andrea Tredenick – has left DeMelo Law and can be reached at andreatredenick@gmail.com

Adrian Willsher – has opened a solo practice at 126 Centre St., St. Thomas, N5R 2Z9, ph: 226-377-7217, email: adrian@willsher.ca

Jennifer Foster – has re-established Foster Family Law for limited scope services, and can be reached at 519-902-9770, email: jennifer@fosterfamilylaw.ca. Jennifer is also serving as the MLA's first Executive Director and can be reached in that capacity at jennifer@middlaw.on.ca

Emely Melendez Rodriguez – is now at Western University, 1151 Richmond St., Stevenson Hall, Rm 3107, London, N6A 3K7, ph: 519-661-2111 x84543, email: emelende@uwo.ca

Peter Dobbie – has retired but can be reached at 519-868-7358, email: peter.dobbie@gmail.com

Patty Malone – email has changed to pmalone@londonpolice.ca

Paul Hendrikx – his street address should be 263 Parkhill Main Street, not 243

T. Perry Ambrogio – has opened a solo practice at 414 McKenzie Ave., London, N6C 1V4, ph: 519-438-7219, direct ph: 519-439-8108, email: pambrogio@gmail.com

Frank Ambrogio – has opened a solo practice. All other contact information is the same except his email, which is f.n.ambrogio@gmail.com

Meredith Rady – is now at Harrison Pensa LLP, direct ph: 519-661-6741, email: mrady@harrisonpensa.com

Lauren Sigouin – is now at McKenzie Lake LLP, ph: 519-672-5666 x7279, email: lauren.sigouin@mckenzielake.com

Todd Devitt – is now at McKenzie Lake LLP, ph: 519-672-5666 x7455, email: todd.devitt@mckenzielake.com

Nathan Hwee – is now at McKenzie Lake LLP, ph: 519-672-5666 x7488, email: nathan.hwee@mckenzielake.com

Jillian Berry – is now at McKenzie Lake LLP, ph: 519-672-5666 x7469, email: jillian.berry@mckenzielake.com

Jed Chinneck – is now at McKenzie Lake LLP, ph: 519-672-5666 x7470, email: jed.chinneck@mckenzielake.com

Lisa Bilyd – email has changed to bilyd@libertaslaw.ca

Tori Wallace – has returned to practice at Wallace Smith, ph: 519-645-1999, email: twallace@wallacesmith.ca

Brett Shillington – email has changed to bshillington@shillingtonlaw.com

Terry Shillington – is now at Shillington Law, direct ph: 519-878-5483, email: tshillington@shillingtonlaw.com

Kenneth J. McGill – has joined Lerner's LLP, direct ph: 519-640-6329, email: kmcgill@lerner.ca

Bryan Sansom – new member at Siskinds LLP, direct ph: 519-660-7805, email: bryan.sansom@siskinds.com

Genevieve Cantin – new member at Siskinds LLP, direct ph: 519-660-7845, email: genevieve.cantin@siskinds.com

Alison McBurney – new member at Siskinds LLP, direct ph: 226-213-3304, email: alison.mcburney@siskinds.com

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Derek Sarluis

CIP, Q.Med., CSIA

Derek brings 40 years of insurance experience to his mediation practice with expertise in personal injury, product liability, professional liability, property and casualty, reinsurance and medical malpractice disputes. Derek was Vice-president of Claims for a large insurance provider and was in management at a major bank. He has instructed Chartered Insurance Professional courses, and was Vice-Chair of the Insurance Bureau of Canada Claims Committee.

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Will Notices

Kathleen Elizabeth Ward

Anyone knowing of a Last Will and Testament for Kathleen Elizabeth Ward (nee Catheline Alisibeth Kimmerly), born October 3, 1934 and passed January 17, 2022 of London, Ontario, please contact her son Tim Ward, ph: 519-200-9295, email: timwardfive@gmail.com. Her last known Will was done by John H. Groom, but the lawyer who took over his files only has an unsigned copy, not the original.

Jaxon Phillips

Anyone having knowledge of a Will for the late Jaxon Phillips of London, Ontario, born October 1, 1983, passed away December 7, 2021, is asked to contact Lou-Anne Farrell, ph: 519-963-0162 ext 5, email: lou-anne@fplaw.ca.

Robert George Taylor

Anyone having knowledge of a Will of the late Robert George Taylor, who passed away December 2, 2021, last address 701-202 McNay St, London, N5Y 4X1 is asked to contact Sherry Ann Oakes at 226-268-9373, email: sherryannoakes@gmail.com, or Derek Taylor at 905-952-9879.

Dean Laverne Joyes

Anyone knowing of a Last Will and Testament for Dean Laverne Joyes, born 1965 and died January 3, 2022 of London, Ontario, please contact Michael at (519) 633-4000, email: michaelbrightling@4elgin.ca.

William "Bill" Jadischke

Anyone having knowledge of a Will of the late William "Bill" Jadischke, who lived at 1329 Jalna Blvd., London, ON, born June 20, 1953 and died on December 6, 2021, is requested to contact Collin Jadischke at Jadischke77@gmail.com or 519-389-1732 or Lindsey@jimdeanlaw.com or 519-663-3326.

Violet England

Anyone knowing of a Last Will and Testament for Violet England, born January 11, 1928 and died December 2021 of London, Ontario, please contact Eric Cameron at 705-930-7590, email: ericvcameron@gmail.com.

Lois Gloria Da Silva

Anyone having knowledge of a Will of the late Lois Gloria Da Silva of the City of London in the County of Middlesex,

Province of Ontario, who died on July 31, 2020, is requested to contact Jennifer Butkus, McKenzie Lake Lawyers LLP, phone: 519-672-5666 x 7356, email: jennifer.butkus@mckenzielake.com.

Cheryl Anne Bird

Anyone having knowledge of a Will of the late Cheryl Anne Bird, recently of the City of London, in the County of Middlesex, and formerly of Scarborough, in the Province of Ontario, who died on October 28, 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.

Matthew Brent Bidner (also known as Brent Bidner)

Anyone having knowledge of a Will of the late Matthew Brent Bidner of the City of London in the County of Middlesex, Province of Ontario, who died on November 20, 2021, is requested to contact Jennifer P. Butkus, McKenzie Lake Lawyers LLP, email jennifer.butkus@mckenzielake.com, phone: 519-672-5666 x 7356.



February 2022 Middlesex Law Association Newsletter

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