

THE MIDDLESEX LAW ASSOCIATION *Snail*



April Issue

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President's Message



Contributed by:

Karen Hulan / Beckett Personal Injury Lawyers

Return to In Person Proceedings

It is time to dust off those robes. By the time this newsletter is released, most of you will have seen or heard of the recent announcement by **Chief Justice Morawetz** on March 17. The [Superior Court of Justice guidelines](#) are available to determine the mode of proceeding in criminal, family, civil, and Small Claims Court matters. While not all matters are returning to in person attendances at this time, effective April 19, counsel must be gowned for any virtual proceeding that if conducted in person would require gowning. The [gowning announcement](#) and [virtual courtroom etiquette rules](#) are available on the Ontario Courts website.

Purpose of the Practice Resource Centre

The **PRC** (courthouse library) is an excellent library. Staff can access material and resources throughout Ontario for members. They can conduct research for you at no cost. Send a topic to **Cynthia or Shabira** and they will respond with a list of resource options. Simply select those materials you wish to read and they will provide them to you. I have personally used both of these services and encourage you do to the same. The responses to inquiries are thorough and prompt.

The **PRC** is, however, more than a library in the traditional sense. Pre-pandemic it was a hub for lawyers and a space for social events. As we gradually return to an increased number of in person events, we will continue to host CPD and social events in this physical space. We are also exploring other roles the PRC may serve for members. Chief Justice Morawetz's announcement highlighted what many of you are experiencing in

your practices, namely, the inequity the pandemic has highlighted between clients with access to technological resources and those without. Those resources are often required to participate in legal proceedings. The MLA will explore how we may assist in addressing this discrepancy, such as providing access to virtual platforms.

We want the PRC to remain relevant to members. We are considering the expanded role it may have in providing greater access to justice. As you know from previous reports, adequate funding for the PRC is not guaranteed from year to year. Advocating for its funding is a priority of this Board. We are focused on ensuring the vitality and relevance of our PRC to the changing legal landscape.

At page 12 of this month's newsletter is an article from **Michael Lerner** about providing paralegal access to **Practice Resource Centres**. Michael provides some history about the regulation of paralegals in Ontario, which I believe is helpful now as our members decide whether to make the PRC, and membership in the association, open to our paralegal colleagues. Some law associations in Ontario have taken this step and we want to hear from the membership on this issue. To begin this consultation process, we will send a poll via email to the membership. Results of that poll will help guide next steps, so please take the time to let us know your views.

Social Events and CPD

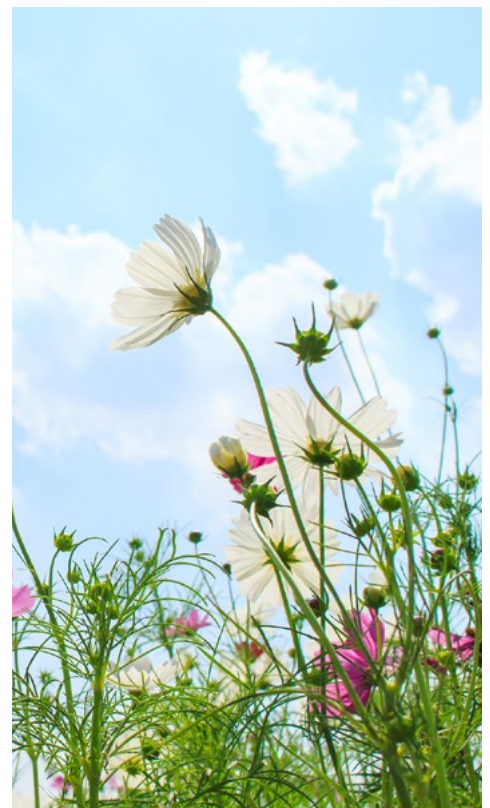
Many hands were on deck to organize the **Women's Networking Event** on March 24. Thanks to our guest speaker, **Dr. Emily Jones**, as well as Board members, **Jennifer Wall** and **Erin Rankin Nash**, the **MLA's Executive Director, Jennifer Foster**, and

chairs, Anna Szczurko and Hilary Jenkins for organizing an excellent event. Thank you to **McKenzie Lake and Siskinds** for their sponsorship. Anna and Hilary's article about the event is at page 14 of this month's newsletter.

The **Real Estate Committee** is planning a social event for the real estate bar on April 21. Other events on the horizon include personal injury and wills and estates CPD, as well as a mentoring dinner. Details will be provided in the weekly membership emails.

I wish you well as you navigate hybrid proceedings over this month. Please reach out with ideas about how the MLA may assist you with that process.

Karen Hulan
PRESIDENT



#StandWithUkraine



Contributed by:
Anna Szczurko / Siskinds LLP

On February 23, 2022, Russia invaded Ukraine. Destruction and loss of life, including civilian, took place. More than 3.7 million refugees fled Ukraine since.

The Ukrainian Canadian Congress (UCC) represents the Ukrainian community in Canada. They have been central in coordinating the effort to assist those most affected. For those wishing to help,

please complete the survey located at www.ucc.ca.

The Ukrainian Canadian Bar Association, a member organization of the UCC, is also coordinating legal assistance. They have worked with the [Canadian Bar Association](#) to spearhead an initiative to provide services to those affected by the crisis in Ukraine, including new

immigration programs to bring eligible Ukrainian nationals to Canada.

For those wishing to donate, please consider the [Canada-Ukraine Foundation](#). To date, over \$6M in aid has been delivered to those trapped in besieged cities as well as families who have made their way into neighboring countries.



Aid for Ukraine

**There are immediate humanitarian needs
for those impacted by the conflict.**

For those members of the MLA prepared to financially aid those needs we provide below information on how to donate to the Canadian Red Cross.

While there are a variety of entities accepting donations, **any Canadian Red Cross donation**

will be matched by the Canadian Federal Government. You will also receive a tax receipt from a recognized Canadian charity.

Most importantly, the aid provided by the Canadian Red Cross is always humanitarian and non-lethal.

Please consider a donation. Every little bit counts.

DONATE HERE



Practice Resource Centre News



Contributed by:

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

Practice Resource Centre Staffing

We are happy to report that staff are on-site full-time! With courts opening to more in-person matters, we anticipate that the Practice Resource Centre will increasingly see more on-site activity. We have missed our regular face-to-face interactions with our members and look forward to seeing some of you as you make your way back in.

New e-Resource: vLex Canada

We announced last month that we now have access to Lexis Practical Guidance and Westlaw's CriminalSource, FamilySource, and Estates&TrustsSource, under a central subscription negotiated for all law association libraries by the Legal Information and Resource Network (LiRN).

We are excited to announce that [vLex Canada](#) has also been added to the resources available on our user computers and funded by LiRN. You may not be as familiar with the name of this product, but you likely know and have used an [Irwin Law](#) publication, and those are all available in full-text and searchable through vLex Canada. We have had a standing order for the print version of the *Essentials of Canadian Law* series (those burgundy soft-covered books) for years and have purchased many of the stand-alone practical texts that Irwin Law publishes.

vLex Canada also includes Vincent, vLex's AI Assistant, which allows you to drag and drop your memo or other document into the program. Vincent will then analyze the content, its main topics, and citations to produce a list of relevant materials, such as legislation, case law, books, and

journal articles for you to review.

vLex has set up training sessions so you can learn all about the fantastic features of this new resource. Click on the dates below to register:

- [Tuesday, April 5, 2022](#)
from 10:00 – 11:00 AM
- [Thursday, April 21, 2022](#)
from 12:00 – 1:00 PM
- [Wednesday, April 27, 2022](#)
from 12:00 – 1:00 PM

Inter-Library Loan

Have you searched our online catalogue from your office and found the perfect law book on your topic to discover that only the Thunder Bay Law Association has it? You probably thought that book was inaccessible to you. Well, you will be happy to know that as long as the other library has a circulating collection (which, by the way Thunder Bay has), we can get the book on loan in a timely manner from any county law association library for you to review in your office. If the library doesn't have a circulating collection, they may still be able to copy a small section from the book pertaining to your legal question and email it to us to be forwarded to you. Best of all, you will not incur any charges associated with the delivery and return of the book.

New Books

There is a bit of a new year publishing lull right now, so we have not purchased any titles in the past month. However, we have heard from various publishers about a slew of planned new editions of popular titles and new books that are slated to

come out this year, so stay tuned for news about upcoming additions to our print collection.

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**

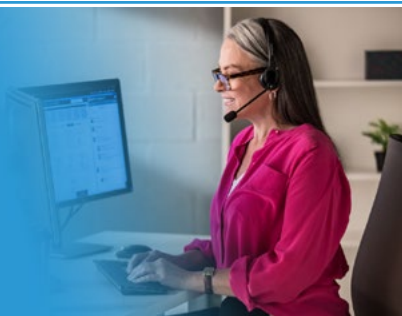
Oosterhoff, Albert H. **Oosterhoff on Wills**, 8th ed., Thomson Reuters, 2016

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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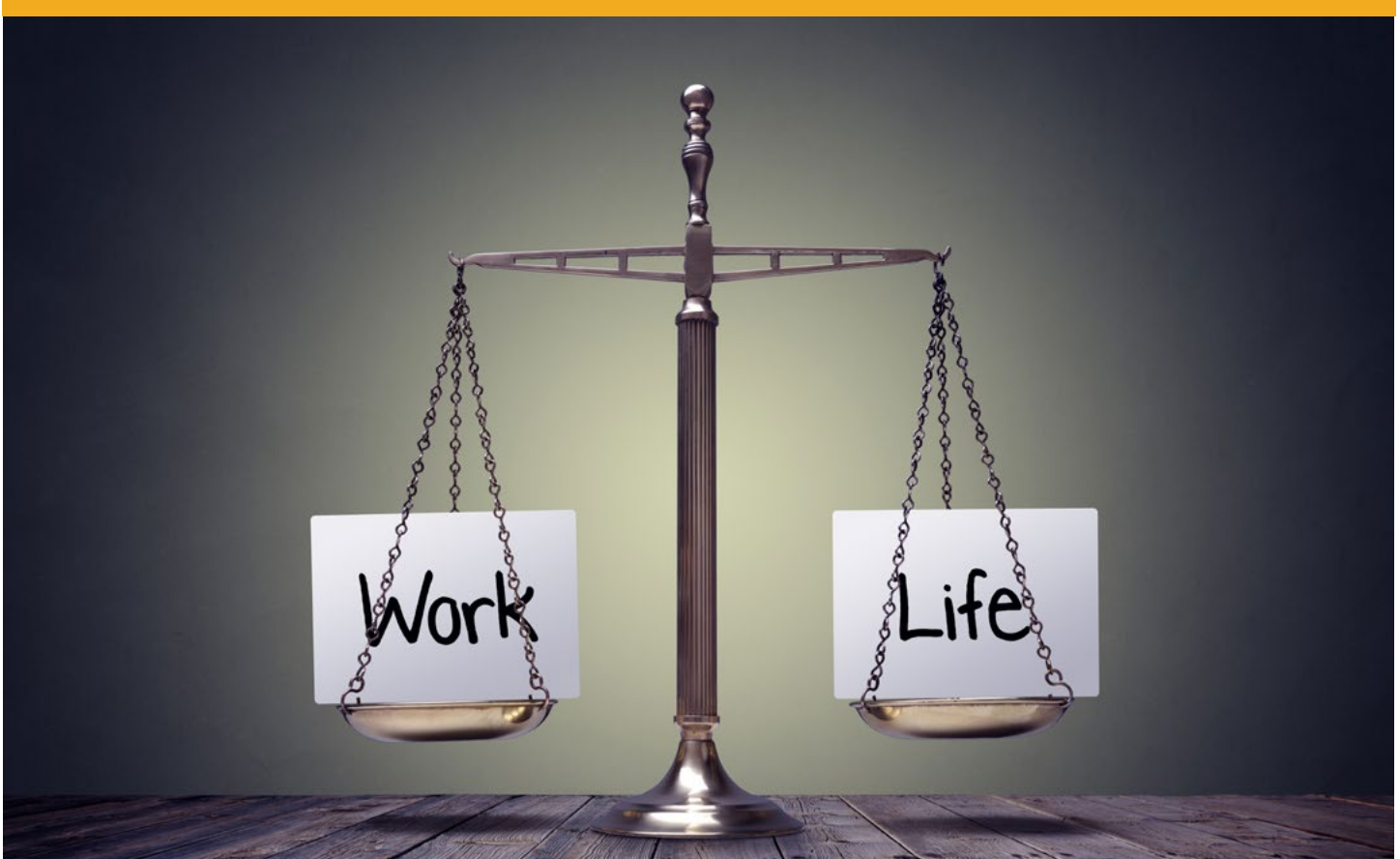
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Bill 27 promotes work-life balance



Contributed by:
Mana Khami / Harrison Pensa LLP

Bill 27, Working for Workers Act, 2021, which received Royal Assent earlier this month, introduces a number of important provisions.

One of those provisions requires certain workplaces to implement a policy on disconnecting from work, which will be the focus of this article.

The requirement with respect to disconnecting from work only relates to work-related communications.

Employers with more than 25 employees as of January 1 of any year, are required to put in place a policy by March 1 of that year with respect to disconnecting from

work. For 2022 only, this policy must be put in place prior to June 2, 2022, instead of March 1, 2022.

Provide Copies

Employers must provide a copy of the policy to each employee within 30 days of preparing the policy or, if an existing written policy is changed, within 30 days of the changes being made. Employers must also provide a copy of the written policy to new employees within 30 days of the day the employee becomes an employee of the workplace.

The policy must include the date the policy was prepared, and the date any changes were made to the policy. The contents of the policy will be prescribed by regulations, which have yet to be released.

As many people have been working from home during the pandemic, and struggling to maintain a work-life balance, this law aims to make that easier for workers in Ontario.

[Mana Khami](#) is a Partner at Harrison Pensa, often engaged with employment and labour issues, and commercial litigation. Connect with Mana on [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](#).

Image Credit: [BrianAJackson](#) - istock.com

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Jennifer Steller

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Watching the Watchers: Regulating Employee Monitoring in Ontario



Contributed by:
Alysia Christiaen / Lerner LLP

The Ontario Minister of Labour, Training and Skills Development recently announced that the government will introduce legislation requiring employers to disclose to employees if they are being electronically monitored.

This will apply to employers with 25 or more employees.

The legislation is intended to provide transparency and privacy protection to workers, ensuring they are aware of how their use of company computers, cell phones, GPS systems, and other electronic devices is being tracked.

Employers will be required to have a policy in place that discloses:

- Whether the employer electronically monitors employees;
- How it monitors employees, and under what circumstances; and,
- The purpose of collecting electronic monitoring information.

The big question

With employee surveillance technology evolving at breakneck speed and many office workers still working remotely, many employers are utilizing software and applications that track information about what is being done on computers used for work.

However, it remains to be seen what will constitute “electronic monitoring”.

Many companies utilize software that gathers information, indirectly, about employee actions. Common examples include data security software that tracks files being placed on external media and file transfers via email, and software that monitors electronic activity to identify the cause of a data breach. Businesses increasingly require service providers and vendors to have this software in place to protect the personal information of their clients. Additionally, many employers are utilizing software with artificial intelligence that gathers user data to identify patterns that can be leveraged to create efficiencies in the operation of the business.

Will simply having software that collects information about what a user is doing on an electronic device be considered “electronic monitoring”, or does an employer need to be reviewing and using the information for employment purposes?

From the beginning of the pandemic, many employers deployed surveillance software, which monitored the productivity of employees through stealth monitoring, optical character recognition, keystroke recording, or location tracking. *The Personal Information Protection and Electronic Documents Act*, the privacy legislation applicable to most Ontario corporations, does not apply to employee personal information.

The Office of the Privacy Commissioner has issued guidance on privacy in the workplace, which states, “If employees

are subject to random or continuous surveillance, they need to be told so.” However, this guidance has not been updated since 2004, eons ago when one considers the advancements in data collection technology.

The road ahead

This pending legislation will need to balance the protection of workers’ privacy, with the need for businesses to collect information to innovate, deliver effective services, and have efficient operations.

[Alysia Christiaen](#) is a privacy lawyer, assisting businesses to comply with their privacy and data security obligations and responding to privacy breaches. Connect with Alysia via [Twitter](#) or [LinkedIn](#). This article originally appeared as a blog posted to the [Lerner LERNx](#).



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The Incorporation Conundrum for Investment Advisors



Contributed by:
Faisal Nasim / Cohen Highley LLP

An ongoing topic of discussion in the financial services market is whether a sole proprietor investment advisor is permitted to incorporate under the Investment Industry Regulatory Organization of Canada ("IIROC") regime.

The respective regulatory bodies for lawyers and doctors, and for financial advisors licensed by the Mutual Fund Dealers Association of Canada ("MFDA"), all permit the establishment of personal or professional corporations to operate their businesses, often subject to certain regulations and limitations. However, the ability of IIROC regulated advisors to incorporate is not entirely clear.

Investment advisors are feeling left out as they cannot benefit from enhanced tax efficiencies of incorporation, for example, by diverting the commissions received from their dealers into a corporation that is taxed at the lower corporate tax rate. Further, they cannot take advantage of other methods of using a corporation to control their earned income or generate investment income from funds they choose to retain within the corporation.

On the other hand, complete protection from personal liability would potentially expose the investment advisors' clients to significant risk. Physicians and lawyers, for example, are permitted to incorporate but are not permitted to avoid personal liability for professional errors or negligence. Regulators under the IIROC

regime, with their concerns for protection of the general public, would also wish to prevent advisors being afforded personal liability protection.

A. Legal Position

As per IIROC Rule 1201(2) (Definitions), an 'Approved Person' is defined as follows:

"An individual approved by IIROC under the IIROC requirements to carry out a function for a Dealer Member, namely, the following individuals:

Associate Portfolio Manager, Chief Compliance Officer, Chief Financial Officer, Director, Executive, Investment Representative, Portfolio Manager, Registered Representative, Supervisor, Trader, or Ultimate Designated Person."

Generally, investment advisors fall under the category of 'Registered Representative', which in turn is defined as:

"An individual approved by IIROC to trade, or advise on trades, in securities, options, futures contracts, or futures contracts options with the public in Canada, on the Dealer Member's behalf, including where that individual deals only in mutual funds or only with institutional clients."

IIROC Rule 2551(7) (Individual Approval) explicitly provides:

"An Approved Person must not accept, nor allow an associate to accept, directly or indirectly, any pay, wages, salary, fees, gratuity, advantage, benefit or other consideration from any person other than the Dealer Member, its related companies, or affiliates for any Dealer Member related activities carried out by the Approved Person."

The foregoing analysis signifies that

IIROC rules may not, at this stage, allow investment advisors to incorporate a corporation, which would be tantamount to such advisors indirectly accepting payments from a source that is not a Dealer Member.

Investment advisors need to be mindful of the fact that any contravention of the IIROC Rules, securities legislation or requirements relating to trading or advising in respect of securities, commodities contracts or derivatives can expose them to IIROC investigation and enforcement proceedings, resulting in a range of sanctions, commensurate with the contravention in question, including fines up to \$5 million per contravention, disgorgement, conditions imposed on approval or membership, suspensions, and barriers to membership. There can also be significant related legal and administrative costs associated with any contravention hearing.

B. Regulatory Position

Canadian Securities Administrators ("CSA") formed a working group to conduct a detailed review of the existing framework for the industry's self-regulating organizations, namely IIROC and MFDA. CSA produced a 'Position Paper 25-404', dated August 03, 2021, setting out the CSA's position and intention to allow such incorporation in the future, as part of wider discussions to merge IIROC and MFDA. As per our discussions with the IIROC officials, such merger is anticipated to occur by the end of 2022, but nothing can be said with certainty at this stage, given the political considerations attached to such decision making.

C. Conclusion

We are advising our investment advisors' clients to err on the side of caution, as incorporation may not be advisable at this stage, from a legal or regulatory perspective. This is also the position of IIROC representatives. Given the anticipated timing for a potential MFDA and IIROC merger by the end of this calendar year, we are advising our clients to defer this decision for a year to see what the combined regulations of an amalgamated entity might permit. If a client decides to continue with incorporation (which many IIROC-regulated advisors have already done), it will be at the sole risk of the advisor, fully informed as to the potential consequences.

? 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

John Nicholson 519-914-3358
jnicholson@cohenhighley.com

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SEPARATE AND NOT EQUAL:

Practice Resource Centre Access for Paralegals



Contributed by:

Michael M. Lerner / Lerner LLP, former LSO benchler and vice-chair of the Ontario Human Rights Tribunal

Lawyers in Ontario have been slow to accept licenced paralegals as partners in the delivery of legal services in the province.

That resistance continues today as paralegals are denied access to virtually all county and district legal resource centres, which is the most recent iteration of law libraries. The issues that separate lawyers and paralegals cannot be an “us against them” proposition. When it comes to the delivery of legal services recognizing the need for greater access to justice, petty differences must be set aside.

In 1984, Brian Lawrie formed a company known as POINTTS, which consisted primarily of retired police officers who represented those charged with highway traffic offences in the Provincial Offences Court. In 1987, the Law Society of Upper Canada, as it then was, took Lawrie and his associates to court alleging they were illegally providing legal services without being licenced to practice law. The Law Society lost in the Court of Appeal and these unlicensed “court agents”, as they were then called, began to spring up across the province. In 1988, the Ontario government commissioned a report dealing with this issue. Essentially, the report gathered dust until, in 1999, the Honourable Peter Cory led a task force to examine the issue of non-lawyers appearing in courts. His report, which recommended, amongst other things, that paralegals be licensed, was not

accepted by the government. In 2001, the Law Society created another task force that undertook a comprehensive review of “court agents” appearing in courts. When that task force reported to the government, Attorney General Michael Bryant advised the Law Society that paralegals would be licenced and regulated. That decision was formalized on October 19, 2006 in the *Access to Justice Act, 2006*, which directed that paralegals were required to be licensed and would be regulated by the Law Society. From that day forward, paralegals have joined lawyers as members of the Law Society.

That legislation met with significant objection from the bar who maintained that to allow individuals who were not members of the bar to practice law did a disservice to the public, notwithstanding that paralegals were licenced and regulated by the Law Society and were members of the Society. To say they were not welcomed would be an understatement. During the intervening years, the work of paralegals has increased so that they now regularly appear before administrative tribunals, before the Small Claims Court, and in the Provincial Offences Court. They continue to be a significant contributor to increasing access to justice in Ontario.

Let me say that I unequivocally support the existence of paralegals. I believe they provide a valuable service in promoting access to justice. Should they be afforded equal status with lawyers? Of course not! When I was a benchler, I was confronted

by an aggressive paralegal who said that, as a member of the Law Society, she should be permitted to do anything done by a lawyer. I responded that I agreed... all that she had to do was to get an undergraduate degree, spend three years in law school, article, and get called to the bar! I strongly support restrictions on the scope of practice of paralegals.

Having provided this background, I now go back to where I began. I believe in recognizing that paralegals are our partners in the delivery of legal services. I support allowing paralegals to have access to our Practice Resource Centre on conditions. Currently, approximately \$188 of lawyer annual LSO dues go directly to support the resource centres. No portion of a paralegal's dues goes to support these centres. If they are to have access, they should share in the cost of maintaining the centres and pay their fair share. I do not know upon what terms, but some, not many, law associations currently do permit paralegal access. The County of Carleton Law Association is a leader in this field. They recently elected a paralegal trustee to their Board of Directors.

Resource centres enhance an individual's ability to provide competent and ethical legal services. Anything that allows the delivery of the best possible services to the public is something I support. As lawyers, we recognize the value of resource material and in the case of our situation, the invaluable service our library staff provides on short notice. Why should not every person who has the benefit of

legal representation have the best possible access to resources?

To me the question is simple. Should paralegals have access to the MLA's Practice Resource Centre? If the answer is "yes", then the second question is, "on what terms?" My interest is the public interest. What can we do to ensure an individual has the best representation possible?

I am now brought to a more fundamental issue that, if it has not already arisen, will. What about self-represented individuals? What access, if any, should they have to the MLA's Practice Resource Centre? Should they not have the opportunity to best inform themselves before appearing before any court unrepresented? That discussion, I will leave to another day.



The Legality of Russia's Invasion of Ukraine



Contributed by:

Iain Sneddon / Cohen Highley LLP

The recent invasion of Ukraine by Putin-led forces reminded me of events I studied much earlier in my life.

I remember hearing about the Nazi occupation of the Sudetenland. The concentration of German speaking residents was used as a justification in much the same way as Putin has justified his invasion of Ukraine.

Prior to World War II, the Sudetenland was annexed by the Nazis. Famously, then British Prime Minister, Neville Chamberlain, declared that we would have "peace in our time". Poland was later invaded. Crimea has been annexed by Russia. Ukraine has been invaded and the world is (and should be) worried about an escalation of the conflict in Ukraine.

Recently, I was asked to comment on AM980 on the legality of the invasion of Ukraine. If you would like to hear that interview, please [click on the link here](#) or go to my profile page on the [Cohen Highley website](#).

I wish my colleagues to know that I am not anti-Russian. I visited St. Petersburg with my wife and my mother in 2002. It had always been a dream of my mother's. In addition to the unusually good weather, the atmosphere was one of hope.

One incident occurred that made me think we were past the days of the

Soviet Union. Leaving Russia by plane, I was pulled aside by airport security. The image I had in my mind was that of a KGB officer. He pointed across the room and led me to a table. Initially, I thought he was going to interrogate me in one of the rooms. He started to go through the contents of my carry-on bag. He was gruff and appeared suspicious. Going through my bag, he noticed a cylinder. He asked me what was in it. I responded

that it was a painting I had purchased from a local artist. He asked me whether I was an artist. I said no. He then asked me what I did for a living. I responded that I was a lawyer. His attitude changed immediately. He may not have met a lawyer before and it was clear that he had a very favourable impression of lawyers and what we do. After his beaming smile, he put the cylinder back

in my bag and waved me on.

It struck me as a reminder that despite all the lawyer jokes out there, many people see lawyers as individuals who protect society's freedoms and call out tyranny, war crimes and human rights abuses. In my view, as lawyers, we have an ethical responsibility to condemn human rights abuses and potential war crimes wherever situated and regardless of where our ancestors came from.

"The only thing necessary for the triumph of evil is for good men [people] to do nothing."
– attributed to Edmund Burke

"The only thing necessary for the triumph of evil is for good men [people] to do nothing."

attributed to
Edmund Burke

WOMEN'S NETWORKING EVENT

Implications of Burnout and Strategies to Preserve Wellbeing



Contributed by:

Co-Chairs, Anna Szczurko / Siskinds LLP and
Hilary Jenkins / McKenzie Lake Lawyers



In the evening of March 24, we were delighted to host Dr. Emily Jones, keynote speaker for the 2022 MLA Women's Event.

Dr. Jones is an internal medicine specialist at LHSC, previously having completed her Masters of Evidence-Based Medicine at the University of Oxford. She has received further training as a Wellbeing Champion, through the American College of Physicians.

With over 40 MLA members attending via Zoom, Dr. Jones shared her wisdom on maintaining and championing wellbeing in the legal profession. While burnout is seen as a work-related construct, wellbeing intentionally addresses a multifaceted and dynamic approach, taking into account personal, social, cultural and professional domains. Being mindful in your approach to balance, even if it varies on a daily basis, and keeping track of key goals by checking in with a wellbeing pie chart can assist.

We remind members that the [Member Assistance Plan](#) is available as a joint venture through the Law Society of Ontario and LawPRO. This is a confidential service, designed to help members achieve their health and wellness goals.

Thank you to McKenzie Lake Lawyers and Siskinds for their sponsorship, which helped support the purchase of snack packs from the London Sandwich Co. for the participants to enjoy during the event!

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Changes to the Rules of Civil Procedure Regarding Expert Evidence



Contributed by:
Roland Kuehn / Beckett Personal Injury Lawyers

Amendments to Rules 50 and 53 of the *Rules of Civil Procedure* took effect on March 31, 2022 and there are some important changes for litigators who rely on expert reports to know about.

Judges in all jurisdictions have expressed concern that they have spent an inordinate amount of time dealing with the consequences of parties' failure to adhere to timetables. This has resulted in too many wasted pre-trials and unnecessary trial adjournments, squandering the already scarce judicial resources that can be dedicated to civil matters. These amendments to the *Rules* aim to facilitate productive pre-trial conferences where the discussion can narrow in on the *real* issues of a case, improving the likelihood of resolution or at least ensuring the most efficient trial possible.

Rule 50 – Pre-Trial Conferences

The amendments to Rule 50 apply to actions set down on March 31, 2022 or later.

The new subsection (2.1) states that unless provided by a court order or applicable practice direction, a pre-trial conference shall be scheduled for a date that is not more than 120 days and not less than 30 days before the later of: i) the first day fixed for trial; or ii) the first day of the sitting during which the trial is expected to be held.

Under the new Rule 50.03.1, a Certificate of Readiness must be filed at least 30 days before a pre-trial to confirm that all expert

reports were served within the 90/60 day time frame specified under subrules 53.03(1) and (2). If these deadlines were not met, the lawyer's Certificate of Readiness must explain the reason why.

Under Rule 50.07, if it is clear to the pre-trial judge that the trial will need to be adjourned, subject to the direction of the regional senior judge, they now may make that order at the pre-trial. This is intended

These amendments are intended to force counsel to think early and often about what expert evidence will be required and to secure those reports well in advance of any pre-trial conference.

to reduce the occurrence of last-minute adjournment requests.

Similarly, under Rule 50.12(2), if the pre-trial judge determines the conference was unproductive for reasons relating to a party's conduct, they may order costs of the pre-trial against that party.

Rule 53 – Expert Evidence

Rule 53.08 has been significantly altered to address the late service of expert

reports. The Rule previously stated that the trial judge "shall" grant leave to admit the late-served report on such terms as are just. The Rule now reads that the trial judge "may" grant leave to admit a late-served report if the party seeking to have it admitted can satisfy them that i) there is a reasonable explanation for the failure to serve it on time and ii) granting leave would not cause prejudice to the opposing party or undue delay in the conduct of the trial. The previous wording made trial judges hesitant to exclude late-served reports. The party who has failed to serve an expert report on time must now explain the delay if it is to be admitted, a much riskier proposition.

Under the new Rule 53.03(4), the parties still have flexibility to serve reports outside of the Rule 53.03 timeline on the written consent of the parties "except that the parties may not consent to an extension that would affect the scheduled trial date."

Takeaways

These amendments are intended to force counsel to think early and often about what expert evidence will be required and to secure those reports well in advance of any pre-trial conference. Failure to do so may expose them to costs of the pre-trial if that delay renders the conference unproductive. Parties can also no longer take for granted that reports served outside of the Rule 53.03 time frame will be admitted. Some harsh decisions may be on their way and no one should wish to be at the center of the "reasonable explanation" that a trial judge ultimately rejects on their way to excluding important expert evidence.

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SAVE THE DATE!

Thursday, April 21, 2022, 5:00 p.m. to 7:00 p.m.

Toboggan Brewing Co., 585 Richmond Street in London

Stay tuned for more event details to arrive in your inbox soon!

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.

Frank Ambrogio – has a new ph: 519-438-7210 and new fax: 519-673-4966

Michael Blackburn – new member at Shillington McCall LLP, ph: 519-645-7330 x258, mblackburn@shillingtonmccall.ca

Ben Blay – is now at Scott Petrie LLP, ph: 519-433-5310 x223, bblay@scottpetrie.com

Ashley Caldwell – is now at McKenzie Lake LLP, ph: 519-672-5666 x7314, ashley.caldwell@mckenzielake.com

Trevor Courtis – is now at McCarthy Tetrault, 5300-66 Wellington St., Toronto, M5K 1E6, ph: 416-362-1812, fax: 416-868-0673, tcourtis@mccarthy.ca

Kristen Dearlove – is now at Aviva Trial Lawyers, 1500-255 Queens Ave., London, N6A 5R8, ph: 519-538-2981, direct ph: 226-559-4865, kristen.dearlove@aviva.com

Leslie Ibouily – new member at Elgin-Oxford Legal Clinic, 98 Centre St., St. Thomas, N5R 2Z7, ph: 519-633-2638, fax: 519-633-7624, ibouill@lao.on.ca

Don Kilpatrick – new address is 202-186 Albert St., London, N6A 1M1 (all else the same)

Sam McColl – new call at McKenzie Lake LLP, ph: 519-672-5666 x7312, sam.mccoll@mckenzielake.com

Michael McEachren – has rejoined from the Public Prosecution Service-IPOC Unit, 201-465 Richmond St., London, N6A 5P4, ph: 519-630-4719, fax: 519-645-4184, michael.mceachren@ppsc-sppc-gc.ca

Ken McNair – email should be kenneth.mcnair@ppsc-sppc-gc.ca

Samalie Nsubuga – new member and has opened Nsubuga Law, 360 Wellington St., Twr B, 6th fl., London, N6A 5B5, ph: 800-309-8432, fax: 416-391-6190, nsubugalaw256@gmail.com

Marcia Oliver – is now at Bennett Group, 524 6th Concession Rd. W., Millgrove, ON, L0R 1V0, ph: 905-689-7242, direct ph: 519-719-2824, moliver@bennettgroup.ca

Terrah Smith – is now at McLeod Green Dewar, 30 Queen St. N., Kitchener, ON, N2H 2G8, ph: 519-742-4297, direct ph: 226-753-4863, fax: 519-744-5526, smith@mgdlawyers.com

Stacey Williams – new call at Shillington McCall LLP, ph: 519-645-7330 x253, swilliams@shillingtonmccall.ca



April 2022 Middlesex Law Association Newsletter

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Will Notices

Clare Elizabeth Maharaj

Anyone having knowledge of a Last Will and Testament for Clare Elizabeth Maharaj of London, Ontario, born August 30, 1932, who died on June 26, 2021, please contact Lou-Anne F. Farrell at lou-anne@fplaw.ca or (519) 963-0162 x5.

Mark Shanks

Anyone having knowledge of a Will for Mark Shanks of the Community of Ilderton in the County of Middlesex, Province of Ontario, is requested to contact Jennifer Butkus, McKenzie Lake Lawyers LLP, phone: 519-672-5666 x7356, jennifer.butkus@mckenzielake.com.

Buryl Leroy Wilson

Anyone having knowledge of a Will of Buryl Leroy Wilson, of the City London, in the Province of Ontario, born November 3, 1943, who died on January 27, 2022, is requested to contact Buryl Charles Wilson, 40 Connaught Avenue, London, ON N5Y 3A3 Tel: 519-495-7542.



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COURT HOUSE ROCKS XVII: THE ROARING TWENTIES – REDUX

APRIL 29, 2022 | RUM RUNNERS | 176 DUNDAS ST



We are pleased to announce the eagerly anticipated return of Court House Rocks for a 17th edition

Rum Runners
176 Dundas Street
Friday, April 29, 2022

**Doors open
at 5:30pm**
**Tickets are \$25/
person.**

*Details on ticketing
will be available soon
– keep an eye on the
weekly MLA email for
more information.*

For over 16 years, **Court House Rocks** has been the major fundraising event for London Lawyers Feed the Hungry. **Over \$500,000 for hunger relief has been raised and distributed to community groups since the first Court House Rocks in 2003.** Court House Rocks has given the legal community the chance to showcase our other talents and gather to enjoy a great evening together while raising money for a good cause.

The pandemic put a damper on fundraising efforts in 2020 and 2021 and prevented Court House Rocks from being held both years. Despite the pandemic, London Lawyers Feed the Hungry was still able to distribute limited amounts of funds to support hunger relief in the community, but resources are depleted and more funds are needed.

Following the last Court House Rocks in 2019, **London Lawyers Feed the Hungry** was able to distribute \$29,800 to community organizations. That represented an increase of just over 8% from the 2018 allocations. The

money raised by Court House Rocks enables London Lawyers Feed the Hungry to make a real and substantial difference in the lives of people in need in our community and we look forward to raising more money on April 29!

There are several ways you can support the cause:

- Enter as a performer/band
- Sponsor one of our performers
- Sponsor the event
- Attend the event at Rum Runners on Friday, April 29

We thank you for your support and look forward to seeing you there!

For more information please contact:

Dave Kirwin - dkirwin@lawhouse.ca

David Thompson - DThompson@shillingtonmccall.ca

Carolynn Conron - carolynn@conronlaw.ca

Want to contribute to the next issue?

Deadline is Noon, April 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

Jennifer Foster

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