

THE MIDDLESEX LAW ASSOCIATION *Snail*



June Issue

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June 25, 2022

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jennifer@middlaw.on.ca

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President's Message



Contributed by: **Karen Hulan / Beckett Personal Injury Lawyers**

Thank you to the Court House Rocks organizing committee for making the bold decision to move ahead with the event in April.

I say "bold" because the decision to offer in-person events, particularly social events, and *even more particularly* those involving singing and dancing (gasp), can be difficult as we ride waves of this pandemic. The event was excellent. London lawyers are, not surprisingly, a talented lot. And, they are generous. **With the help of sponsors, over \$20,000 was raised this year for London Lawyers Feed the Hungry.**

There will be more occasions in June to see one another outside of our day-to-day work. On June 14 beers will be shared at **Anderson Craft Ales** as junior and senior members of the bar talk about changes in the practice of law. Our in-house colleagues will emerge from their houses to gather at **Toboggan Brewery** on June 22. You can get to know a little more about some local in-house counsel by reading **Grace Smith's** interviews at page 10.

On a more formal note, the **Law Society** will host an in-person **Call to the Bar Ceremony on June 13** in London. We look forward to celebrating this special occasion with those who have worked very hard to reach this important milestone. The MLA will also acknowledge those who were called to the bar since 2020 at the **Opening of the Courts** ceremony in September. After two long years, we are planning for an event that celebrates our new calls, colleagues appointed to the bench and the accomplishments of our lawyer colleagues. Awards will be given to lawyers for their distinguished service, philanthropy and improving access to justice. There will also be recognition of a lawyer with fewer than 10 years' practicing law for excellence in law and community involvement. Details of those awards and opportunities for you to become involved in the awards committee and the Opening of the Courts committee are outlined in this newsletter.

I moved to London in 2006 having taken a circuitous route here from Newfoundland. It was a very good

decision for my family and for me. I have met so many genuinely kind people in my personal and my professional life. I did not expect, from a city of nearly half a million people, the sense of community that I have enjoyed while living and working here. This strong sense of community was palpable in June last year with the tragic loss of **Salman Afzaal, Madiha Salman, Yumnah Afzaal, and Talat Afzaal**. Many Londoners took to social media and to the streets as signs of support for the Afzaals' young son, **Fayez**, who was present when his family died and he too sustained injury. As the first anniversary of this devastating loss approaches, I encourage you to learn about ways in which you may continue to show your support to Fayez and to strengthen our community. **You may learn more at [Our London Family](#).**

I wish you well during this last month of spring.

Karen Hulan
PRESIDENT



Are Structured Settlements *dead*?

Inflation Rate in Canada = 6.7%

Structured Settlement Rate of Return \approx 2.25%

Real Rate of Return \approx **-4.45%**

CLICK HERE to find out.



MLA Awards Committee Seeking Volunteers

We need volunteers from different practice areas and types of practice to help with the nomination and selection process for our Awards, which will be given to deserving members during the **Opening of the Courts Ceremony on September 15, 2022**. If you are interested in being part of the Awards Committee, [please email Jennifer Wall](#).

The Awards will recognize MLA members for their contributions to:

- the profession through the Distinguished Service Award;
- a charitable or not-for-profit organization through the Philanthropy Award;
- helping low-income people and to ensuring access to justice through the Access to Justice Award; and
- the practice of law and community involvement in their less than ten-year law career through the Rising Star Award.

Stay tuned for more details!





Practice Resource Centre News



Contributed by:
Cynthia Simpson and Shabira Tamachi
library@middlaw.on.ca

Thanks for the Donation

We would like to thank MLA member Alf Mamo for generously donating what we refer to as the pandemic editions of his popular Annual Review of Family Law. We now have both the 2019-2020 and 2020-2021 editions available for checking out of the library. These are great resources to review the current jurisprudence in the areas of children's law, child and spousal support, family property, and domestic contracts.

We always welcome donations from any other MLA members who have published law books. We label the book, so others know of your generosity, and highlight it in our monthly newsletter column.

Articling/LPP Students

We would like to welcome the articling and LPP students who have started the 2022-2023 term and invite each of you to reach out to us for help if you haven't already. Students enjoy full library privileges and most association privileges during their work term. There is no charge to register with the MLA and it guarantees you will receive all our communications while you are working for our members. We send out a weekly email every Wednesday, so if you haven't already gotten one of those, we may not know you are working in Middlesex County.

Please [reach out to us](#) so we will get your names and email addresses in our system, and we can give you a tour of the Practice Resource Centre, explain our services and resources, and show you what is available both in print and online. Finally, we aren't reporting back to your principal so please

ask us for help if you can't find something or don't know where to start your search. Let us help you look brilliant!

Masking Ends at the MLA

Thank you to the PRC users who have followed our requirement for masks while in our space at the courthouse. The MLA decided to end the mask requirement in the Practice Resource Centre on Wednesday, June 1, although we encourage those who wish to continue wearing one.

If you have any questions, please direct them to [Jennifer Foster](#), the MLA's Executive Director.

New Books

Cuming, Ronald. **Personal property security law, 3rd ed.**, Irwin Law, 2022

Kaplan, Ari. **Pension law, 3rd ed.**, Irwin Law, 2021

Kirsh, Harvey J. **Alternative dispute resolution in the construction industry in Canada**, LexisNexis, 2022

Linden, Allen. **Canadian tort law, 12th ed.**, LexisNexis, 2022

LSO. **19th Real estate law summit - Day One & Day Two**, 2022

LSO. **16th Family law summit - Day One & Day Two**, 2022

McLeod & Mamo. **Annual review of family law 2020-2021**, Thomson Reuters, 2021

McLeod & Mamo. **Annual review of family law 2019-2020**, Thomson Reuters, 2020

n/a. **Martin's related criminal statutes 2022-2023**, Thomson Reuters, 2022

Missing Books

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

Bullen, Edward et al. **Bullen & Leake & Jacob's Canadian precedents of pleadings, 3rd ed., Volume 3**, Thomson Reuters, 2017

Fridman, G.H.L. **Law of contract in Canada, 5th ed.**, Thomson Carswell, 2006

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**

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

OBA. **Constructive trusts and resulting trusts 2007: bringing order to chaos**

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

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

Waters, Donovan, ed. **Equity, fiduciaries and trusts, 1993**, Carswell

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June 2022

Middlesex Law Association Newsletter

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Getting Creative with Articling Placements



Contributed by:

Teresa Donnelly / Treasurer, Law Society of Ontario

Originally published on LSO.ca/gazette on March 21, 2022

Thinking your practice, business, or firm would benefit from an articling candidate but concerned that you do not have enough work, time, or money to sustain an articling position for the required 8-month term?

Have you thought about setting up a mutual arrangement with another firm or legal workplace to structure an articling placement, but questioned whether that is even allowed by the Law Society of Ontario? And if allowed, do you wonder how this would work when confidentiality, conflicts, supervision, time allocation, benefits, and payment of remuneration may all be an issue?

To most of us, the traditional conception of an articling placement is: one candidate, one organization, one supervisor. However, there are many ways to structure placements to balance the objective of ensuring a quality training experience for the articling candidate and the needs and resources of the employer. The Law Society of Ontario offers flexibility in the articling program—joint placements, part-time placements, national placements, and international placements are all permitted.

If you are wondering about what this may look like in practice, then I offer you this interesting example:

For decades, Halton Region has hired an articling candidate in its legal department. A few years ago, the Region's Commissioner

of Legislative Services & Corporate Counsel, Bob Gray, and his colleagues in the Region's Legal Services Department, led by Jody Johnson, noted that it was getting harder to recruit municipal law lawyers. One approach to develop interest in the field was to expose articling candidates to a wider array of practice areas available in municipal legal departments, in the hope that it would attract more candidates. In turn, the Region would be developing or "growing" municipal lawyers.

With a purpose and a sense of creativity, the Halton Region legal team worked with colleagues at the Town of Oakville and the Halton Region Police Service (HRPS) to develop a program of sharing a cohort of articling candidates who would "rotate" through the three organizations during an articling term, similar to the way articling candidates rotate through various legal departments in a law firm. Although neither the Town of Oakville nor HRPS had hired an articling candidate previously, Town Solicitor Doug Carr and his team, together with Counsel to the HRPS Ken Kelertas, became enthusiastic partners in the exploration of this opportunity.

From this visionary collaboration, with the support of the Law Society of Ontario, a unique municipal law-based articling program was born. The program has just hired its third cohort of articling candidates set to start work in the summer of 2022. A memorandum of understanding governs the relationship between the three organizations and ensures that all operational, supervisory, and program responsibilities are addressed. Although there are three different placements, the candidates are employed by the Region

throughout their entire term and are paid by the Region.

I sat down with Jody Johnson to explore how the program worked in practice and to learn about the benefits, challenges, and outcomes. She told me that the program has been a huge success—for articling candidates and for the Region, Town of Oakville, and the HRPS.

The Halton articling program hires three candidates for 12 months with each candidate spending four months with each organization. There is an Articling Principal at each rotation—so each candidate is supervised while experiencing unique perspectives in municipal law during their articles. In addition to the formal candidate/Principal relationship, the lawyers, paralegals, and law clerks working at the Region, the Town, and HRPS are all committed to mentoring, teaching, and supporting the articling candidates. With orientation, continuing legal education, practice discussions, guidance, and time for the candidates to work with a variety of legal professionals at varying years of licensure, each placement is dynamic, engaging, and supportive.

To ensure confidentiality of information, each organization has its own policies binding the articling candidates during their placement in that organization. To further protect confidentiality, each candidate has a separate email address for each organization, which ensures that substantive work matters at each location remain confidential. While placements are structured to reduce conflicts of interest, the three organizations have established a process to address them if they arise.

Now entering its third cohort, the articling program is a success. All three candidates from the first cohort are now working as lawyers in municipal legal departments.

I spoke with Taylor Knowlton who was an articling candidate in the first cohort and is now Associate Corporate Counsel at the Region. Being exposed to different areas of law, organizational structures, and types of practice at a lower tier, upper tier, and with a police service was interesting, challenging, and enriching. Taylor's reflections on the program are that it was a good experience, she was supported consistently throughout, it was well organized, and she enjoyed the work: *"It is a really good program and I encourage other articling students to apply."*

This creative articling program could not flourish without the support of the dedicated legal professionals at the Region of Halton, Town of Oakville, and the HRPS. Their commitment to enhancing articling opportunities, increasing the number of articling positions and "growing" future municipal lawyers is impressive and reflects the highest standards of the bar.

If you would like to share your story of a flexible or creative articling or LPP placement program, please reach out to me at Treasurer@LSO.ca. For more information on types of articling placements, check out [Beginning a Placement](#).

REGISTER NOW!

15th Annual Mentoring Dinner: Law in Transition

Tuesday, June 14, 2022 / 5:30 p.m. to 8:00 p.m.
Anderson Craft Ales Outdoor Patio (*weather permitting*)

This program contains 2 hours of Professionalism content.



Chairs: Grace Smith, City Solicitor's Office, City of London & Jennifer Hawn, Polishuk Camman & Steele

If you have been practising law for 10 years or less, please join us for our Annual Mentoring Dinner at Anderson Craft Ales! Enjoy the delights of local fare prepared by the talented team at EatOA while engaging in meaningful discussions about 'transitions' and socializing with colleagues and mentors. As a legal community, London has so much to offer – and the MLA and our mentors want to encourage the newer members of the bar to join us for a night of open discussion and sharing of knowledge.

MENTORS:

Andrew Camman, Polishuk Camman & Steele
Ali Chahbar, Thames Valley District School Board
Alysia Christiaen, Lerner LLP
Cassandra DeMelo, DeMelo Law
Sandra Drozd, Canada Life
Greg Parrack, Community Legal Services, Western Law
Genevieve Samuels, Samuels Family Law
Susan Toth, Polishuk Camman & Steele
Kristi Sargeant-Kerr, Scott Petrie LLP
Jim Virtue, Siskinds LLP

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SAVE THE DATE

In-House "Warming"

Wednesday, June 22, 2022

5:00 p.m. to 7:00 p.m. / Toboggan Brewing Co.

Please join us for an evening of networking and socializing with your colleagues who practice in-house! Enjoy a drink and some hors d'oeuvres while you catch up with your colleagues.

REGISTRATION OPENS SOON!

Bench and Bar Update



Contributed by:

Rasha El-Tawil / Siskinds LLP and MLA Board Trustee

Hilary Jenkins / McKenzie Lake Lawyers LLP and MLA Board Trustee

John Nicholson / Cohen Highley LLP Lawyers and MLA Board Trustee

A Bench and Bar Meeting was recently held on May 12, 2022. Regional Senior Justice Thomas and Local Administrative Justice Grace again kindly gave their time to address a number of questions submitted in advance by MLA members. Participation was excellent, with 78 MLA members attending.

Justice Grace reminded the members present to ensure they are well acquainted with the recent province-wide [Notice to the Profession, Parties and the Media](#) and the regional [Notice to the Profession: Mode of Proceedings for the Southwest Region](#).

Topics addressed during the Bench and Bar Meeting included:

- Judicial complement and staffing resources for the London Court and the Southwest Region
- Courtroom availability
- Backlog of criminal, family, and civil matters

- The likelihood of civil jury and non-jury trials being heard in the short and medium term
- The manner in which trials are being heard in terms of COVID protocols

If you were unable to attend the meeting, please review the [Minutes](#) for a detailed summary of the information shared by Justices Thomas and Grace.

Opening of the Courts on September 15 – Save the date and call for volunteers!

It has been more than two years since the Middlesex Bench and Bar have been able to meet in person. After a long hiatus, we are extremely excited to announce that we are actively planning the return of the Opening of the Courts Ceremony, so please save the date and plan to attend on September 15, 2022 at 4:30 p.m.

We plan to have a procession from the courthouse to Museum London where the event will be held, followed by a reception to reconnect with your colleagues. For those wishing to stay after the ceremony and reception and reconnect further with members of the bench and bar, dinner will be offered in the River Room at Museum London. Spaces for dinner will be limited, and tickets will be sold in advance.

Planning is underway for the Ceremony, and we need your help! **If you are interested in joining the planning committee, or can help on the day of the event, please reach out to any of your Bench and Bar representatives, [Rasha El-Tawil](#), [Hilary Jenkins](#), or [John Nicholson](#).**

Please watch for updates in the coming months as this important event approaches.

SAVE THE DATE

194th Opening of the Courts THURSDAY, SEPTEMBER 15, 2022

5:00 p.m. *procession to commence at 4:30 p.m. from the
MLA Practice Resource Centre to MUSEUM LONDON

After a two-year hiatus, we are excited to come together to celebrate our colleagues and their accomplishments, to celebrate our community, and to celebrate a fresh start with a renewed purpose as we move out of isolation and quarantine and move into a bright and exciting future.

On September 15, 2022, we will celebrate the new lawyers and judges in the London region and we will celebrate and honour the lives of those we have lost. We will celebrate the judicial system and the privilege of practicing in the legal profession. Most importantly, we will celebrate each other together in person.

Stay tuned for more details!

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Jennifer Ferreira

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Ergonomic Assessments

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Jennifer Ferreira

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IN-HOUSE INSPECTION

with Erika Webb and Sandra Drozd



Contributed By:

Grace Smith / City Solicitor's Office, City of London and MLA Board Trustee

"In-House Inspection" is a new series that will highlight the work and experiences of in-house counsel. For this edition, I am very pleased to introduce to everyone Erika Webb and Sandra Drozd, two members of the MLA's In-House subcommittee. Please feel free to say hi to them at the upcoming In-House "Warming" social event we've planned at Toboggan on June 22 at 5:00 p.m.

Can you give a brief introduction of your role/position and what your day-to-day job looks like?

Erika: I am legal counsel for Intact Insurance. My day to day involves the various aspects of an insurance defence litigation practice. This involves reporting on files, having calls with clients, insureds, and various counsel to work towards the resolution of the files, attending discoveries, mediations, pre-trials, and trials.

Sandra: I am Senior Litigation Counsel in the London office of the Canada Life Assurance Company. I have a wide-ranging practice, so my days are varied. I was called to the Bar of Alberta in 2020 so my practice primarily involves litigation and trial work for various insurance matters in Ontario and Alberta. I also work on different types of matters that may arise in other provinces such as subrogation. In addition to file work, I provide litigation advice to many areas of the company. I also supervise several law clerks and paralegals who for the most part handle their own files.

How long have you been in-house? What made you choose to work as in-house counsel (or for your current employer)?

Erika: I have been working as in-house counsel for Intact Insurance for over seven years. I became interested in the position after speaking with Intact senior counsel at a networking event. The legal counsel role offered an opportunity for litigation experience, a chance to work my

own files, and work/life balance.

Sandra: I joined Canada Life approximately five years ago. Before then, I was in private practice. I chose to work for Canada Life as it has a good reputation in the legal community. I heard very good things about the work environment and the company culture. Canada Life seemed committed to their employees, and I liked that the company contributed to the community. I heard the law department is very much a team. Although most of Canada Life's litigation work is outside of the area, they had quite a few litigation lawyers in London which suggested to me that they were busy. I actually knew some of their lawyers from private practice so I was confident that I would enjoy working with them at Canada Life.

What is something you value about your job?

Erika: I value the support of my colleagues. I moved to Intact Insurance with only a little insurance defence experience. They have supported me in each stage of my career with Intact and they are always available to answer questions and offer support.

Sandra: Aside from working with great colleagues and staff, I would have to say I like how unique my position is in terms of the significant exposure I get to different areas of law and different litigation processes. Canada Life is a huge company that does many things. The range

of matters I handle is quite broad. Working on matters in several other provinces is interesting and it sometimes sparks ideas for files. I can easily say my legal knowledge has expanded exponentially given how varied my practice has become.

Are there any tips that you were given with respect to legal practice that you could pass onto others?

Erika: Stay organized. Practicing law can be overwhelming, but a proper system of organization can help save time and alleviate a lot of stress and anxiety. My more experienced colleagues also remind me to pick up the phone and call counsel. Especially in a virtual world where we are sending so many emails, a lot can be accomplished with a quick phone call.

What do you see as the challenges of working as in-house counsel as opposed to in private practice?

Sandra: As in-house counsel I am often required to develop impactful solutions that go beyond providing a legal answer. It is therefore important that I understand and know the various lines of business and clients that I serve. I need to have a good grasp on the unique needs of the business teams. This takes time and experience, and it requires counsel to develop a more diverse skill set. At times when requiring instructions, I need to identify the business units that could be impacted by a course of action and involve them in the decision-making. It can be challenging having to

navigate so many interests and internal considerations beyond just the legal considerations when determining a solution for the company.

What are some of the approaches you use to continuously try to improve your practice? What do you think is the key to achieving satisfaction with the work that you do?

Erika: Being prepared. It is satisfying to know you worked your hardest on a file and you were the most prepared you could be at the important stages of the litigation.

Sandra: As in-house counsel my approach has generally been to make the

most of my opportunities. I find more opportunities tend to arise from doing so. I also enjoy being "in the know" so I try to go to as many Continuing Legal Education programs as possible and share the new information with my colleagues. I recently attended a really interesting program by the Quebec Division of the Canadian Bar Association about utilizing case management arbitration for civil litigation files. The speakers suggested this could be a means to help with the backlog created by the pandemic. This sounds like a really interesting idea that I intend to explore further.

REGISTER NOW!

Islamophobia and the Law

Wednesday, June 8, 2022
1:00pm - 3:00pm / Online via Zoom

This program contains 2 hours of EDI Professionalism content.



Ali Chahbar, General Legal Counsel and Executive Officer,
Thames Valley District School Board



Nusaiba Al-Azem, staff lawyer,
National Council of Canadian Muslims



Chair: Rasha El-Tawil, Siskinds LLP

As we approach the one-year anniversary of the horrific murder of a Muslim family in London, Ontario, please join panelists Ali Chahbar and Nusaiba Al-Azem as they discuss "Islamophobia and the Law".

Their presentation will include the following important topics so that we can learn more, understand more, and take action:

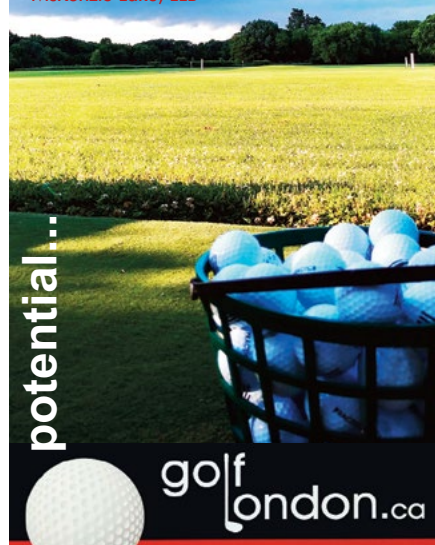
- General information about Islamophobia
- Occurrences of Islamophobia in Canada
- Caselaw Review and Update on Relevant Cases
 - Legislative Amendments and Reform
 - And more!

To register, please visit the MLA website.

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We have a large office (with room for two people) available at our new location. Suitable for lawyer, lawyer + clerk, one or two paralegals etc. Some shared resources available (photocopier, internet etc). Please email Susan stoth@pcslawyers.com for more information.

Deductibility of Collateral Benefits and the Rule Against Double Recovery



Contributed By:

Tinashe Madzingo / Diamond & Diamond Lawyers and MLA Board Trustee

When there is a negligent act causing injury (a tort), there is typically a claimant, who seeks compensation for an injury, and a tortfeasor, who causes the injury and must compensate the claimant.

The general principle of compensation in tort is that the injured claimant is entitled to be put in the same position they would have been, but for the negligent act. This general principle is informed by the common law rule against double recovery, which means the injured claimant is eligible to recover the full extent of their damages, and no more. Recovery in excess of one's actual damages offends the general principle of compensation in tort and will typically not be permitted; compensation in tort is not intended to punish the tortfeasor, nor is it intended to put the injured claimant in a *better* position than if the negligent act had not occurred.

Exceptions to the General Rule

As in other areas of law, there are exceptions to the general principle. Among them are exceptions for charitable gifts and private insurance payments. For charitable gifts, the court will not deduct gifts or acts of public or private benevolence from an award for damages. For example, a successful GoFundMe campaign will not be considered in an assessment of damages. For private insurance payments, the court will not

permit the tortfeasor to benefit from the injured claimant's forethought in acquiring and paying for private insurance benefits. For example, privately funded long-term disability ("LTD") benefits will not be deducted from an award for loss of income.

An Exception to the Exception for Private Insurance Payments

Where the injured claimant is injured in a motor vehicle accident, the private insurance exception does not apply. In Ontario, motor vehicle accidents are governed by the *Insurance Act*, which specifically enumerates collateral benefits that must be deducted from an award of damages for injuries sustained in a motor vehicle accident. With respect to private insurance payments, section 267.8 (1) of the *Insurance Act* codifies the common law rule against double recovery. In effect, the private insurance payment exception does not apply in tort or the *Statutory Accident Benefits Schedule* ("SABS") when the injury arises from a motor vehicle accident.

An Exception to the Exception to the Exception for Private Insurance Payments

The Divisional Court recently examined the exception for private insurance payments and double recovery in the context of a motor vehicle accident. In *Co-Operators General Insurance Company v. Branden*, 2022 ONSC 2473, which is an appeal from a decision of the Licence Appeal Tribunal, the Court had to decide whether LTD benefits could be deducted from income replacement benefits under the SABS.

Ms. Branden's LTD claim settled for \$120,000.00. That amount was reflected in a settlement calculation sheet and was equal to her total entitlement under the policy. Co-Operators argued at the Tribunal and on appeal that, since the settlement amount was equal to her entitlement, the settlement sum was solely for LTD benefits (a private insurance benefit) and ought to be deducted from her claim for income replacement benefits. Ms. Branden pointed out that there was no direct evidence as to how the settlement was calculated and that the settlement was in satisfaction of all her claims against the LTD insurer, including legal costs and aggravated, exemplary, and punitive damages. Indeed, the release used by the LTD insurer was a standard release using standard language and there was no breakdown among the various heads of damages claimed. The Tribunal and Court found the release amounted to a settlement for all her claims against the LTD insurer, including legal costs and extra contractual damages. Since the release involved claims that were not and could not be the subject of deductions to the benefit of the SABS insurer, the settlement could not be properly described as an income replacement benefit for the purposes of SABS deductions.

The Divisional Court was not convinced that the settlement calculation sheet was compelling evidence of the settlement breakdown between Ms. Branden and her LTD insurer and upheld the Tribunal's finding that the SABS insurer was not entitled to a deduction.

Takeaway

If disability insurers continue to use a standard release for all claims where there is no allocation as among the various heads of damages claimed, there is a real prospect that this decision may effectively bar some SABS insurers from deducting awards for LTD benefits from claims for income loss.

There does not appear to be any motivation presently for a disability insurer to break down settlements for the sole benefit of a SABS insurer. A standard release for all claims is the safest way for the disability insurer to protect

its interests, and it is doubtful they will lose sleep because SABS insurers cannot offset their pay out.

It will be interesting to see how this new dynamic between disability and SABS insurers unfolds – particularly in the context of global mediations, where offsets are discussed to tedium and counsel are already motivated to engage in vigorous finger-pointing.



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Court House Rocks Returns!



Contributed By:

Alison Mason and Emma Kirwin (law student) / Kirwin Fryday Medcalf LLP

Members of the London legal community were brought together for the first in-person Court House Rocks event since 2019, to enjoy live music, networking, and refreshments on April 29.

The Middlesex Law Association revived this fan-favourite charity event with a **Roaring 20's Redux** theme at Rum Runners.

Twelve bands, **The Carbollic Smoke Balls, Randy Mills, Millars Law, Jim Zegers, Michel Castillo, The Delicate Arch, Matthew Dupre and Toenie Hersch, Zach Wilson, Adam Campbell and The Wyld Stallions, The Wyld Stallions, RBC/DC, and The Soldiers of Disappointment** took to the stage throughout the night to showcase their musical talents and raise

money for **London Lawyers Feed the Hungry**. The emcee, **Michael Hodgins**, kept the crowd entertained with his witty repartee and 1920's puns.

This was the 17th year that **Court House Rocks** brought the legal community together. Over 100 attendees and sponsors raised money for London Lawyers Feed the Hungry with ticket sales, donations, and a raffle featuring prizes from **Gordons Gold** and **Quantum Verdi**.

A total of over \$20,000 was raised this year for London Lawyers Feed the Hungry, which is a volunteer-run organization that supports local organizations working towards hunger relief in our community. This organization supports a variety of "soup kitchens," meal programs, and provides direct funding to community gardens and support classes to help low-income Londoners cook more economically and nutritiously. London Lawyers Feed the Hungry has distributed

funding to many organizations over the years, including: **AIDS Connection, Ark Aid, Boys & Girls Club, Children's Nutrition Network, Community Living London, Glen Cairn Community Centre, Hunger Relief Action Coalition, London Community Chaplaincy, London Family Court Clinic, London Food Coalition, London Jewish Community Federation, London Lawyers Meal Program, Meals on Wheels London, My Sister's Place, Neighbourhood Resource Association Westminster Park, South London Resource Centre, St. Joseph's Hospitality Centre, The Unity Project, and Youth Opportunities Unlimited.**

Since 2003, Court House Rocks has raised and London Lawyers Feed the Hungry has been able to distribute over **\$500,000** in the community for hunger relief.

At the conclusion of this year's event, the **Pensa Cup**, named after Claude and **Elaine Pensa**, the founding



members of London Lawyers Feed the Hungry, was awarded to **The Soldiers of Disappointment**. The Pensa Cup is awarded annually to the musical act that best captures the essence of the event – fun, fundraising, and funky!

A special thanks goes out to the **Middlesex Law Association**, the **Court House Rocks Committee**, and the **volunteers** for all their hard work organizing this year's successful event.

Keep an eye out for the 18th Annual Court House Rocks in 2023!

Thank you to our event sponsors: **Carlyle Peterson**, **Cram & Associates**, **Corley Developments**, **Davis Martindale**, **Kirwin Fryday Medcalf LLP**, **FP Law**, **Harrison Pensa**, **Lerners**, **Marcus & Associates/Hoare-Dalton**, **McKenzie Lake Lawyers**, **MD Lawyers**, **MDD Forensic Accountants**, **MDM Reporting**, **Millars Law**, **Miller Thomson**, **Siskinds**, **Shillington McCall**, **Zegers Criminal Law**, and **Gordons Gold**.

For further information, please contact [David Kirwin](#).



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Subcommittee Recruitment:

Be a Leader in Your Practice Area



Contributed By:

Jake Aitcheson / Lerner LLP and Vice President, MLA Board of Trustees

The Middlesex Law Association is actively recruiting members to contribute their expertise and voice to the newly formed subcommittees detailed below.

This opportunity will raise your profile within the community, earn you a reputation as a leader in your practice area, and connect you with other lawyers in your field.

As previously reported in the *Snail*, the MLA has reformed the way in which it will deliver CPD programming to its membership. Following the Annual General Meeting in February, the MLA formed nine distinct subcommittees, reflecting the diverse practice areas and experiences of our membership. These subcommittees include Criminal; Family; Real Estate; Corporate/Commercial; In-house; Personal Injury; Wills, Estates and Trusts; EDI/Professionalism; and Small Firms/Sole Practitioners.

Each subcommittee is responsible for organizing informative, creative, and engaging CPD programming within the subcommittees' area of specialization and producing high quality content for publication in the *Snail*. Each subcommittee is overseen by a Trustee but is comprised mainly of volunteers who practice in the subcommittee's area.

For instance, as I practice plaintiff personal injury, I would volunteer with the Personal Injury subcommittee. As I'm practicing exclusively in this area, I ought to be one of the first to learn of new developments, trends, decisions, or legislative changes that have wide-ranging consequences to the practice area. If I learned of something of this nature, I would connect with other members of the Personal Injury subcommittee and discuss how we should share this information with the local Personal Injury bar. For this example, the subcommittee could plan a seminar, develop an agenda, and then recruit lawyers or other experts to present on the topic. Having organized

the substantive component of the event, the subcommittee would then delegate the execution of the program to Jennifer Foster, the MLA's Executive Director, who would assist in securing a venue, marketing the event, securing sponsorship, receiving RSVPs and payment, etc. Following the event, one of the members of the subcommittee would then prepare a brief update for publication in the *Snail*. In this way, the MLA aims to leverage the legal expertise and connections of our membership to not only enhance our CPD offerings, but the overall competency of our bar.

If you are interested in volunteering within one of the listed practice area subcommittees – Criminal; Family; Real Estate; Corporate/Commercial; In-house; Personal Injury; Wills, Estates and Trusts; EDI/Professionalism; and Small Firms/Sole Practitioners – please reach out to me directly at jaitcheson@lerner.ca or call me at 519-640-6396 and I will put you in touch with a representative of the applicable subcommittee.

**VOLUNTEERS
NEEDED**

Contact [Jake Aitcheson](#),
VICE PRESIDENT, MLA BOARD OF TRUSTEES
**if you are interested in being involved
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Bill 88 Impact on Digital Platform Work



Contributed by:
David Canton / Harrison Pensa LLP

Ontario recently passed a new law affecting gig workers such as those providing ride share or delivery services like Uber or Skip the Dishes.

Bill 88, otherwise known as the *Working for Workers Act, 2022*, became law on April 11, 2022.

We wrote before about the Act's requirement for businesses to have a written policy regarding electronic monitoring of employees.

Bill 88 also enacted the *Digital Platform Workers Rights Act, 2022* (DPWRA). The DPWRA will govern "digital platform work" performed in Ontario. This type of work is defined as the provision of for payment ride share, delivery, courier or other prescribed services by workers who are offered work assignments by an operator through a digital platform.

The DPWRA will capture all workers of a digital platform operator, regardless of whether they are employees or independent contractors. The distinction between employees and contractors is important from a legal perspective, as the law treats them differently in many ways. The Act applies employee-like rules even if the person is at law a contractor and not an employee.

Below are features of the DPWRA.

RIGHT TO BE INFORMED

Digital-platform workers must be given certain information by the operator within 24 hours of receiving access to the operator's digital platform for the purpose of accepting or declining work assignments. Examples of the information that must be given include: a description of how pay for the undertaken work is calculated, and any factors used in determining how work assignments are offered to workers and how these factors are applied.

RIGHT TO RECURRING PAY PERIOD AND PAY DAY

The operator must establish a recurring pay period and pay day. The worker is entitled to receive all amounts, including all tips and gratuities, earned during a particular pay period on the corresponding pay date.

RIGHT TO A MINIMUM WAGE

The DPWRA says digital-platform workers are entitled to be paid at least the minimum wage set out in the *Employment Standards Act, 2000* for the residual class of employees. This amount is currently \$15.00 per hour. The minimum wage must be paid for each work assignment performed by the worker. Tips and other gratuities earned by the worker are not included in determining whether compliance with the minimum wage requirement is satisfied by the operator.

RIGHT TO NOTICE OF REMOVAL

An operator must explain in writing to the worker the reason why the worker's access to the digital platform was removed. If the removal of access lasts for 24 hours or longer, the operator must provide two weeks' written notice of the removal to the worker, except where the worker is guilty of wilful misconduct or in other situations where prescribed circumstances apply.

VENUE OF DISPUTE RESOLUTION

All disputes between the operator and the worker must be resolved in Ontario.

REPRISAL

An operator cannot intimidate, penalize or try to threaten to intimidate or penalize a worker when the worker attempts to exercise their rights under the DPWRA, among other things.

RECORD-KEEPING

The Act imposes certain record-keeping requirements on the operator for each worker that uses the digital platform to perform work assignments.

DIRECTOR LIABILITY

The Act includes liability for directors if they fail to comply with an order under the Act, or if they authorize, permit, or acquiesce to an offense under the Act.

COMPLAINTS AND ENFORCEMENT

A person who alleges that the DPWRA has been contravened may file a complaint with the Ministry of Labour, Training and Skills Development. Or they may start a civil proceeding in court. An individual must pick between those two courses of action. They cannot do both. However, a civil proceeding can be commenced where a complaint has been submitted if the worker withdraws their complaint within two weeks after its filing.

TIMING

While the DPWRA has been passed, it will not come into force until proclaimed

by the Lieutenant Governor. So far there is no word on when that might happen.

[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](#).

Razvan-Mario Moldovan is a summer law student at Harrison Pensa. Raz is currently attending Western Law where he has held various volunteer positions. He has an Honours B.A. in Political Science with specialization in Public Law and Judicial Studies and minor in History. Connect with Raz 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](#).

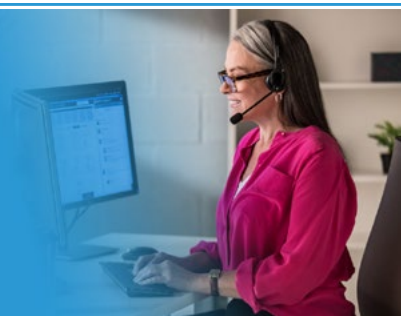
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We are hiring! Reporting to the Executive Director, the new Finance Associate will be responsible for bookkeeping and payroll for the MLA. This role requires an average weekly commitment of 15 hours at approximately \$25-\$30 per hour depending on professional experience. While the successful candidate will be able to work remotely, they will also be required to work onsite as needed to fulfill the duties of the role.

Full details regarding duties and qualifications can be found in the [Finance Associate Job Description](#).

Please send your cover letter and resume to [Jennifer Foster](#), the MLA's Executive Director.

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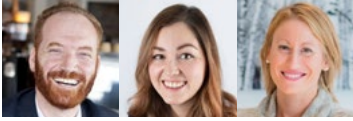
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Then Again...Specific Performance in Real Estate Law



Contributed by:

Bassam Lazar, Madelaine Hofford and Aimee Fishman / Lazar Law

Buyers entering into Agreements of Purchase and Sale, most prominently for residential properties, are increasingly seeking to abort their transactions.

The Sellers, understandably, refuse to release them from the contracts, having perhaps secured a price beyond their wildest dreams. In short, buyers and sellers, having bound themselves to binding contracts, are facing the consequences, and realizing there is no easy way out just because of buyer's remorse.

If a buyer refuses, or is unable, to complete a transaction, the seller may select a course of action deemed most appropriate for the circumstances. They may request the buyers forfeit the deposit already paid, and execute a mutual release, with both parties going their separate ways. The seller may refuse to execute a mutual release, and to mitigate their damages, relist the property and seek the best available price on the market. Any damages, such as a lower price, incurred as a result of the buyer's anticipatory breach may be pursued against the buyer.

Generally, the courts have also awarded buyers damages against sellers refusing to close. The 1996 Supreme Court Case, *Semelhago v. Paramadevan*, 1996 CanLII 209 (SCC) has been a long-standing precedent for Ontario buyers, providing that residential real estate is just like any other commodity, awarding damages for failing to provide that commodity so

that the injured party may return to the market. Unless the property is considered "unique", specific performance would not be awarded. However, the recent market volatility is seeing a change in this typical response and the understanding of what makes a property unique.

The legal field for real estate is becoming increasingly treacherous to navigate for the contracting parties, the solicitors, and the litigators, and while some guidance is available from the courts, the ever-changing market conditions will certainly reshape the legal landscape.

Buyers may seek specific performance if the selling party refuses to close, perhaps with their own seller's remorse, hoping to resell for a higher price. This issue was recently addressed in *Warner v. Ahmadi*,

2022 ONSC 2679 (CanLII) by way of a summary judgement. The Defendant, the seller, had advised the Plaintiff, the buyer, that he would be unable to close the transaction. The Plaintiff sought specific performance, in lieu of damages, which hinges on finding the property to be "unique". "The assessment of uniqueness considers all of the circumstances of the Property" (*Warner* at para. 13), as well as the inability to find an alternative property on "similar financial terms" (*Warner* at para. 14). Affordability has now become an important factor in the analysis of uniqueness. As there were no reasonable alternatives for the property within the buyer's price range, the court awarded specific performance on the summary judgement motion, finding there was no issue requiring a trial.

The legal field for real estate is becoming increasingly treacherous to navigate for the contracting parties, the solicitors, and the litigators, and while some guidance is available from the courts, the ever-changing market conditions will certainly reshape the legal landscape.



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Want to contribute to the next issue? Deadline is Noon on June 25

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

For more information, contact: Jennifer Foster / Executive Director

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? Questions & Comments ?

If you have any issues or concerns regarding the Middlesex court facilities, operations, judiciary, etc., let them be known! Send all concerns to the current MLA Bench & Bar representatives:

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rasha.el-tawil@siskinds.com

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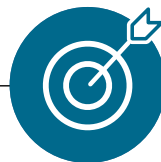
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Member Updates

Copies of our print Members' Directory are 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 their 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.

John Brennan – has opened JBrennan Law, ph: 226-236-6306, john@jbrennanlaw.ca

Genevieve Cantin – has joined Miller Thomson LLP, direct ph: 519-931-3554, gcantin@millერთhompson.com

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

Robert Rose – has rejoined the MLA and is at Mathers-Prior Professional Corporation, 200-495 Richmond St., London, N6A 5A9, ph: 519-661-1010 x225, fax: 519-661-1015, rrose@mathers-prior.ca

David Spence – is now at 3M Canada, 300 Tartan Dr., London, N5V 3R6, ph: 519-457-8544, dspence@mmm.com

Isha Wadhwa – has rejoined the MLA and is at Isha Wadhwa Law, 5-571 Wharncliffe Rd. S., London, N6J 2N6, ph: 548-689-9291, fax: 519-601-2345, isha@ishawadhwalaw.ca

Will Notices

Kerry Ronald Box

Anyone having information or knowledge of a Last Will and Testament of Kerry Ronald Box who died May 2, 2022 in the City of London, County of Middlesex, please contact John Belecky, Belecky & Belecky, 104-235 North Centre Road, London, ON, N5X 4E7 at 519-673-5630 or john@belecky.ca.

Bradley James Tanner

Anyone having knowledge of a Will of Bradley James Tanner, late of the City of St. Thomas and previously of the City of London, Ontario, is requested to contact Jacob Aitken, MacDonald, Evenden, 1229 Dundas Street, London, ON, N5W 3B1 at 519-451-2489, fax: 519-451-8131, or jaitken@macdonaldevenden.ca.

Ian Gordon Wilkinson

Anyone knowing of a Last Will and Testament for Ian Gordon Wilkinson, born 1961, and died May 19, 2021, practicing as a paralegal in the Cities of London, ON, and Woodstock, ON, please contact Jordan Palmer at 905-631-8830 or JPalmer@JBRPPC.com.

Kenneth Lloyd York

If you have knowledge of the whereabouts of the Last Will and Testament of Kenneth Lloyd York of London, ON, born on January 3, 1927 and deceased on May 15, 2022, please contact Debra Griffith at 226-980-8810 or tiera66@hotmail.com.

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Effective June 6, 2022, Harrison Pensa is relocating to the Dufferin Corporate Centre at 130 Dufferin Ave., Suite 1101.

Scott Petrie LLP is pleased to welcome Sam and Ben to the firm

SAMANTHA GORDON

sgordon@scottpetrie.com

Samantha is an associate with Scott Petrie's litigation group. She practices in the areas of commercial litigation, construction litigation, and professional negligence defence. Samantha attended law school at the Bora Laskin Faculty of Law at Lakehead University in Thunder Bay. She completed her articles at a large full-service law firm in London during which time she gained experience in a wide variety of practice areas including commercial litigation, professional negligence defence, and plaintiff personal injury. She was called to the Ontario Bar in June 2021.

BEN BLAY

bblay@scottpetrie.com

Ben practises in commercial litigation, including insolvency, secured transactions, Internet law, fraud recovery and investigation, contractual disputes, shareholder and partnership disputes, real estate litigation, creditor remedies, debt recovery, estate litigation, commercial tenancy matters, and defamation (particularly online defamation). Prior to his legal career, Ben worked for 10 years in the IT sector for two prominent insurance brokerages. Ben has argued before various levels of court up to and including the Court of Appeal for Ontario.



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