

THE  
MIDDLESEX LAW  
ASSOCIATION

# Snail



## November Issue

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and advertisers for supporting this  
month's edition of the Snail.

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to the next issue?

The deadline is noon on  
November 25, 2022

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# President's Message



Contributed by:

**Karen Hulan / Beckett Personal Injury Lawyers and MLA Board President**

## Practice Resource Centre (PRC)

The PRC continues to be a hub for members in many ways including to access computer services, research and to hold meetings. The MLA is aware that many members, particularly those practicing in family and criminal law, are often required to attend in person hearings and virtual hearings on the same day. With limited space and time, lawyers are forced to find a space in the PRC to attend a virtual hearing. We know that this manner of practicing law is not sustainable.

We reached out to Court Operations to inquire about granting access to courthouse witness rooms or pre-trial conference rooms so that you may attend both virtual and in person hearings. Unfortunately, we were advised that there are several requests to access those spaces and so they will not be made available to our members. This is an issue that requires the attention of the Ministry of the Attorney General. We will approach that office about the conditions in our courthouse and request space for you to attend hearings which may include physical changes to the PRC.

Those who have read my *Snail* messages over the last year know well that funding for our Practice Resource Centre has fluctuated. Securing adequate funding for our PRC remains a priority of this Board. We have met with the Legal Information and Resource Network (LiRN), throughout the year to provide input on the scope

of funding required to support our members' practices. We are supported in this work by the Federation of Ontario Law Associations (FOLA).

FOLA is comprised of 47 Ontario law associations, including the MLA. FOLA continues to advocate for county Practice Resource Centres and is making information available to current Benchers and future Bencher candidates about the vital role these centres have in supporting licencees and the legal services we provide to our clients. FOLA launched a successful advocacy campaign in support of PRCs. At October 27, 2022 convocation, Law Society Benchers passed the LiRN budget. We are pleased to see this support from the LSO and FOLA. Thank you also to Joanne Beasley and Hamoodi Hassan for writing letters of support. You may read their letters [here](#). While the LiRN budget passed, the MLA encourages members to write to Benchers and 2023 Bencher candidates about the importance of sustaining funding for PRCs. Please see the [FOLA website](#) for more about how you may contribute.

We are very pleased that Court Operations and the MLA will host a tour of retrofitted courtrooms. This will also be an excellent opportunity for new calls to the bar to see the inside of a courtroom (perhaps for the first time). This event will be offered as part of the holiday social the MLA is organizing for members. It will occur in the PRC in early December. Please watch for details in the weekly Wednesday email to members and the

December edition of the *Snail*. Thank you Darcy Lampkin, Manager of Court Operations, for working with us to plan this upcoming event.

## Continuing Professional Development (CPD)

In October, family law and estates law lawyers worked together to offer a joint seminar. Similarly, personal injury lawyers and family lawyers provided a seminar on the new tort of family violence. We would like to offer more of this cross-over approach to CPD in the future. Reach out to the Practice Area Committee leads listed at the end of the newsletter if you have an idea for programming.

Keep an eye on our [CPD page](#) for upcoming seminars. There is content that may be of particular interest to those who practice in the areas of personal injury, commercial and wills/estates law.

As November 11 approaches, we are reminded of the sacrifice that many Canadians have made and continue to make in times of war and in times of peace. They do so to protect our freedom and human rights. For those of us who have lived our entire lives in Canada, the freedom we enjoy can be taken for granted. This Remembrance Day I will be thinking not only of those who serve our country but those who are serving their own in the ongoing Russian/Ukrainian war.

Karen Hulan  
PRESIDENT

NOVEMBER



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## Insurance Claims Litigation Personal Injury Valuation

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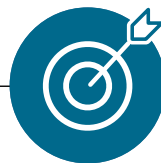
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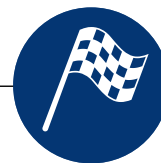
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# Practice Resource Centre News



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

## Legislative Research

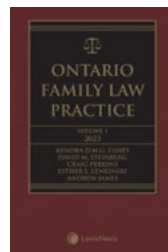
We've had a few questions lately (seriously, [email us](#) your questions!) dealing with older legislation that just isn't readily available through online sites like CanLII and e-Laws. We do have most of these items in print in the library, but even we don't want to be scanning from those old books when nice copies are available at no charge to Ontario lawyers. Where, you ask? [HeinOnline](#), of course! You can go right into its Canadian content area and drill right down to the year and volume you need for both the annual Statutes of Ontario and all of the Revised Statutes of Ontario, not to mention the statutes of other provinces and territories.

Of course, there's so much more on HeinOnline than old statutes. Do you need to see an old English case report out of The English Reports? Perhaps you need a journal article from The Advocate's Quarterly or The Canadian Journal of Family Law. Yes, you can get all of those things from your office.

The Law Society of Ontario has contracted for the provision of HeinOnline free of charge to all members directly from their offices. The LSO needs to confirm that you are a member in good standing, so you do need to contact them for the login information by emailing [refstaff@lso.ca](mailto:refstaff@lso.ca). HeinOnline gives you access to a wide variety of US, Canadian and International law journals, Canada's Supreme Court Reports and the full reprint of the aforementioned English Reports case reporter series. Contact the Law Society's Great Library today to get your login information and check out this great resource from the comfort of your home or office.

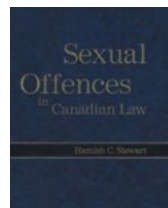
## Special Missing Titles Profile – Updated!

We profiled some missing books in last month's article but, sadly, we need to expand upon that piece for this month as it would appear our entire sexual offence section is missing from the collection. You may have honestly thought you had signed them out and do not realize we can't track them. We do not care how we get them back and no apologies are necessary, but we really do NEED all these books returned as they are popular titles in our collection. And, since a picture is worth a thousand words...



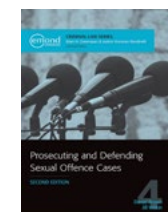
### Ontario Family Law Practice 2022

We are missing both volumes of the 2022 edition of this title.



### Sexual Offences in Canadian Law

We have updates waiting for this title!



### Prosecuting and defending sexual offence cases, 2nd ed.



### The trial of sexual offence cases, 2nd ed.

## New Books

Allen, John. **Handling provincial offence cases in Ontario 2022**, Thomson Reuters, 2022.

Archibald & Echlin. **Annual review of civil litigation 2022**, Thomson Reuters, 2022.

Harris, Joanna. **Child protection law in Ontario**, LexisNexis, 2022.

LSO. **Practice gems: administration of estates 2022**.

LSO. **Practice gems: Probate essentials 2022**.

Sullivan, Ruth. **Construction of statutes --7th ed.**, LexisNexis, 2022.

## Missing Books

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

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

Brown, Daniel. **Prosecuting and defending sexual offence cases, 2nd ed.**, Emond, 2020.

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

Fuerst, Michelle. **The Trial of Sexual Offence Cases, 2nd ed.**, Thomson Reuters, 2018



## Missing Books

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

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

Steinberg, et al. **Ontario Family Law Practice, 2022 edition, 2 vol.**, Lexis Nexis, 2022

Stewart, Hamish. **Sexual Offences in Canadian Law**, Thomson Reuters

Want to contribute to the next issue?

# DEADLINE IS NOON ON NOVEMBER 25

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.

Contact Tracy Fawdry

EXECUTIVE DIRECTOR

[tracy@middlaw.on.ca](mailto:tracy@middlaw.on.ca)



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# Treat domain names as valuable assets



Contributed by:  
**David Canton / Harrison Pensa LLP**

*A report about a candidate for re-election to London Council [being Rickrolled](#) is a reminder of how important it is to keep control of your domain names.*

His election signs include his name as a domain name. But if you go to the URL, it brings up the common internet prank, the [Rick Astley "Never Gonna Give You Up"](#) video. This [prank](#) is so common that the video has almost 1.3 billion views.

The candidate re-used signs from his previous election campaign but didn't renew the domain name when it expired in the interim. Apparently, no one on his campaign checked the domain content before putting the signs up.

Someone noticed that the domain name expired, bought it, and set up the Rickroll.

"Never Gonna Give You Up" is good advice for your domain names.

Every business, organization, or person with a domain name needs to:

- Register it in their own name (e.g. not a web designer, or advertising agency).
- Make themselves or a senior employee the administrative contact.
- Keep track of the expiry date and renew it.

## Domain Names Drive Traffic

Domain names are valuable assets. Losing one can be embarrassing at the very least. But if you have a transactional site, it can be disastrous and costly. You can lose all the traffic and benefits gained from SEO efforts. It can get very messy very quickly if the domain is in the name of someone else who obtained it for you, or if the administrative contact is a third party — that relationship goes sour — and they hold it for ransom.

While there are procedures available to get your domain name back, they take time and money. There are processes

available to change the administrative contact without the consent of the listed administrative contact. But because the risk of fraud and abuse is so high, the registrar puts you through a significant process to ensure that the domain name is not being hijacked.

This is one of those things that is simple to get right from the outset but can be a major pain in terms of loss and damage, as well as the time and money to fix if it goes wrong.

As a client once put it: "All this for a \$20 domain ... sad".

[David Canton](#) is a business lawyer and trade-mark agent with a practice focusing on technology issues and technology companies. Connect with David on [Twitter](#) and [LinkedIn](#).

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





## What is a DISABILITY FINANCE SPECIALIST™?

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  - ODSP, CPPD, Direct Funding, Passport Program
  - The Disability Tax Credit (DTC) and the Registered Disability Savings Plan (RDSP)
  - The Canada Disability Savings Grant and the Canada Disability Savings Bond
- Have a functioning understanding of the SABS, the HCAI system, the LAT, and the dispute process
- Understand the different heads of damages in Tort Law and how they are treated by ODSP
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- Understand the requirements of The Bench when it comes to PUD cases
  - Be able to prepare financial and management plans that will satisfy these requirements, in particular the SDA
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# Mushroom Madness & *Mens Rea*



Contributed by:  
Carolynn V. Conron, LL.M. / Conron Law Professional Corporation

*In the cases of R. v. Brown, 2022 SCC 18 and R. v. Sullivan, 2022 SCC 19, the Supreme Court of Canada (SCC) weighed in on the constitutionality of Section 33.1 of the Criminal Code, which was enacted after the SCC's decision in R. v. Daviault, [1994] 3 S.C.R. 63, where the court held that self-induced intoxication can be a defence to a general intent offences, including assault and sexual assault*

Section 33.1 was enacted as a matter of policy to eliminate this defence by legislating that individuals cannot rely on self-induced intoxication to negate their *mens rea* for such crimes.

The constitutional challenges to this provision harken to the fundamental tenets of criminal law in a free and democratic society where the stigma associated with societal censure resulting from a criminal conviction is only appropriately attributed to those who not only commit the *actus reus* (guilty act) but those who formed an intention to do so (*mens rea*). An enlightened criminal justice system recognizes that individuals are only justly convicted when someone with an operating mind intended to commit a guilty act.

The "intention" or guilty mind in the *mens rea* analysis can be held to different standards. Specific intent, general intent, recklessness or wilful blindness can suffice depending on the nature of the crime. First degree murder, for example, requires proof of both planning and deliberation. Proof

of a high specific intent is required to establish the *mens rea* element of the offence, not simply an unlawful death. In contrast, assault, the unwanted application, or threat of force with the present ability to effect it, is a crime of general intent. It can be committed without a specific intent to do so.

In the case of *Brown*, the accused had consumed alcohol and psilocybin "magic" mushrooms. He was in a psychotic state with no willed control over his actions and broke into a nearby house, attacked the occupant and then broke into another residence, causing property damage whereupon the occupants called the police. He was charged with break and enter and aggravated assault with respect to the first residence and break and enter and mischief to property over \$5,000 for the second house.

At trial, *Brown* was successful in arguing that s. 33.1 violated the principles of fundamental justice and the presumption of innocence guaranteed by ss. 7 and 11(d) of the *Charter*. The trial judge found the violations were not saved by s. 1. *Brown's* defence of extreme intoxication akin to automatism was accepted at trial and he was acquitted of all charges.

The appeal made its way from the Alberta Court of Appeal to the SCC where the unanimous decision of the court was delivered by Kasirer J. The Court held and affirmed in *Sullivan* and *Chan* that section 33.1 trenches on fundamental principles at the core of Canada's criminal law system by creating a liability regime that disregards principles meant to protect the innocent. "[It]... communicates the message that securing a conviction is more important than respecting the basic principles of justice."

When enacting s. 33.1, Parliament considered an extensive record showing a strong correlation between alcohol and drug use and violent offences, particularly against women. However, as it was drafted, s. 33.1 had the potential to convict the morally innocent who did not possess the minimum level of fault required since it did not contain a criterion of objective foreseeability, making it impossible to say who, among those who voluntarily ingests intoxicants, has the degree of blameworthiness that would justify the stigma and punishment associated with the underlying offence. In other words, it allows for convictions without proof of *mens rea*.

The court found that there are other ways for Parliament to legislate their socially legitimate goals of protecting the equality and security rights of victims vulnerable to intoxicated crime without impacting on the principles of fundamental justice.

The *Sullivan* and *Chan* appeals were heard together for the purpose of the latter decision.

*Sullivan* had voluntarily taken a prescription drug and while impaired had attacked his mother with a knife and caused serious injuries to her. He was charged with aggravated assault and assault with a weapon.

*Chan*, had fallen into an impaired state after he voluntarily ingested magic mushrooms. He killed his father using a knife and seriously injured his father's partner. He was charged with manslaughter and aggravated assault.

At trial, both accused argued their state of intoxication was so extreme that their actions were involuntary and could not be the basis of a guilty verdict for the violent offences of general intent. *Chan* also argued his



underlying brain injury was a significant contributing cause.

At Sullivan's trial, the judge accepted he was acting involuntarily but found that s. 33.1 prevented him from accepting the defence of extreme intoxication akin to automatism. At Chan's trial, the judge dismissed his constitutional challenge to s. 33.1. His brain trauma was not found to be the cause of his incapacity and he was convicted of both charges.

The Ontario Court of Appeal heard both appeals together and entered an acquittal for Sullivan, setting aside his convictions. They ordered a new trial for Chan since no finding of fact had been made in respect of non-mental disorder automatism. The matters were appealed to the SCC.

Relying on the companion appeal of *R. v. Brown*, 2022 SCC 18, and the principles of *stare decisis*, the SCC held that s. 33.1 violates ss. 7 and 11(d) of the *Charter* and is of no force and effect, pursuant to s. 52(1) of the *Constitution Act*, 1982.

Notwithstanding the declaration of constitutional invalidity of s. 33.1, the Court confirmed the common law rule that intoxication is not a defence to crimes of general intent, so the benefits tied to accountability and protection will continue to be met.



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about it...

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## Amin Law and Menear Worrad & Associates Announce Merger

MENEAR WORRAD + AMINLAW

LONDON, ON, November 1, 2022 - It is with great pleasure that we announce that the law firm of Amin Law Professional Corporation will be working in association with Menear Worrad & Associates.

The new association, **Menear Worrad Amin & Associates** came into effect on October 1, 2022. The firm will be operating from **478 Waterloo Street, London**, with the coalescing of their core values of "wisdom focused legal solutions" and "specializing in service", which will continue to be the cornerstones of the association moving forward.

Existing clients of both law firms can expect the same high level of service to which they are accustomed. The complement of lawyers at Menear Worrad Amin & Associates continues the legacy of carrying out their vocations as practitioners, not with a sense of entitlement, but in sincere Christian gratitude and appreciation for the opportunity to work and to serve others.

For further information, please contact:

Gail Twohey, Office Manager,  
Menear Worrad Amin & Associates  
T: (519) 672-7370  
E: gtwohey@menearlaw.com

To learn more about the history  
of both law firms, please visit:

[www.davidaminlaw.com](http://www.davidaminlaw.com)  
[www.menearlaw.com](http://www.menearlaw.com)

# Hassan Law Lawyers support FOIA campaign & LiRN



Contributed by:

**Hamoody Hassan / Hassan Law Lawyers**

I have been a frequent visitor to the Great Library at Osgoode Hall.

I have been to many other county and district libraries. As a long time member of the LSO, OTLA, OACPL, Middlesex Law Association, practicing for over 43 years (or at least visited for 41 until Covid hit in March 2020 until just last week!), I visited law libraries almost daily. The London Middlesex Library was where I often met with my lawyer colleagues (both former and present in large firms and small) as well as articling and other students. As senior counsel of Hassan Law and having worked in partnerships and a large firm, I was almost a daily visitor to the London and Middlesex County Law Library. We law association members and guests, read, researched, attended seminars, webinars, and social events for the profession including OBA & CBA.

Whenever I travelled to other courthouses in places around the GTA, Windsor, Chatham, Sarnia, St. Thomas, Hamilton, Halton, Ottawa, Goderich, Barrie, and many other courts including the court of Appeal and Divisional Courts, I always went to the library to do research, quietly review files for court, conduct research updates, read and just relax.

*Often, I met colleagues almost daily in the MLA lawyer's lounge and we would discuss law and events in courts. I enjoyed time with many colleagues doing likewise on court breaks.*

The librarians - some of whom were parttime in smaller libraries - were always helpful and attentive whenever on duty and hosted lawyers local and visiting. Our London-Middlesex County law librarians are great! If I need urgent research they unfailingly will help.

I love the Library so much that on the occasion of my 40th year of my call to the bar, I organized the creation of an Indigenous Medicine Wheel project at our office and then finished it at the London and Middlesex County Law library. This project involved installing small mosaic coloured glass tiles in a specific order and layout, under the guidance and supervision of Elder Brenda Collins. During this exercise we shared food, stories, and had good fun. I greatly enjoyed donating this Medicine Wheel installation. It was an important acknowledgement as a live project that engaged quite a few people with lawyers, librarians, students, and Indigenous guests who throughout the day completed this important piece of Indigenous spirituality. The Medicine Wheel remains in our Middlesex-Law Library today.

I have always loved libraries, but I especially love the London and Middlesex County Courthouse library and the librarians. Over the years I have gotten to know every librarian and assistant well. They are invariably, thoughtful and helpful at all times.

While technology may change it is no substitute for all the things well informed librarians do to support the many needs of practitioners and the legal profession. As accessibility becomes more important, librarians likely will acquire new skills and show

leadership at the centre of accessibility campaigns in our profession. Libraries do not just hold books and computers; the librarians especially can help in any research or communication emergency at the courthouses; they can add a supportive voice on a bad day, and can bring a solution unexpectedly to a difficult problem. They often host important practice or professional meetings. Sometimes (well almost always they have good cookies)!

Ontario's libraries and librarians are essential as not all licensees and law firms can afford to resource their law firm's technology or research needs or training. Librarians ensure they provide support. To do so, law libraries and librarians require ongoing essential funding, training, resources and support. If all required staff are to help law students, articling students, lawyers and paralegals, the justice system will remain accessible. Libraries enable each participant to do their job while serving the public interest.

*Law libraries and librarians are essential to the delivery of justice in Counties and Districts throughout Ontario.*

Reducing budgets for libraries is a big mistake and on the contrary they should be bolstered and enabled to deliver the best in person or virtual accessible services for the public and licensees.

Yours very truly,

Hamoody Hassan  
Senior Counsel & Mediator  
Hassan Law Lawyers



*If you are facing a serious charge your first call should be to James Zegers.*

Having faced a charge that would have altered the rest of my life, I can confidently tell anyone **I would trust no other criminal defense lawyer. James's performance at trial was masterful.** I was in awe of the time and detail that was put into the defense, and his ability to think quickly and change the direction of questioning in the moment if needed.

*Thank you James for fighting for my life."*

### **Zegers Criminal Law Office**

**JAMES ZEGERS / LAWYER**

585 Talbot St., London ON N6A 2T2

james@zegers.ca / 519.673.0440

**zegers.ca**

## 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

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**John Nicholson**

519-914-3358

[jnicholson@cohenhighley.com](mailto:jnicholson@cohenhighley.com)

**Hilary Jenkins**

519-672-5666 x7301

[hilary.jenkins@mckenzielake.com](mailto:hilary.jenkins@mckenzielake.com)



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WHY THEY MATTER

## ENSURING COMPETENCY AMONG THE PRACTICING BAR

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1

### EQUAL ACCESS FOR ALL LAWYERS - REGARDLESS OF LOCATION!

- All lawyers, not just those practicing in large firms in major urban centres, require access to current and historical legal information

2

### THIS PHYSICAL SPACE IS IMPORTANT FOR PRACTICAL & PROFESSIONAL REASONS

- Local & visiting lawyers often need to update cases mid-trial & should have access to similar resources from library to library

3

### CONSTANTLY UPDATED RESOURCES = HIGH QUALITY SERVICES

- Legal texts and databases are very expensive and lawyers practicing in smaller firms rely on law libraries for these

4

### BULK PURCHASING = SAVINGS!

- Resources offered through LiRN affords access information that is otherwise unaffordable to sole and small practicing lawyers - saving sole practicing lawyers almost \$8,300/yr

5

### IT'S THE LSO'S MANDATE TO ENSURE COMPETENCY

- Sustainably funding ensures that the public is served by lawyers with the highest standards of learning and competence. Cutting law library budgets works against this goal

# LiRN Advocacy Request - Reminder

*It's critical that they allocate sufficient funding to ensure our Law Libraries are able to meet the needs of Ontario's lawyers.*

FOLA has launched another Law Library/Practice Recourse Centre advocacy campaign geared towards Benchers and bencher candidates.

To help with their campaign, FOLA would like letters sent to Benchers from individual law association members that highlight the importance of their local law library.

To better ensure that letters are personal, FOLA will provide talking points to include in these letters rather than send out a template. Talking Points and Bencher emails can be found on FOLA's [Courthouse Library Action Centre](#) page. If you do send a letter, please either cc Katie at [katie.robinette@fol.ca](mailto:katie.robinette@fol.ca) or send a copy of your letter once it has been sent. Alternatively, FOLA would be happy to send your letter on your behalf.





# 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 information below on how to donate to the Ukrainian Canadian Congress (UCC).

All contributions are sincerely appreciated and help to address a wide range of needs in the Ukrainian community.

*Please consider a donation. Every little bit counts.*

**DONATE HERE**

## Criminal Lawyers Needed



The Assistance Services Group is an award-winning organization that provides premium, private label contact centre solutions for many of Canada's largest organizations.

Our Legal Assistance Division is seeking lawyers to respond to the toll-free Duty Counsel telephone service.

We require qualified lawyers to fill a variety of overnight shifts commencing at 8pm or later. Successful candidates can complete shifts from their home or office.

**Successful candidates should:**

- Be in Private Practice
- Have LawPRO coverage

**Assistance  
Services Group**  
a SYKES company

Please send your resumé to:

Riyad Bacchus, Director – Legal Assistance Division  
Riyad.Bacchus@sykes.com • T: (519) 953-3416 • F: (888) 963-1035



# In-House Counsel Compensation & Career Survey Report



Contributed by:

**Grace Smith / MLA In-house Practice Area Subcommittee Lead**  
Solicitor I, City Solicitor's Office, City of London

*As in-house counsel for a municipality, each year for the past five years, I have compiled data for various benchmarking measures for the City of London's legal department so that our department can be compared to that of other municipalities across the country.*

The measures are not always comparable for all municipalities, but it is helpful to get a general sense of, for example, what the operating costs for each legal department is, and to have data which may inform business practice improvement initiatives.

The Canadian Corporate Counsel Association in collaboration with the Counsel Network released its 2022 In-House Counsel Compensation & Career Survey Report earlier this year, which provides key information for industry compensation, benefits, work hours and job satisfaction for in-house counsel. Naturally, the report piqued my interest as it provides benchmark data about all in-house and corporate compensation within Canada, which may be of assistance to employers who are looking to attract and retain in-house talent for quality service delivery in an increasingly competitive labour market. Some highlights of the report are below:

## Respondent Demographics

A total of 1,009 respondents took part in the survey, 36% of whom were located in Ontario. 55% of those

respondents identified as female, while 43% identified as male. The average age of in-house counsel was 43, with the 70% of respondents aged 35-54.

## Findings

- National Average Base Salary: In 2022, the national average base salary for in-house counsel was \$180,000, which was higher than what was reported in 2020 (\$167,500). The highest average base salaries are in the resources/mining/forestry industry (\$233,000), followed by retail/hospitality/consumer products, manufacturing/automotive/chemical, oil and gas, real estate, information technology and pharma/medical. Those working for government, Crown corporations and not-for-profits reported the lowest base salaries and represented 23% of all respondents.

In Ontario, the average base salary for in-house counsel was \$190,500, which was higher than what was reported in 2020 (\$171,500). Financial services/insurance/banks was the top sector employing in-house counsel and the sector with the highest base salary (\$202,000).

- Gender wage gap: In 2022, the average male base salary was \$193,000. The average female base salary was \$169,000. The gender wage gap reported in 2020 was \$19,000; it has grown to \$24,000 in 2022. There are substantial gender differences at the higher wage level, but women were paid less than men at all job role levels.

- Work Logistics: 58% of respondents reported that they are currently working remotely full time. 65% predicted that they would be moving

to a hybrid work model in the near future.

- Job Content: Respondents reported on average spending 67% of their time on purely legal work. General findings also included that the proportion of time spent on purely legal work had a positive correlation with the number of employees and a negative correlation with seniority. The top four tasks included preparing legal documents, advising on legal aspects of internal policies, liaising with external legal team and leading/participating in negotiations.
- Work Hours: The reported number of hours in an average work week was 47, which was not a significant change from what was reported in 2020.

The full report can be found on the [CBA website](#)







**LPT**

Evaluative Mediation and  
Arbitration Services

**Email:** [lyndapayton@lptmediation.ca](mailto:lyndapayton@lptmediation.ca)

**Phone:** 519-657-1522

**Website:** [lptmediation.ca](http://lptmediation.ca)



The Honourable Lynda Payton Templeton is pleased to announce the opening of **LPT Evaluative Mediation and Arbitration Services** commencing November 16, 2022. These services include remote-based or in-person mediation, arbitration and case-management.

Her 23 years of experience as a trial judge in the Superior Court of Ontario makes her uniquely qualified to offer effective, alternative, and less expensive solutions to family, estate and civil law disputes.

Let her help you and your clients achieve a fair and meaningful resolution.





# October 2022 Continuing Professional Development (CPD) Highlights

## *Real Estate Update – Fall 2022 CPD*



*Contributed by:*  
**Jacqueline Fortner/  
MLA Real Estate  
Subcommittee Lead**

This CPD was held virtually on October 19 and was well-attended despite the lack of a roast beef lunch. Jeffrey Lem, Ontario's Director of Titles, shared his "23 Things for 2023" that real estate lawyers should be on the lookout for; he also made it clear that he is owed several roast beef lunches that he's missed on account of COVID-19 and virtual CPD programs.

MLA member and local farmer John Goudy took participants through a whirlwind tour of over 180 years of drainage legislation in Ontario. MLA member and Adjunct Professor of Real Estate Law at Western University Michael Lamb finished the program by

taking the real estate bar "back to the basics", reviewing the standard clauses of Agreements of Purchase and Sale.

Thank you to Jacqueline Fortner, Jennifer Foster, and Tracy Fawdry for organizing the event, to Matthew Wilson for emceeing, and to our sponsors, Stewart Title and LCS (Lawyer Conveyance System)!

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## *What Every Family Lawyer and Civil Litigator Needs to Know About the New Tort of Family Violence CPD*



*Contributed by:*  
**Tinashe Madzingo /  
MLA Personal Injury  
Subcommittee Lead**

On Thursday October 20, the Middlesex Law Association welcomed four esteemed panelists to speak and inform the membership about the new

Tort of Family Violence. Two panelists from the Family Law bar and two panelists from the Personal Injury bar came together to discuss the ins and outs of this new civil remedy.

The panelists gave an engaging presentation and answered audience questions following the well-attended presentation. Those in attendance learned, among other things, the anatomy of the new Tort; practical and procedural implications; when to seek the advice of a family or civil lawyer; and how the new Tort interacts with existing torts.

The Middlesex Law Association would like to thank our panelists Laura Camarra from Camarra Law, Anju Fujioka from Beckett Personal Injury Lawyers, and Professor Claire Houston from Western Law for sharing their time and expertise with our membership.



## CPD Summary

# Tidying up end of life issues with MAiD (Medical Assistance in Dying)



Contributed by:

**Jennifer Wall, MLA Treasurer, Partner / Harrison Pensa Lawyers**

**September 20, 2022,  
1:00 PM – 3:00 PM**

Medical Assistance in Dying (MAiD) is a relatively new option for patients in Canada. On September 20, 2022 I presented “Tidying up End-of-Life Issues with MAiD” with Dr. Emily Jones, an internal medicine physician at London Health Sciences Centre and a practitioner of MAiD. The CPD covered both how we got to the current system through court decisions and legislative change, and where we are now in terms of how MAiD is accessed, eligibility requirements, and the experience for people who choose MAiD.

MAiD is a process where a person seeks and obtains medical assistance to end their life. This is accomplished through a physician or nurse practitioner administering a substance to them, at their request, that causes their death, or by prescribing or providing a substance to a person at their request that the person then self-administers to cause their death. Canada is one of several jurisdictions in the world where MAiD is available, and is a highly regulated option with safeguards to protect patients.

Many of us will recall reading the court decisions that were part of the process that led to the current MAiD regime in Canada as part of our constitutional law classes in law school. The current MAiD regime starts with the Supreme Court’s decision in *Carter v. Canada (Attorney General)* in 2015, which held that the prohibition on physician-assisted dying for competent adults who seek death as a response to a grievous and irremediable medical

condition is a breach of s. 7 of the *Charter*. After a fast but extensive consultation process in the period while the declaration of invalidity was suspended, the federal government amended the *Criminal Code* to provide for exceptions to certain provisions dealing with homicide, assisted suicide, and administering a noxious substance. The *Criminal Code* now includes a detailed scheme covering eligibility and safeguards for MAiD. The Ontario provincial government also amended several pieces of provincial legislation to accommodate MAiD deaths, including to protect eligibility for life insurance payments. The *Criminal Code* was amended again in response to *Truchon v. Canada (Attorney General)*, a 2019 Quebec Superior Court case, to broaden the eligibility for MAiD to include patients whose deaths were not reasonably foreseeable. Conscientious objectors in the health care system, including physicians, nurses, pharmacists, administrators, and hospitals may decline to participate in MAiD based on their ethical beliefs. MAiD is the topic of ongoing study and debate in the government, as recently as a Senate debate in October 2022.

Dr. Jones reviewed the current system for MAiD, with a focus on how it is handled in Southwestern Ontario. She distinguished MAiD, where a practitioner provides or administers a substance that intentionally brings about a death at the patient’s request, from palliative care, which focuses on improving quality of life and managing symptoms to help patients live and die well.

To be eligible for MAiD, patients must

be eligible for publicly funded health care services in Canada (or be in the applicable waiting period), be 18 years of age or older, be capable of making health care decisions, and be making a voluntary request. In order to qualify for MAiD, the patient must have a grievous and irremediable medical condition. This means that they must meet all of the following tests:

- Have a serious and incurable illness, disease, or disability; and
- Be in an advanced state of irreversible decline in capabilities; and
- Be enduring physical or psychological suffering, caused by the medical condition of the state of decline, that is intolerable to the person and cannot be relieved under conditions that they consider acceptable.

A patient’s eligibility for MAiD must be confirmed in writing after an independent assessment by two physicians or nurse practitioners, one of whom will be the provider of MAiD. The patient’s informed consent is confirmed at each assessment.

MAiD cases fall into two categories. In Track One cases, death must be reasonably foreseeable from the medical reason for which MAiD is requested. In Track Two, which came about as a result of *Truchon*, death does not need to be reasonably foreseeable. In Track Two cases there are additional safeguards including a 90-day assessment period and a requirement that if neither of the two clinicians who assess eligibility has expertise with the condition causing the person’s suffering, they must consult with a clinician who has that expertise.



A recent development is the availability of a Waiver of Final Consent, a written arrangement between a patient

who is fully eligible for MAiD and the practitioner providing MAiD when the patient is at risk of losing their capacity to give consent between the date that the assessment process is completed and the date of the provision. When a waiver is used, the provision must be in accordance with the terms of the agreement between the patient and the provider and no consent is required from a third party, even if the patient has signed a Power of Attorney for Personal Care.

In 2021, 3.3% of all deaths in Canada were MAiD provisions. The incidence

of people choosing MAiD is increasing over time, although most patients also received some palliative care and/or disability support services before their deaths. The government is currently considering expanding the eligibility requirements for MAiD and this promises to be an area where more legislative change is coming.

# Will Notices

**Felicien Joseph Cote**

Anyone knowing of a Last Will and Testament for Felicien Joseph Cote, born May 13, 1927 and died April 8, 2021 of London, Ontario, please contact David Amin or Allegra Curran at 226-224-8823, email: [info@davidaminlaw.com](mailto:info@davidaminlaw.com).

## Robert Gordon Hill

Anyone knowing of a Last Will and Powers of Attorney for Robert Gordon Hill, born in 1939, and residing at 182 Maple St., West Lorne ON, please contact Joseph Mann at 519-768-1790, email: [jsmatfab@start.ca](mailto:jsmatfab@start.ca).

## Natalia Kiraly

Anyone knowing of a Last Will and Testament for Natalia Kiraly, born December 9, 1950, died May 27, 2022, last known residence 134 Main Street, Courtland, Ontario, please contact Tania Marcon at Polishuk, Camman & Steele at 519-858-8005, email: [tmarcon@pcslawyers.com](mailto:tmarcon@pcslawyers.com).

**Godfrey Bernard Mitchell**

Anyone knowing of a Last Will and Testament for Godfrey Bernard Mitchell, born May 23, 1944, died June 25, 2020, last known residence 87 Tumbleweed Crescent, London, Ontario, N6E 2N6, please contact Laverne Foran at Philip Morrissey's office at 519-679-7770 or [laverne@pbmorriseylaw.ca](mailto:laverne@pbmorriseylaw.ca).

**George Jason Phillips  
& Judith Anne Phillips**

Anyone knowing of a Last Will and Testament for George Jason Phillips (born December 27th, 1941) & Judith Anne Phillips (born October 31st, 1940), last address of 58 Donnybrook Rd. London Ontario N5X 3C8, Ontario, please contact Dan Phillips at 519 860-6490, email: [dphillips78@hotmail.com](mailto:dphillips78@hotmail.com).

**George Jason Phillips  
& Judith Anne Phillips**

Anyone knowing of a Last Will and Testament for George Jason Phillips (born December 27th, 1941) & Judith Anne Phillips (born October 31st, 1940), of London, Ontario, please contact Chris Phillips at 519-850-3467, email: [caphillips72@hotmail.com](mailto:caphillips72@hotmail.com).

**Dorthy Van de Valk**

Anyone knowing of a Last Will and Testament for Dorthy Van de Valk, born June 6, 1940 and died Oct 18, 2022 of London, Ontario, please contact Lynn Constantineau at 705-975-4185 email: [lynnco@mail.com](mailto:lynnco@mail.com).



## November 2022

# Middlesex Law Association Newsletter

## EDITOR

Tracy Fawdry  
tracy@middlaw.on.ca

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## DESIGN

jason@carvedesign.ca

## REGISTRATION OPEN

### Navigating Governance Challenges in Closely Held Companies

Wednesday, November 2nd, 2022  
1:00 – 2:00 p.m. / online via Zoom

Chair: Jennifer Hawn, Polishuk Camman & Steele

In this program, Susan Kushneryk and Eric Morgan, Kushneryk Morgan LLP will discuss how lawyers who work with closely held companies can navigate governance challenges, including complex legal frameworks and ethical issues involved in the governance of companies. They will provide an overview of governance legal principles, identify common sources of conflict in closely held companies and how to deal with them, and discuss how these conflicts can be avoided and resolved, both in and out of court.



*\*This program contains 45 minutes of Professionalism content and 15 minutes of Substantive content.*

### 18th Annual Wills, Estates & Trusts Conference

Thursday, November 10th, 2022  
9:00 a.m. – 12:00 p.m. / online via Zoom

Co-chairs: Lou-Anne Farrell, Harrison Pensa, LLP  
Justin Newman, Harrison Pensa, LLP  
Ian S. Wright, Ian S. Wright Law



*\*This program contains 45 minutes of Professionalism content and 2 hours of Substantive content.*

#### Our Speakers:

Kerry Rizzo, CFP, CIM, FCSI, Senior Investment Advisor - BlueRidge Private Wealth Management  
Lou-Anne Farrell, Counsel, Harrison Pensa LLP  
Dawn Phillips-Brown, Madorin, Snyder LLP  
Erin Naylor, Scott Petrie LLP

#### The Conference agenda will cover:

- A refresher on RDSPs, Henson Trusts and Disability Trusts
- A caselaw update with 4 cases being reviewed
- Documenting Your File & Production Request in Estate Planning from LawPro Preferred counsel
- New Estate forms and procedures - 2022 changes reviewed
- Q&A focussed on practice challenges and developments in the COVID pandemic recovery

### Catastrophic Impairments: Pediatric Traumatic Brain Injuries

Wednesday, November 16th, 2022

1:00 – 3:00 p.m. / online via Zoom

Chair: Tinashe Madzingo, Diamond & Diamond Lawyers



*\*This program contains 30 minutes of Professionalism content and 1 hour, 30 minutes of Substantive content.*

#### Our Speakers:

Andrew Leroy Rudder, Rudder Law Group  
Evelyn ten Cate, Partner, Fosters Law, LLP  
Kirsten Smith, Pursuit Health Management, MSc(OT), OT Reg. (Ont.)

#### Session overview:

Please join our esteemed panelists as we discuss Catastrophic Impairments: Pediatric Traumatic Brain Injuries.

With the aid of an anonymized, real-life fact scenario, our panelists will present an overview of the strategic approaches and problems that arise when dealing with catastrophic brain injuries for children, and the new definition under Section 3.115 of SABS.

Andrew Rudder, a personal injury lawyer with the Rudder Group, will discuss catastrophic injury and strategy from a personal injury perspective; Evelyn ten Cate, a partner with Fosters Law and an insurance defense lawyer, will discuss catastrophic injury and strategy from a defense perspective; and Kirsten Smith will discuss

## WATCH WEEKLY EMAILS!



### Courthouse Tour & Holiday Social

Date TBD

MLA Practice Resource Centre/Courthouse Library

# Subcommittee Recruitment:

## *Be a Leader in Your Practice Area*



Contributed by:  
**Jake Aitcheson / Lerner LLP**  
and MLA Board Vice President



the MIDDLESEX  
LAW ASSOCIATION

*We were excited to receive volunteer interest after our last issue and the Middlesex Law Association continues to actively recruit 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 delivers 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: **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 subcommittee's 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 Tracy Fawdry, 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, please reach out to me directly at [jaitcheson@lerner.ca](mailto: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](mailto:jaitcheson@lerner.ca),

VICE PRESIDENT, MLA BOARD OF TRUSTEES

**if you are interested in being involved in any of the subcommittees.**

Criminal, Family, Real Estate, Corporate/Commercial, In-House, Personal Injury, Wills, Estates and Trusts, EDI/Professionalism, Small Firms/Sole Practitioners



# Harrison Pensa Wills & Estates Law

## WE ARE PROUD TO WELCOME GEMMA CHARLTON

Gemma joins Harrison Pensa as a Partner with the Estate Litigation group.

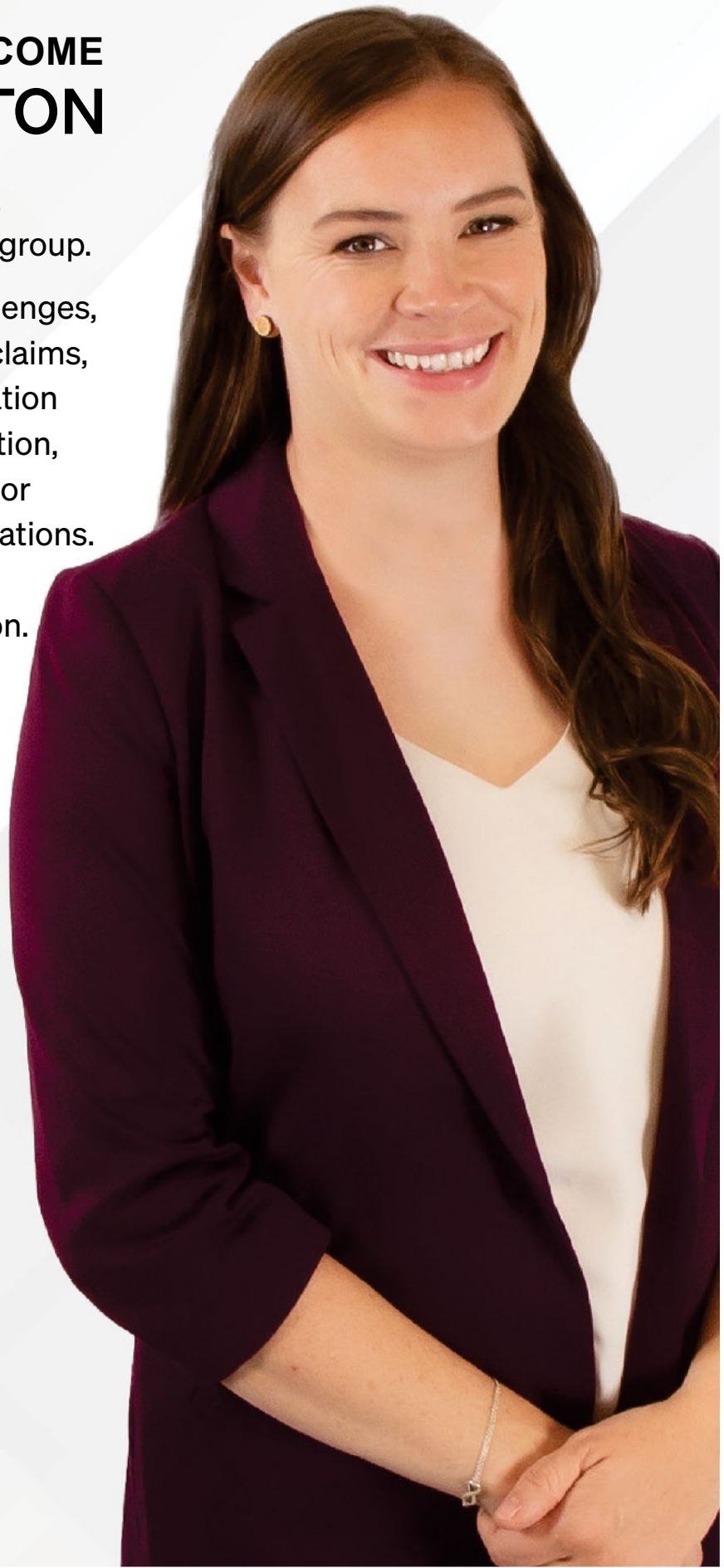
She represents clients in will challenges, dependant and spousal support claims, estate accounting and administration disputes, Power of Attorney litigation, capacity litigation, trustee/executor disputes and guardianship applications. She also has experience in estate planning and estate administration.

Gemma is currently the Chair of the Estate Planners' Council of London.

[gcharlton@harrisonpensa.com](mailto:gcharlton@harrisonpensa.com)  
(519) 675-4109

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[harrisonpensa.com](http://harrisonpensa.com)





# Member Updates

*Our 2022-2023 members' directory, generously sponsored by Davis Martindale LLP, has been published and copies are available for pickup from the MLA Practice Resource Centre during normal office hours. You can always access the up-to-date membership details through our [online members' directory](#).*

**Riyad Bacchus** – email has changed to [riyad.bacchus@sitel.com](mailto:riyad.bacchus@sitel.com).

**Gemma Charlton** – is now practicing at Harrison Pensa LLP, direct ph: 519-675-4109, [gcharlton@harrisonpensa.com](mailto:gcharlton@harrisonpensa.com)

**DeMelo Law** – Cassandra DeMelo and Katie Heathcote have entered into partnership and the firm is now known as DeMelo Heathcote.

**Jingkun Dong** – new Call practicing at XS Law Professional Corporation, direct ph: 647-670-2286, [jing@xsunlaw.ca](mailto:jing@xsunlaw.ca).

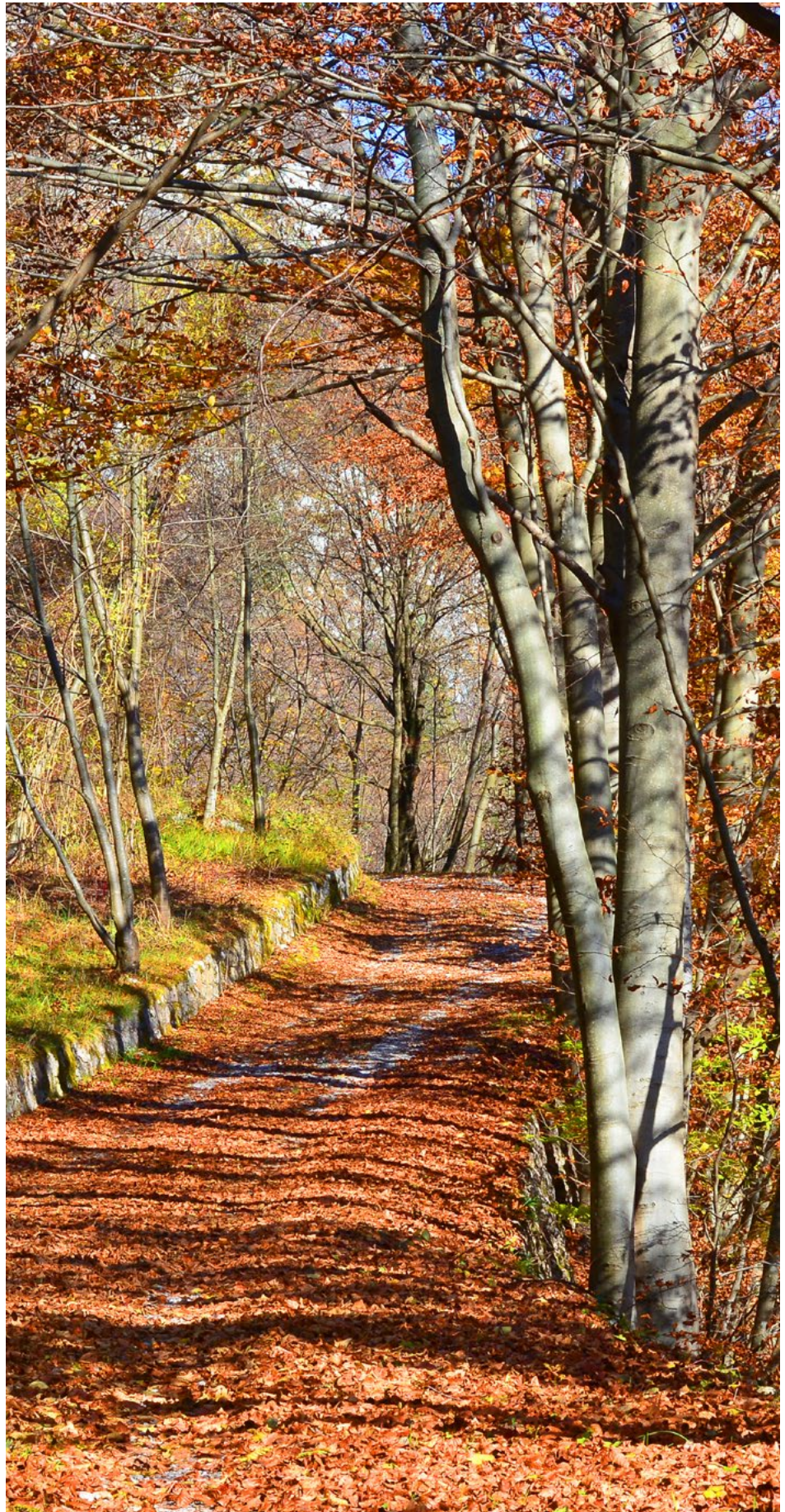
**Kristen King** – is now practicing at Wallace Smith, ph: 519-645-1999 x39, [kking@wallacesmith.ca](mailto:kking@wallacesmith.ca)

**Paul Ledroit** – email should be [pledroit@ledroitsabo.com](mailto:pledroit@ledroitsabo.com).

**Felicia Lozon** – new member at Advocates LLP, ph: 519-858-8220 x240, [f.lozon@advocatesllp.com](mailto:f.lozon@advocatesllp.com).

**Thomas Petrella** – new Call practicing at Intact Insurance, ph: 519-432-4282 x47978, [thomas.petrella@intact.net](mailto:thomas.petrella@intact.net).

**Ondrej Sabo** – email should be [osabo@ledroitsabo.com](mailto:osabo@ledroitsabo.com).





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### MLA & Practice Resource Centre Staff

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**Cynthia Simpson**  
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**Shabira Tamachi**  
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[shabira@middlaw.on.ca](mailto:shabira@middlaw.on.ca)



## Core Purposes:

1. Providing information resources
2. Providing professional development
3. Providing professional networking
4. Advocating for lawyers' interests
5. Providing a physical space for lawyers