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ASSOCIATION

Snail



March Issue

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President's Message



Contributed by:

Jake Aitcheson / Lerner LLP

During my tenure on the Board of Trustees, the Middlesex Law Association has undergone a transformative evolution in almost all respects. That transformation continued at the Annual General Meeting held on February 28. At that time, motions were passed by the membership to permit Paralegal Professionals access to the Practice Resource Centre, to permit Paralegal Professionals membership into the Middlesex Law Association, and to permit one Paralegal Professional to sit on the Board of Trustees. Given the overwhelming response from the membership on these matters, the Board of Trustees is looking forward to engaging with the more than 300 Paralegal Professionals practicing in this region and welcoming them into the MLA.

While we work to expand the membership of the Association, we will not lose focus of our core mandate – to provide maximum value and essential services to our membership. To that end, I am excited to be working closely with this year's group of Trustees. This year's Board of Trustees are:

Rasha El-Tawil (Siskinds LLP),
Jacqueline Fortner (Dyer Brown LLP

Law Firm), Jennifer Hawn (Spero Law), Karen Hulan (Beckett Personal Injury Lawyers), Grace Smith (City of London), Nicola Circelli (Nicola Circelli Law), Hilary Jenkins (McKenzie Lake), John A. Nicholson (Cohen Highley LLP), Anna Szczurko (Siskinds LLP), Jennifer Wall (Harrison Pensa LLP), Natalie Carrothers (Lerner LLP), Leslie Ibouily (Elgin Oxford Legal Clinic), Geoff Snow (Snow Lawyers), Gregory R. Willson (Lerner LLP)

The Executive Committee is comprised of myself, Jennifer Wall as Vice-President, Nicola Circelli as Treasurer, Jacqueline Fortner as Executive member-at-large, and Karen Hulan as Past President.

During the next year, the Board of Trustees will be focused on cementing our sub-committee structure and social and CPD offerings. The Board will continue to operate practice group subcommittees in the areas of real estate; wills, estates, and trusts; family; criminal; corporate commercial (litigation); corporate commercial (solicitor); personal injury; small firms and solo practices; in house counsel; and EDI and professionalism. The purpose of the sub-committee will

continue to be offering programming and content that is informative, engaging, and local. We encourage all members to reach out to our Executive Director, Tracy Fawdry, if you're interested in working with the sub-committees in any capacity. It is a great networking opportunity and will help you become a leader in your practice area. At the Board level, we will continue to work to ensure consistency of programs and social events across all practice areas. More information will be released about this in the upcoming months.

Finally, I want to thank our outgoing President, Karen Hulan. Karen joined the Board in 2013 and served as President of the MLA since the fall of 2021. As a Board, we benefited from her hard work, dedication, and leadership. With an unwavering positive attitude, she stewarded the Board through a period of transition and was integral in reshaping the organization. Her significant and invaluable contributions to the membership will be everlasting and I thank her for her service.

Jake Aitcheson
PRESIDENT



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Practice Resource Centre News



Contributed by:

Cynthia Simpson and Shabira Tamachi

library@middlaw.on.ca

Court Attire for New Lawyers

We have had some members retire recently and they have generously donated their court attire to us to offer to new lawyers who may not yet have a set. We have one complete set (two 16" shirts, vest, robe, tabs), a 15.5" shirt, robe, tabs and long skirt that were donated together (but no vest), and two 18.5" shirts plus a pair of pants that were donated together. We also have three sets of tabs with the largest being 16.5" and the other two smaller. Please contact us at library@middlaw.on.ca or drop by the library to see if any of the items would be suitable for your needs. We are fine with passing on parts of these sets and there is no requirement to take all the pieces.

Focus on Missing Books

Regular users will know that we have quaint circulation system involving sign-out cards so that members can borrow things in a self-serve manner, even after-hours. Unfortunately, this means that sometimes that step is missed, and we are sure it's an oversight when a book is taken without the sign-out card being left behind. However, there are some popular items missing right now that we wanted to highlight in case you have them. No need to apologize as we simply want these expensive items returned for the benefit of other MLA members.

- Marseille, Claude, ed. **The law of objections in Canada: a handbook**, LexisNexis, 2019 - \$195 plus tax, s/h. – this is our most recent missing book, so it deserves special notice.
- Fuerst, Michelle. **The trial of sexual offence cases, 2nd ed.**, Thomson Reuters, 2018, \$136 plus tax, s/h.

- Knight, Patricia. **Small Claims Court: procedure and practice, 5th ed.**, Emond Law, 2021 - \$107 plus tax, s/h.
- Steinberg, et al. **Ontario family law practice, 2022 edition, 2 vol.**, Lexis Nexis, 2022. \$275 plus tax, s/h.
- Stewart, Hamish. **Sexual offences in Canadian law**, Thomson Reuters. (looseleaf), \$850 per year to maintain.

There are many other titles listed in our regular Missing Books segment below, but we wanted to draw particular attention to these items that have gone missing within the past year and which were popular with our members prior to their disappearance.

Have you been hearing from us?

We send out the weekly MLA Update email each Wednesday with a summary of information pertinent to our members and the practice of law. We also send out obituary notices and periodic emails about association events and CPD seminars. If you haven't been getting these or if you were getting them and somehow aren't now, please contact the MLA PRC at library@middlaw.on.ca or give us a call at 519-679-7046 to update your email address and contact information. We may have an outdated email address for you, or you may need to check your email settings to give permission for any @middlaw.on.ca email to get through to your inbox (we send emails from the cle@middlaw.on.ca address too). We are also using an online membership management program called Wild Apricot for our member database, event & CPD registrations, dues payments and polls. You will receive targeted emails from mla8@wildapricot.org, so please make sure that your email settings allow

incoming messages from either @middlaw.on.ca, or @wildapricot.org to make it to your inbox.

New Books

Asma, Matthew and Matthew Gourlay. **Charter remedies in criminal cases: a practitioner's handbook, 2nd ed.**, Emond, 2023.

Gunn, Justice Cameron, et al. **Witness preparation, presentation and assessment**, Emond, 2023

HLA. **2022 family law seminar**, Hamilton Law Association, 2022.

Hutchison, Cameron. **Modern principle of statutory interpretation, 2nd ed.**, LexisNexis, 2022.

LSO. **Impaired driving 2022**.

LSO. **Civil appeals: the year in review 2022**.

LSO. **11th human rights summit, 2022**.

LSO. **Six-minute family law lawyer 2022**.

LSO. **30th immigration law summit day 1 & 2, 2022**.

LSO. **Six-minute real estate lawyer 2022**.

n/a. **Section 85 rollovers: a complete guide, 3rd ed**, Wolters Kluwer, 2022.

Robert, Henry M. **Robert's rules of order newly revised, 12th ed.**, Public Affairs, 2020.

Salte, Bryan. **Law of professional regulation, 2nd ed.**, LexisNexis, 2023.

Segal, Murray. **Annotated Ontario rules of criminal practice 2023**, Thomson Reuters, 2023.

Shields, John Douglas. **Law of affidavits.**, LexisNexis, 2023.

Waldman, Lorne. **Canadian immigration & refugee law practice, 2023**, LexisNexis, 2023.



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

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

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

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

Knight, Patricia. **Small Claims Court: procedure and practice, 5th ed.**, Emond Law, 2021

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

Marseille, Claude, ed. **The law of objections in Canada: a handbook**, LexisNexis, 2019

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

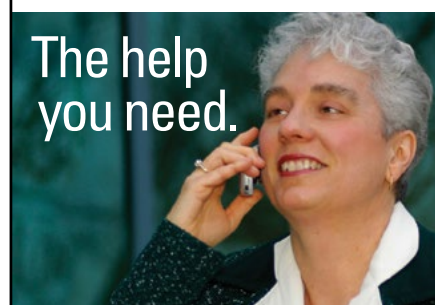
Oosterhoff, Albert H. **Oosterhoff on wills, 8th ed.**, Thomson Reuters, 2016

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

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Want to contribute to the next issue? DEADLINE IS NOON ON MARCH 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.

Potential topics for submissions include:

News, the promotion of an upcoming event, a review of a past event, recognition of someone in the legal community, opinion and letters to the editor, discussion of a legal issue & case reviews, or practice tips

Contact Tracy Fawdry

EXECUTIVE DIRECTOR

tracy@middlaw.on.ca

Distinctive Trademarks – Common Questions



Contributed by:
David Canton / Harrison Pensa LLP

The single biggest mistake people make when creating a trademark is not making it distinctive enough.

This has always been the case. But it has become more important since changes to the Canadian Trademarks Act in 2019 gave examiners the ability to reject trademark applications based on lack of distinctiveness.

A trademark that is not distinctive doesn't set your product apart from others — which is the fundamental purpose of a trademark. That has not changed from the earliest uses of trademarks, which were marks put on pottery to identify the artisan.

WHAT DOES DISTINCTIVE TRADEMARK MEAN?

A trademark is distinctive when it is unique to your product. In other words, it should identify the artisan to pottery buyers.

An example is in the recent Federal court case of *Gentec v Nuheara*. The trademark in question was "IQ" for electronics products. The court decided that "IQ" is not distinctive because "IQ" is a commonly used term for smart products. "IQ" has also been incorporated within many other trademarks for electronics products.

Trademarks should be memorable — but not describe the product. The goal of a trademark is to set your products apart from competitors, not to tell customers what your product is. The question to ask is "How can I make people remember my brand and product?" not "How is everyone going to know what my product is?"

Put another way, if you see an ad for breakfast cereal, and later in the grocery store buy a different brand of cereal thinking it is the one you saw in the ad, it may not be distinctive enough. You want shoppers facing a wall full of breakfast cereal to remember and buy yours.

CREATING A DISTINCTIVE TRADEMARK

A trademark is not distinctive if:

- It describes the product.
- It describes an attribute of the product.
- It describes how your product is better than others.
- A competitor might think about using it.
- It describes where the product is made.
- It is similar to existing trademarks for similar products.
- It is a term commonly used in the industry.

The best trademarks are made up words, or real words that have nothing to do with the product.

David Canton is a business lawyer and trademark agent at Harrison Pensa with a practice focusing on technology, privacy law, technology companies and intellectual property. Connect with David on [Twitter](#), [LinkedIn](#) and [Mastodon](#).

A TRADEMARK IS **NOT** DISTINCTIVE IF:



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Trucking Right Along

Ontario's Excess Soil Laws and Considerations for the Development Industry



Contributed by:

Anand Srivastava, Willms & Shier Environmental Lawyers LLP

For decades, many involved in land development and construction struggled with how to interpret Ontario's regulation of excavated soil.

Stakeholders had many common questions. When is excavated soil considered "waste", as defined in Ontario's *Environmental Protection Act*? What if excavated soil contains contaminants? What if excavated soil is destined for re-use, such as for backfilling or grading? What if excavated soil is treated?

Without clear answers, unwanted impacted excavated soil was generally either disposed of lawfully at Ontario's limited-capacity landfills or unlawfully through unauthorized dumping on private or public property. Without clear authority to regulate "waste", municipalities were caught in jurisdictional limbo and forced to rely on site alteration by-laws to attempt to prohibit and enforce unauthorized and illegal dumping.

After much anticipation, Ontario has created a legal regime to answer the questions raised above and provide certainty for the construction and waste management industries, consultants, contractors, municipalities, land owners, and developers alike. The first two phases of Ontario's excess soil laws are in legal force and effect with one further phase to follow.

ONTARIO'S EXCESS SOIL LAWS

On December 4, 2019, Ontario's Ministry of the Environment, Conservation and Parks ("MECP") filed the long-awaited

O. Reg. 406/19: On-Site and Excess Soil Management Regulationⁱ ("Excess Soil Regulation") and complementary amendments to Ontario's Records of Site Condition regulation (O. Reg. 153/04ⁱⁱ) and two of Ontario's waste management regulations (Reg. 347ⁱⁱⁱ and O. Reg. 351/12^{iv}).

In addition, the Excess Soil Regulation incorporates by reference:

1. the "Rules for Soil Management and Excess Soil Quality Standards"^v, which include the following:
 - a. Part I - the Rules for Soil Management (known as the "Soil Rules")
 - b. Part II - the Excess Soil Quality Standards,^{vi} and
2. the Beneficial Reuse Assessment Tool ("BRAT"), which is a model for developing site-specific excess soil standards.^{vii}

We refer below to this full suite of laws as "Ontario's Excess Soil Laws."

Continue [here](#) to read the full paper by Anand Srivastava.

ⁱO Reg 406/19.

ⁱⁱO Reg 153/04.

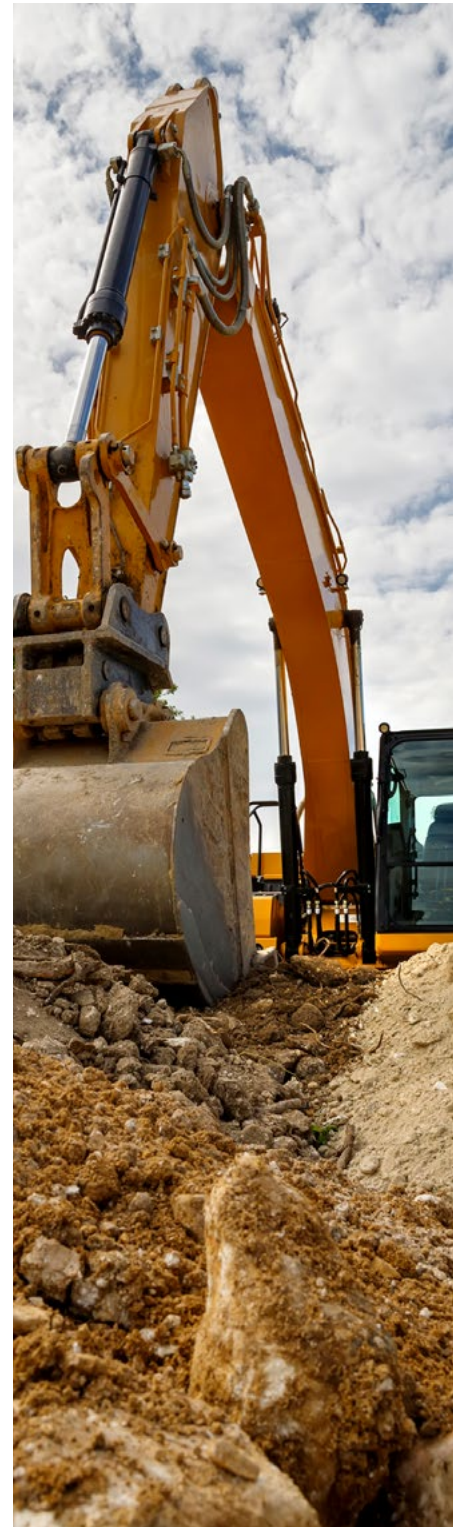
ⁱⁱⁱReg 347.

^{iv}O Reg 351/12.

^vRules for Soil Management and Excess Soil Quality Standards (2022).

^{vi}The Excess Soil Quality Standards are presented in a similar manner as the Soil, Sediment and Ground Water Site Condition Standards under O. Reg. 153/04. For the most part, the Excess Soil Quality Standards are more stringent than the O. Reg. 153/04 Site Condition Standards.

^{vii}Ontario has also released a "Guide for Developing Site Specific Excess Soil Quality Standards Using the Beneficial Reuse Assessment Tool (BRAT)", version: 1.0 (November 19, 2019).





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Court of Appeal's Inaugural Rosenberg Moot : Experience of a Lifetime



Contributed by:

Sam Puchala / Criminal Lawyer and Founder, Velox Law Professional Corporation / Recipient of the 2022 MLA Rising Star Award

I recently had the pleasure of being accepted to and participating in The Inaugural Criminal Appellate Advocacy Development Program in Honour of the Honourable Marc Rosenberg (aka the Rosenberg Mentorship Moot).

The Rosenberg Mentorship Moot provided me and twenty-three other junior counsel to obtain mentorship, guidance, and experience in the Court of Appeal for Ontario. This amazing program consisted of virtual meetings and two in-person events at the Court of Appeal for Ontario in Toronto, including the moot itself, which took place on January 28, 2023.

We, as participants, had the chance to be inspired by some of the top talent in our criminal appellant bar, get paired up with seasoned appellant mentors, and formally argue a mock criminal appeal

before judges of the Court of Appeal, as well as some special guest judges from the Superior Court of Justice and Ontario Court of Justice.

The Honourable Marc Rosenberg was a titan—every criminal lawyer knows his name. I did not have the pleasure of knowing him or working with him, but some of the greatest lawyers I know that I look up to, have. They have told me story after story of showing how much of a class act he was, mentoring and encouraging younger counsel both as an appellant lawyer and a judge. Smart, kind, and humble - these are words I heard often from many to describe the Honourable Marc Rosenberg. I felt so honoured to be part of an experience inspired by someone who has made such an impact on the legal profession.

The Rosenberg Mentorship Moot was life changing. I can say without a doubt it has given me the confidence to expand my horizons and venture into appeal work. Making my debut in the Court of Appeal in Toronto before a panel of three judges following

weeks of mentorship, and getting individualized feedback after crushing my moot was empowering, informative, and a once-in-a-lifetime opportunity that I will never forget. I learned a ton.

The Official Rosenberg Mentorship problem centered around the constitutional right not to be arbitrarily detained or imprisoned pursuant section 9 of the Charter and was based of the legal issues arising in the *R. v. Tim* case decided by the Supreme Court of Canada late last year ([R. v. Tim, 2022 SCC 12](#)). The factual scenario of the Rosenberg Mentorship Moot involved a woman flagging down two officers on bicycles to assist her with rescuing a cat from a tree. Things escalated quickly from there—after police spotted pills on her nearby vehicle's front passenger seat, she was arrested and searched. A search of her vehicle revealed a large quantity of illicit drugs. She was charged for the possession of a controlled substance contrary to section 4(1) of the *Controlled Drugs and Substances Act* (CDSA). The case ultimately turned on whether the

accused's arrest was lawful, and whether the drugs found in her vehicle following her arrest were admissible evidence under to section 24(2) of the *Charter*.

I was lucky to be placed on a team with Kyle Quinlan, a colleague who practices in criminal law and does agency work with the Public Prosecution Service Canada (PPSC). He and I were assigned to represent the accused as the appellant. I took on the section 9 argument for the unlawful arrest, and Kyle dealt with the s. 24(2) argument for the exclusion of the evidence. We made a great team, as his thorough read of the law complimented my strong grasp of the facts.

Opposite us, Prateek Awasthi, an employment, labour, and Human Rights lawyer at Mathews Dinsdale brilliantly represented His Majesty the King as the respondent. Although his co-counsel could unfortunately not make it to the in-person argument, Prateek argued both the s. 9 and s. 24(2) issues with ease. He was a masterclass. I did not see him look down at his notes once. I told him that I hoped one day he would become a criminal lawyer.

My mentors, Matthew Asma, from the Crown Law Office – Criminal (CLOC) at the Ministry of the Attorney General, and Megan Stephens, a criminal and constitutional lawyer, both have extensive appellant experience and were crucial in my preparation leading up to the moot. They put Kyle and I through two practice runs over Zoom, each time peppering us with difficult questions and providing critical feedback that assisted us in improving our arguments.

We had a kickoff event in person on January 12, 2023 at the Court of Appeal for Ontario in Toronto during which Marie Henein and the Associate Chief Justice of Ontario Michal Fairburn delivered amazing keynote speeches that got me even more excited for the moot. Marie delivered a powerful talk, which focused on her top tips for advocacy. My favourite piece of advice of hers was to enjoy being in a courtroom. This really resonated with

me as there's often no place that I would rather be than in court. I hung on to every word and learned the importance of being able to rejig and pivot while answering questions, and how essential it is to be fluid in making your arguments rather than following a script.

On the morning of January 28, 2023, I did exactly that. Fully robed and making my debut in courtroom #8 of the Court of Appeal in Toronto before Justice MacPherson (presiding), Justice Sharpe, and Justice Crosbie, I brought my A-game. When the questions came in, I rolled with the punches. I was quick on my feet, and I delivered. I answered all the judges' questions and even managed to finish all my points in my allotted 30-minutes of time for argument.

The panel told me I had a good voice, good pace (although at times, I was a bit too fast!), and good eye contact. Thanks to my mentors' feedback, I had a clear and structured opening. I slowed down in my introduction to allow the judges to write down the three main points I was addressing. Despite being asked questions very early on, just two minutes into my submissions, I was "not flustered at all" and "rolled beautifully" with the questions throughout, which the panel found "impressive." This, given especially that I had never done appeal work. I was also told that when pressed, I maintained a hard line on a key issue, which the panel felt was effective. I told the judges about the launch of my new practice, Velox Law Professional Corporation and how I intended to expand the scope of my practice to appellant work given how much I loved the experience. They commended me for it and encouraged me. Finally, it meant a lot to me that the clerk told me I nailed it and that she "would have for sure thought I was an expert."

I stayed and watched one of the afternoon moots and learned a lot from the invaluable feedback those participants received from their panel's judges as well. There was a social held in the main hall after each of the morning and afternoon moots where we continued our discussions with the judges, mentors, and fellow colleague participants. Finally, we were given an official and behind-the-scenes tour of the Court of Appeal. I was in awe at the building—it has become one of my favorites in Toronto.



Sam Puchala at Court of Appeal

I agree with Marie Henein: a great day is being in court, and January 28, 2023 remains one of the best days ever! I look forward to challenging myself in trying my hand at some appeal work as I launch my own practice.

Thank you to Anita Szigeti, Anna Trbovich, and Dena Bonnet for organizing this amazing program, and for everyone else who made this wonderful opportunity possible. I encourage all junior counsel to apply, in what I hope will be many more years of Rosenberg Mentorship Moots. Finally, thank you to the very talented and professional photographer, Vita Cooper, who captured the amazing shots featured in this article.

In-House CPD

Working with Data & Information



Contributed by:
**Grace Smith / Solicitor I,
City Solicitor's Office,
City of London**

The In-House Practice Subcommittee had its inaugural CPD breakfast on January 31, 2023.

The half-day event, which took place at the Residence Inn by Marriott London downtown, was the first in-person CPD hosted by the MFLA in more than a year and the first one of 2023. The conference co-chairs, Erika Webb, Sandra Drozd and Grace Smith, invited an array of interesting speakers from diverse backgrounds to present on topics relevant to working with information and data. The presentations ranged from the new legislation on the electronic monitoring of employees to using arbitration for case management to cybercrime, which included a fascinating introductory demo of ChatGBT. The CPD event also included a panel on best practices and practical tips for tendering evidence in electronic/hybrid court proceedings and using Caselines, and concluded with a refresher on how to optimize the use of the PRC's library resources remotely. The event is now active on CPDOnline.

[Electronic Monitoring of Employees; Cybersecurity and Protection of Data](#)

[Case Management Arbitration & Dispute Resolution; Best Practices for Caselines; Evidence Tendering in Remote Hearings & Trials](#)



Summary of MFLA Town Hall Bench and Bar January 30, 2023



Contributed by:
**Genevieve Samuels / MFLA President
Hilary Jenkins / Vice President/Secretary**



MFLA President, Genevieve Samuels, and Vice President/Secretary, Hilary Jenkins, welcomed members of the Bench and Bar to the Town Hall.

The MFLA congratulated our members who were honoured with awards this past year. We also look forward to the upcoming CPD programs that will be offered in 2023. If you are interested in a specific CPD topic or in planning a program or volunteering at the MFLA Conference, please email the admin@themfla.com.

The MFLA executive acknowledged the challenges based by our members and the Court as a result of the pandemic and the unique pressures that applies to those working in this practice area. The MFLA recognizes the hard work of the former MFLA executive, the Honourable Justice Henderson, and the province's judiciary in managing the consequences of the pandemic.

The new Practice Direction is another step in managing the consequences of the pandemic and is one step in evolving measures to provide better access to justice and improve services provided by lawyers and judges.

The Honourable Justice Sah, the new Family Local Administrative Judge, thanked all the members who attended the Town Hall. She also acknowledged and thanked the dedicated trial coordinators, Doris, Kailey and Cedric, for their hard work to ensure that the Bench and Bar receive the best possible service while managing countless emails and the Court schedule.

Justice Sah also acknowledged Kelsey Vaughan, who has taken over the supervisor of Court services.

Justice Sah also publicly thanked the Honourable Justice Henderson for his years as the Family Local Administrative Judge.

The Honourable Justice Tobin has taken over the role of overseeing the Dispute Resolution Officer project from the Honourable Justice Mitrow. Justice Tobin would like to increase the compliment of the Dispute Resolution Officers and he would encourage any member of the Bar who is interested in applying to contact him or Marie Tukara for more information about the application and vetting process. The DRO schedule commitment will continue with 3 cases per session with each session being a half day.

The Honourable Justice Sah advised that London now has a full judicial compliment of Family Judges; however, there are still delays and inefficiency caused by the COVID-19 pandemic. The upcoming Family Court schedule changes will work to address some of the delays. The Bench acknowledges that there may be some growing pains as everyone adjusts to the new schedule. The Bench is committed to continuing to provide quality services.

The Bench asks that MFLA members advise the Bench of how the changes are working and if there are suggestions to improve services.

The Honourable Justice Sah welcomed questions from MFLA members and encourages members to contact the MFLA executive with ongoing questions.

Certificate for Divorce

Physical copies of Certificates for Divorce will be prepared as a matter of course and will be available for pick up at the Courthouse without the requirement of a request. In the event that Counsel required electronic copies of the Certificate for Divorce, they must make that request and an electronic copy will be prepared and sent out.

Basket Motions

The Bar has raised the issue of significant delay in receiving decisions with respect to 14B basket motions as well as conflicting information when making inquiries into the status of their basket motions.

The Honourable Justice Sah advised that there are a number of steps between Counsel submitting their basket motions to the Court and the decision being released back. The materials are exchanged by a number of different people in a number of different offices before they are sent to the Judge and similarly progress through a number of steps before being returned to Counsel. Like "broken telephone", this may lead to delay in processing time and misinformation being shared either internally or to Counsel making inquiries. The Bench and Courthouse staff alike are concerned about the current delays, inefficiencies, and other issues with basket motions. As a result, there will be a meeting between Courthouse staff and Justice Sah to review the basket motion process.

At this time, there will be no in-person "to be spoken to" dates available for counsel to walk in draft Orders for issuing and the practice will continue to be to submit draft Orders via 14B basket motions.

Basket motions are appropriate for simple procedural matters or for matters where there is consent from all parties. It is not appropriate to bring a basket motion for a motion to be removed from the record or for any issue where there is an expected

dispute. Those motions should be properly brought on a Wednesday in open Court for argument.

Adoptions Day

Prior to the COVID-19 pandemic Court shut down, there was a monthly adoptions ceremony day. This was a wonderful day for families; however it was largely ceremonial. While the Courthouse will continue to assess the schedule, right now Judicial and Courthouse resources must be directed at addressing the backlog of matters in active litigation. Currently, there is no schedule for when adoption day may resume.

Judicial Dispute Resolution Project

In 2021, a pilot project was started using Judicial-assisted Dispute Resolution. The project was expanded in 2022 and one version of it has been adopted in Stratford by the Honourable Justice Garson.

The Judicial Dispute Resolution requires that both parties consent to the process and then attend a Judge-led mediation. If the parties cannot resolve the matter following the mediation, the presiding Judge will make a binding decision. This method is intended to resolve discrete issues and is most successful when both parties are represented by Counsel. While this particular project may come to the London Courthouse in the future, the current focus is working on the incoming schedule changes and addressing the backlog.

Running Motions Lists

Prior to the commencement of the motions list being argued, the Court will admit all parties and vet the list for matters that have resolved or require adjournments. Those brief matters will be heard first before the commencement of argued motions. Counsel should communicate with each other and attempt to resolve or narrow the issues in advance of attendance. Breakout rooms will also be available for

discussion with opposing Counsel and/or parties. Unless placed in a breakout room, Counsel will remain in the virtual Courtroom until their Motion is reached. All Counsel, particularly junior Counsel are encouraged to observe argued Motions for learning purposes.

It is expected that, after matters that have been resolved on consent or are requesting adjournments are dealt with, the list will be called in the order that it appears on the published docket. However, the presiding motion Judge will have the discretion to call matters as they see fit. At this time, there is not presumption that senior Counsel will be given priority with respect to having their matter heard.

While there are some members who would prefer that motions return to in-person attendance for motions, this is not a decision that our Local Administrative Justice can make. The mode of attendance is determined by the Chief Justice in consultation with Regional Senior Justices. As of June 1, 2023, Regional Senior Justice Thomas will step away from that role and we will have a new RSJ. As the LAJ, Justice Sah will work with both RSJ Thomas and the incoming RSJ to advocate for the needs of the London region.

Zoom Court – Chat Function

The Honourable Justice Sah will make inquiries as to whether there is a way that participants in Rule 39 Court can be updated as to which matter is being called through the Zoom chat function to enable counsel to mute their audio and complete other work until their matter is called. However, Her Honour is mindful that the Registrar must complete a number of functions in Rule 39 Court and it may not be possible for them to also provide updates to the chat. Participants, other than Court staff, are not able to write in the chat; this function was disabled across the province following some inappropriate comments put into the chat in previous Zoom hearings and it is unlikely that it would be reinstated.

Trial Sittings and Protected Days

If a matter is not reached in its scheduled trial sittings and pushed to another sittings, Counsel should advise the Court at Trial Readiness Court of dates that they require protection. This is different from Counsel consenting to traverse a matter from one sitting to another and then requesting that the Court protect days for vacations and other pre-scheduled unavailable dates. If a matter is traversed on consent, all Counsel should be available for the entirety of the new court sittings.

Commencement Date of the New Court Schedule

As indicated in the Memorandum, the commencement of the new Court schedule varies by the nature of the appearance and is subject to change. The Courthouse is making best efforts to implicate the changes in accordance with the schedule set out in the Memorandum; however, this may not be possible and some of the commencement dates may shift.

CaseLines and Courtroom Technology

Questions about invitations to CaseLines and the creation of bundles should be directed to Court Services. Uploading materials to CaseLines is the responsibility of the parties and/or Counsel.

CaseLines is particularly useful for trials and to organize documents at trial. While it may feel like duplicated work filing through the provincial portal, uploading documents to the OneDrive / SharePoint, and uploading on CaseLines, it is the new method of ensuring all relevant documents are before the Court. The Honourable Justice Sah made the comparison that the OneDrive is like filing materials in the Continuing Record while CaseLines is like walking a document into Court and physically submitting it to a Judge to become an exhibit.

Both Courtrooms 601 and 602 are equipped with technology to offer hybrid attendance (virtual and in-

person). This should assist with the virtual components of trials. Further, it is expected that the plexiglass will be removed, which will allow for more space at Counsel table for personal technology, such as laptops.

At the Civil Bench and Bar meeting, judicial recommendation was that if there are particular technology requirements for trial, Counsel should raise this issue with Judge at the Trial Readiness Conference and at Trial Readiness Court so that best efforts can be made to accommodate this request

The Honourable Justice Sah made the comparison that the OneDrive is like filing materials in the Continuing Record while CaseLines is like walking a document into Court and physically submitting it to a Judge to become an exhibit.

Settlement Conferences

One intention with the return to in-person Conferences is to encourage discussion and to resolve or narrow issues in an effective manner. With the resumption of multiple conferences during a time slot, matters may be heard in order on the published docket or by readiness to proceed. Counsel are encouraged to check in with the Registrar and advise if they are ready to proceed or if the matter should be stood down to allow more time for settlement discussions.

It is the expectation that Settlement Conferences will only be scheduled when Counsel and parties are prepared to have substantive settlement discussions, following the production

of disclosure and oral questioning, if required. If those steps have not been taken, a Settlement Conference should not be scheduled.

Summary Judgement Motions and Long Motions

Counsel wishing to bring a summary judgement motion or long motion must bring their Notice of Motion, returnable to a regular Motion date (Wednesday for DA, FLA and CLRA matters/ Fridays for CYFSA matters). At that date, Counsel and the Presiding Justice will complete the Certificate of Readiness with the date that the matter will be heard and the corresponding deadlines. There are sections of the Certificate that Counsel can complete in advance, for example, whether there will be viva voce evidence. The Honourable Justice Sah will review the current Certificate and the MFLA will advise members of the correct form to use for London matters. This information will also be shared on the MFLA Website and the executive thanks Zachary Wilson for taking on the website project. Adrian Willsher advised that another good resource for information is courtnoticefinder.ca.

If a CYFSA Summary Judgement Motion event type changes (example: no opposition expected and then an opposition is advanced), Counsel should address that issue when it happens at the return of the event. While it is expected that the majority of CYFSA Summary Judgement Motions will be flagged at the Settlement Conference, it can also be raised at a "to be spoken to", if appropriate. "To be spoken to" dates will always be set following a Summary Judgement Motion in a CYFSA matter to ensure that the Motion proceeded and to prevent matters from falling into the "ditch".

The MFLA would like to thank the Honourable Justice Sah for leading this Town Hall and for all Court staff, Bench and Bar members in attendance. We had approximately 75 attendees. If there are any further questions, please address them to admin@themfla.com.

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The Singulawyerty is Near

(with apologies to Ray Kurzweil)



Contributed by:
Ben Blay, Scott Petrie LLP

Last year, researchers at Brigham Young University revealed artificial intelligence (AI) software that was better than humans at reaching co-operative outcomes.

The software was tested using game theory hypotheticals such as the prisoner's dilemma. The researchers tested the software in three scenarios: computer-to-computer; computer-to-human; and human-to-human. Perhaps unsurprisingly, the most collaborative outcomes resulted from the computer-to-computer scenarios.

Since then, ChatGPT and other advanced AIs have been thrust into the public eye, to varying degrees of celebration and consternation. Rightly so, in both cases. Though I do not

profess to have unique insight, I do have a particular fascination with the topic. Law is a second career. Before it, I spent 15 years in information technology. Watching the two worlds collide at accelerating speed has been interesting, to say the least.

I suppose I address this article to the lawyers who are dismissive of the potential impact of AI on the legal profession. When ChatGPT was recently asked by a CTV journalist, "How can humans avoid being made obsolete by AI?", among its answers were "upskill and reskill", "embrace technology", and "build a diverse skill set" – not exactly comforting to the technologically impaired.

One naysayer I recently spoke with suggested that AI is no threat because it will never be able to truly think and that ChatGPT, at heart, is no more than a well-informed and highly complex statistical prediction machine

that uses heuristics to deliver a "best guess" at what reply fits the dialogue. That may be so, but as Ray Kurzweil goes to great pains to set out in *How to Create a Mind* (New York: Viking Books, 2012), at the neural level, the human brain operates in an almost identical fashion. Of course, his thesis has implications with respect to the nature of consciousness and so on, but that is beyond the scope of this article. I would recommend Kurzweil's book and Douglas Hofstadter's, *I Am a Strange Loop* (Basic Books, 2007) to anyone interested in this area of inquiry.

But back to the impact of AI on the legal profession. It's no secret that the justice system was under strain even before it was subjected to the dramatic impact of Covid-19. The justice system occupies over \$5 billion of the provincial budget. My suspicion is that AI's intrusion will start small but expand its scope very quickly.

Imagine the legislature being sold an AI system for resolution of small claims matters. For the moment, an appeal route to a human judge would still be available, but if statistically the AI decision maker was more reliable than its human counterparts, and obviously cheaper to employ (or, rather, deploy), how long before the same system is expanded to short motions and other matters that are typically decided in writing? The last frontier would likely be those hearings where an assessment of credibility is necessary, but research is already well underway to automate even that process (through methods such as gesture and verbal modeling). Considering the Brigham Young research discussed above, it could very well be that AI has a significant role to play in alternative dispute resolution as well.

On the other side of the litigation equation, consider a civil or family law

litigant who can ask a ChatGPT-like "law bot" to draft materials for her, explain how to argue her case and what evidence is important, research applicable law, and lead her through the legal process. Once that app exists, it will be trivial to replicate and deliver. Overnight, a large swath of law students and young associates could become redundant.

When under threats of this nature, I anticipate bodies such as the provincial law societies would get chauvinistic about legal practice. In the US, for example, an AI company recently was forced to halt its plan to put a microphone/earphone in a litigant's ear so that the AI could listen to the court proceeding and prompt the litigant how to respond to the judge. A number of state bar associations were up in arms. How long, though, will that resistance hold up against a public who has been

crying out for more affordable justice?

Obviously, the hypotheticals I have raised in this article are beyond the present state of AI, but the rate of development of AI is such that, to quote Randy Bachman, "you ain't seen nothin' yet." If history is any indicator, AI's abilities will improve apace computer processing speed and its (somewhat scary) ability to learn from itself. That rate is exponential, not linear. My sense is that when AI is paired with parallel sea-change developments in fusion power and quantum computing, the world will look like a very different place five years from now. The shock to the legal profession and the justice system will just be part of a much larger disruption.

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LSO Bencher Election **2023**
YOUR VOTE. YOUR FUTURE.

WHAT HAPPENS NEXT?



Voting will
occur online in
April 2023



Candidate Profiles
will be available in
March 2023



Results will be
announced
May 1, 2023

[LEARN MORE AT FOLA.CA/BENCHER-ELECTIONS-2023](https://fola.ca/bencher-elections-2023)



Federation of Ontario
Law Associations

Toronto Lawyers ASSOCIATION

The next Law Society bencher election is in April 2023!

Voting will occur online in April 2023 with the results announced on May 1, 2023 after the tabulation of votes.

[Voting procedures for the 2023 Bencher Election](#) have been published on LSO.ca. The procedures provide information on the conduct of the election such as voter eligibility and anonymity, casting votes online or by phone and the announcement of results.

Benchers elected for the 2023-27 term will take office at the May 25, 2023 Convocation.

[List of all candidates for LSO Bencher](#)

FOLA'S Candidate Survey

In advance of the bench election set for April 28, 2023, FOLA is working to provide Law Association members with an easy way to identify "FOLA Friendly" candidates who complete the survey

Their survey focuses on the following priority topics:

1. Whether the candidate is a contributing member of their county or district law association;
2. Whether, if elected, the candidate will support a properly funded courthouse library system; and
3. Whether, if elected, the candidate will work to support a sustainably-

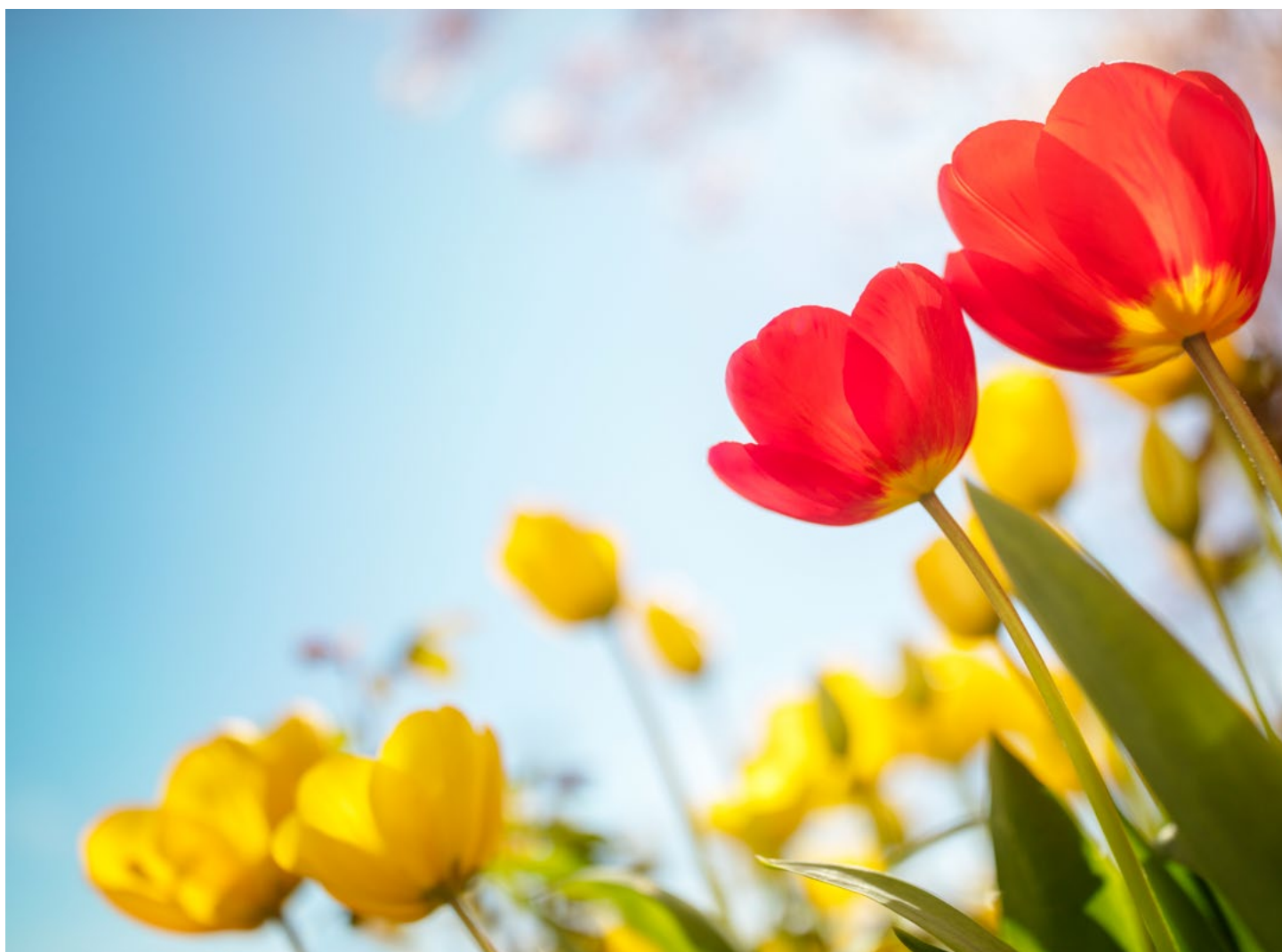
funded Legal Aid system that provides access to justice for low-income Ontarians and ensures that Legal Aid practice continues to be viable service for the private bar to offer.

For transparency, all candidate responses received by FOLA's deadline of April 1, 2023 at 5pm (Eastern Time) will be published online, in full, with candidate profiles. Responses will not be edited in any way unless they exceed word limit. They will also indicate if a candidate did not respond by the deadline. FOLA reserves the right to excerpt portions of any responses

provided to them, for their ongoing use during the election.

FOLA's bench election committee will also review all responses and may use those responses to identify "FOLA-Friendly" candidates – i.e., those that most closely align with the priorities of county and district law associations and their members.

CANDIDATE BIOS will be released soon & SURVEY RESPONSES will be shared at deadline.



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](#).

Morgan Alevan – new call at Hassan Law, morgan@hassanlaw.com

Kyle Bertsch – new call practicing at Miller Thomson LLP, direct ph: 519-619-7441, kbertsch@millerthomson.com

Darlene Daley – has moved Daley Law Office to 6566 French Ave, London N6P 0G5, all else the same

Joseph Dillon, KC – has opened Joe Dillon Law, josephmdillon@outlook.com

Layla Hassan – has opened Layla Hassan Law, ph: 519-701-1567, lhassan1000@gmail.com

Dan Mailer – is semi-retired and has opened Dan Mailer Law, ph: 519-670-1081, drmlaw85@outlook.com

Jimmy Nakano – has opened Nakano Law at 151 York St, London N6A 1A8, ph: 519-870-4056, jimmy@nakanolaw.ca

Tyler O'Henley – new call practicing at Foreman & Company, ph: 519-914-1175 x112, tohenly@foremancompany.com

Jenny Prosser – has opened a sole practice at Main-135 Albert St, London N6A 1L9, ph: 519-615-4768, jenny@prosserlaw.ca

Sam Puchala – has opened Velox Law Professional Corporation, 472 Ridout St N, London N6A 2P7, ph: 519-636-7157, sam@veloxlaw.ca

Michael Rayner – new member at Rayner Arbitration, 10001 Old River Rd, PO Box 1450, Grand Bend N0M 1T0, ph: 613-608-7196, mike_a_rayner@hotmail.com

James Simpson – new member at Neighbourhood Legal Services, james.simpson@nlsim.clcj.ca

Maninder Singh – new call at Neighbourhood Legal Services, maninder.singh@nlsim.clcj.ca

Manav Singhla – new member at Miller Thomson LLP, msinghla@millerthomson.com

Kevin Wilbee – has joined Brown Beattie O'Donovan LLP, direct ph: 519-964-3168, kwilbee@bbo.on.ca

Jessica Williams – is back at Harrison Pensa LLP, jwilliams@harrisonpensa.com

Paul Vandenbosch – has joined Brown Beattie O'Donovan LLP, direct ph: 519-964-3162, pvandenbosch@bbo.on.ca

Steve Yormak – firm address should be 420-495 Richmond St, London N6A 5A9

Questions & Comments

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

Rasha El-Tawil
519-660-7712

rasha.el-tawil@siskinds.com

John Nicholson
519-914-3358

jnicholson@cohenhighley.com

Hilary Jenkins

519-672-5666 x7301

hilary.jenkins@mckenzielake.com

Will Notices

Donald Allan Ball

Anyone knowing of a Last Will and Testament for Donald Allan Ball, born December 11, 1951 and died February 5th, 2023 of Yarmouth Township, Aylmer, please contact Sue Carlyle at 519-432-0632 x 222, scarlyle@cplaw.com.

Darryn Bethune

Anyone knowing of a Last Will and Testament for Darryn Bethune, born July 4, 1965 and died February 19th 2023 of Windsor, Ontario, please contact Angela Venneri at 519-476-6663, email: angelagvenneri@gmail.com. It is believed Michael McCarron drafted the last one, but he is no longer practicing.

Susan (Susi) Dawn Carter

Anyone knowing of a Last Will and Testament for Susan (Susi) Dawn Carter, born October 20, 1956 and died June 20, 2022 of London, Ontario please contact David Amin at 226-224-8823, email: info@dauidaminlaw.com.

John Bernard Helsby

Anyone knowing of a Last Will and Testament for John Bernard Helsby, born January 10th, 1956, please contact Paul Helsby at 519-841-3686, email: phelsby@outlook.com.

Gilles Marcel Masse

Anyone knowing of a Last Will and Testament for Gilles Marcel Masse, born September 2, 1956 and died November 19, 2022 of London, Ontario, please contact Sue Carlyle at 519-432-0632 x 222, email: scarlyle@cplaw.com.

Dorothy Jean McKellar

Anyone knowing of a Last Will and Testament for Dorothy Jean McKellar, born September 15, 1960, and died February 2, 2023 of City of London, Ontario, please contact Paul Randhawa at 519-679-0063, email: prandhawa@downslaw.ca.

Walter Osoka

Anyone knowing of a Last Will and Testament for Walter Osoka, born March 15, 1954 and died February 19, 2023 of City of London, Ontario, please contact Paul Randhawa of Downs Law Professional Corporation at 519-679-0063, email: prandhawa@downslaw.ca.

Andrzej Skonieczny / Andrew Skonieczny

Anyone knowing of a Last Will and Testament for Andrzej Skonieczny also known as Andrew Skonieczny, born October 24, 1958, died August 8, 2022, last resided, London, ON, please contact the law office of Siskinds LLP at 226-213-7426, email: sharon.owen@siskinds.com.

Rita Catherine Van Leeuwen

Anyone knowing of a Last Will and Testament for Rita Catherine Van Leeuwen, born June 18, 1947 and died February, 6 2023 of London, Ontario, please contact Trevor Van Leeuwen at 519-719-5497, estate: ritacvanleeuwen@gmail.com.

Debrah Anne Watson (also known as Debrah Anne Glaese, and Deborah Ann Glaese)

Anyone knowing of a Last Will and Testament for Debrah Anne Watson, born December 5, 1966 and died December 20, 2022 of City of London, Ontario, please contact Paul Randhawa of Downs Law Professional Corporation at 519-679-0063, email: prandhawa@downslaw.ca.



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Middlesex Law Association Newsletter

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