

THE
MIDDLESEX LAW
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September 2023 Issue

Thank you to all the contributors and advertisers for supporting this month's edition of the Snail.

Want to contribute to the next issue?

The deadline is noon on **September 25, 2023**

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President's Message



Contributed by:
Jake Aitchison / Lerner LLP and MLA Board President

As the warmth of summer slowly gives way to the crisp air of fall, we find ourselves at the cusp of a seasonal transition that mirrors the shifting legal landscapes we practice within. Our world is undeniably witnessing significant changes in technology, practice demands, and

legal processes. As legal professionals, it's vital that we stay attuned to these shifts and proactively adjust our approaches.

Over the next few months, the MLA Practice Area Committees will be organizing conferences and workshops to help you confront these changes.

Consider attending these conferences and workshops that speak to your practice area to expand your skill set. Networking opportunities can also help establish new connections that may yield fruitful collaborations in the future. The upcoming socials organized by the Practice Area Committees will

provide you an opportunity to speak to your colleagues in an informal and fun environment. Embrace the fall season as a period of transformation and renewal, where you invest in your professional development to reap rewards in your legal career.

Also, as discussed in the summer edition of the Snail, the [195th Fall Opening of the Courts](#) is being held on September 19, 2023. Please join us at Museum London to observe the procession, ceremony, and reception. Like last year, dinner will follow the reception, and will be open to all members who wish to attend, alongside the judicial members, speakers, key community members, and dignitaries in attendance. Further, on September 14, 2023, the MLA will be hosting its annual [Mentorship Dinner](#) at Ivey Spencer Leadership Centre. While this event is geared towards lawyers under 3 years of call, it is open to anyone interested in hearing advice and insights from some of the most exceptional lawyers in our region. Tickets for both these events are selling well, so don't delay.

With that, I wish you all a productive and transformative fall season.

Jake Aitchison
President

Practice Resource Centre News



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

New Members

Are you a new member of the association and wondering what we have here at the MLA Practice Resource Centre? We are always happy to provide a tour of our space and educate users on our resources and services. We have an extensive print and electronic collection in the library, and the practice resource centre also contains Zoom booths, lounge space, a coffee service, locker rooms with washrooms, a copier/scanner, binding machine, phone charging station, and kitchenette. We are always staffed between 9am-4pm, so please stop by and find out how we can help you with your work needs.

Reminder - Clients are Not Permitted in the PRC

This bears repeating on an annual basis, especially now that more matters have returned to in-person. We want to give you a quick reminder that access to the MLA Practice Resource Centre is strictly for our members, their students, and firm staff only. For various reasons, it is not an appropriate place for clients, and contravenes our MLA policies but primarily, it is our obligation to paying members to keep the space for their use only. It is incredibly important that they have this autonomy. We are unable to

allow meetings with clients or witnesses in any space within the PRC. Thank you for your adherence to this request.

Loose-leaf Updates

Should you need any loose-leaf updates, please ask us as some are available but not yet filed. It may also be available in a different format. All our active Thomson Reuters' loose-leaves, for example, are available through its ProView platform which you can access from the user computers in the library. Other Thomson Reuters loose-leaves may no longer be maintained in print because we now have the title available through Westlaw. We do ensure that we have filed releases for any looseleaf titles that we do not have access to electronically, and all binders on the shelves have labels indicating if they are current or if they are available in a different format. If you are reviewing a loose-leaf in hard-copy and want to make sure the information is current, you can either check the title on ProView, Westlaw, or Lexis Advance Quicklaw using the links on every computer here at the PRC or [just ask us](#) to get it for you. We are always happy to find and send excerpts to you, within copyright restrictions of course, and there is no charge for this service.

New Books

Ahmad, Imran.

Cybersecurity in Canada: a guide to best practices, planning, and management, 2nd ed., Lexis Nexis, 2021.

Allen, John and Libman, Rick. **Handling provincial offence cases in Ontario 2023**, Thomson Reuters, 2023.

Greenspan, et al. **Martin's annual criminal code 2024**, Thomson Reuters, 2023.

Joyal, Lisa et al. **Prosecuting and defending offences against children: a practitioner's handbook, 2nd ed.**, Emond, 2023.

Keeshan, David, and Lena Wang. **2023 annotated Ontario Construction Act**, Thomson Reuters, 2023.

Klar, Lewis N. **Tort law, 7th ed.**, Thomson Reuters, 2023.

Kratz, Martin. **Canada's intellectual property law, 4th ed.**, Thomson Reuters, 2023.

LSO. **Eight-minute municipal lawyer 2023**.

LSO. **Eight-minute employment lawyer 2023**.

LSO. **Eight-minute labour lawyer 2023**.

MacFarlane, K.C., Bruce A. **Cannabis law: the legislative framework,**

2023 ed., Thomson Reuters, 2023.

McGill Law Journal. **Canadian guide to uniform legal citation, 10th ed.**, Thomson Reuters, 2023. See Queen's Law tutorial: <https://guides.library.queensu.ca/legalcitation-mcgill-10th>

Radbord, Joanna. **LGBTQ2+ law: practice issues and analysis**, Emond, 2020.

Rouleau, Sylvain and Bar-Moshe, Ophir. **Ontario municipal law: a user's manual 2023**, Thomson Reuters, 2023.

Schjerning, Eric J. **Disability insurance law in Canada, 3rd ed.**, Thomson Reuters, 2023.

Segal, Murray D. **2023 Annotated Ontario Highway Traffic Act**, Thomson Reuters, 2023.

Ziff, Bruce. **Ziff's principles of property law, 8th ed.**, Thomson Reuters, 2023.

Zubick, Jennifer and Samantha Callow. **ADR for legal professionals, 2nd ed.**, Emond, 2023.

Zuker, Marvin. **Ontario Small Claims Court practice 2024**, Thomson Reuters, 2023.

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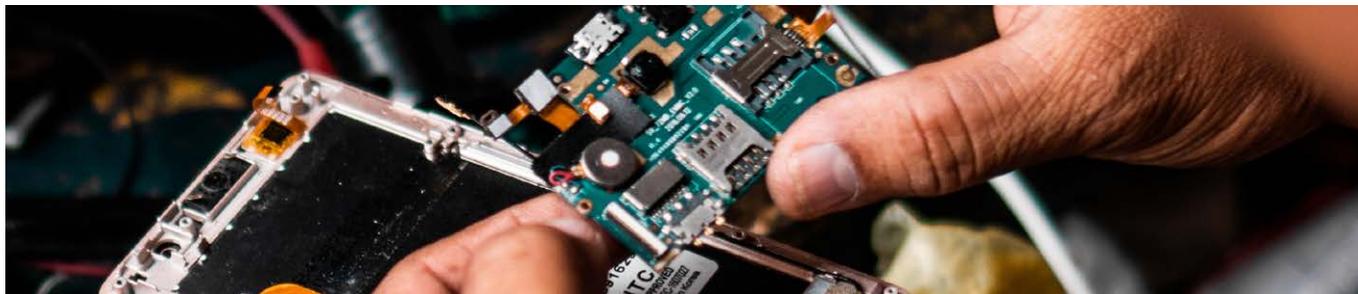
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Right-to-repair bill limited to copyright measures



Contributed by:
David Canton / Lawyer and Trademark Agent

Canadian [right-to-repair legislation](#) is slowly working its way through Parliament. [Right to repair](#) refers to the notion that consumers should be able to fix what they buy. Or that we can get someone other than the manufacturer to repair things when they break.

The poster child for the movement is farm equipment manufacturers that refuse to give access to software on the machines. That prevents both equipment owners and other repair shops from servicing them. Other methods used by manufacturers include making it difficult to get parts and specialized tools and withholding repair manuals.

TPMs

[Bill C-244](#) does not deal with all of those right-to-repair issues. It deals only with the issue of “technical protection measures” (sometimes referred to as TPMs) as described in the Copyright Act.

A technical protection measure is technology that a rights holder uses to stop people from accessing their work. That might be something like a digital lock that stops users from copying files or stops users from accessing software

menus. The Act makes it an offence to circumvent a TPM or to provide services or tools to circumvent them — except in certain circumstances.

Bill C-244 would change the definitions and exceptions to make it clear that they apply to access to computer programs. And add that the prohibition “...does not apply to a person who circumvents a technological protection measure for the sole purpose of maintaining or repairing a product, including any related diagnosing, if the work, performer’s performance fixed in a sound recording or sound recording to which the technological protection measure controls access forms a part of the product.”

What C-244 will do

The idea is that it will be acceptable to hack through manufacturer software locks to maintain or repair the device the software operates.

This would apply to anything using software, ranging from consumer electronics to cars to tractors.

The bill doesn’t require manufacturers to unlock their software. And it doesn’t deal with non-software

related right-to-repair issues such as specialized tools and repair manuals. But at least it will make it legal to break a manufacturer’s digital lock on software so you or an independent repair shop can maintain the product it is installed on.

[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 [LinkedIn](#), [Twitter](#), [Mastodon](#) and [Bluesky Social](#).

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Please join the Middlesex Law Association
in a celebration of the

195th Fall Opening of the Courts

Tuesday, September 19th

Museum London

421 Ridout Street, London, Ontario

Procession to commence at 4:30 p.m.

Keynote Speaker:

Ali Chahbar, Chairperson,
London Police Services Board

We look forward to celebrating our
colleagues and community.

Reception to follow hosted by the
Middlesex Law Association.

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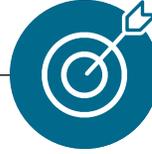
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Questions & Comments

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

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Leslie Ibouily

519-633-2638

leslie.ibouily@eolc.clcj.ca

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hilary.jenkins@mckenzielake.com

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519-914-3358

johnicholson@cohenhighley.com

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Free Legal Information for Sexual Assault (LISA) Program at Western University



Contributed by:
Anju Fujioka and Chanèle Rioux-McCormick / Legal Information for Sexual Assault (LISA), Western University

This academic year, students at Western University will have access to free and confidential legal information regarding sexual assault through the Legal Information for Sexual Assault (LISA) Program.

LISA launched in February 2023 for a three-month pilot in collaboration with Community Legal Services and with support from Western University's Faculty of Law. We are pleased to announce that it has been renewed for a full academic year.

LISA aims to complement existing on- and off-campus support services for survivors. Students who access LISA will never be encouraged or pressured to report an assault or pursue any specific legal remedy. The program simply aims to empower survivors to learn about various legal and non-legal resources and avenues for accountability, justice, and healing.

Services Provided:

Through LISA, any Western student can meet with a trained law student to discuss their legal options, understand various legal processes, and receive information and referrals to legal and non-legal resources. The team of volunteers work under the supervision of two lawyers, Anju Fujioka and Chanèle Rioux-McCormick. Students can discuss a range of issues including:

- Reporting to the police
- What to expect as a complainant in a criminal process
- Civil legal options (e.g. lawsuits against an organization or individual responsible for the assault)
- The Ontario Human Rights Tribunal
- Reporting or disclosing sexual assault on campus and Western University's complaint process
- Referrals for legal advice and/or representation

NOTE: LISA only provides legal information and does not provide legal advice or representation.

Eligibility:

LISA is open to any student currently enrolled at Western University's main campus. Students need not have experienced sexual violence themselves to contact LISA, book an appointment, and obtain information.

Booking Appointments:

Appointments can be booked by emailing law-lisa@uwo.ca. Emails should not include details of the sexual assault or the alleged perpetrator's identity. Appointment requests will be answered within two (2) business days.

Students can choose between virtual meetings or in-person meetings at Community Legal Services, Room 126 Western University Faculty of Law.

Contact Information:

- Email: law-lisa@uwo.ca
- Website: <https://law.uwo.ca/lisa>
- Twitter: [@LISAatWesternLaw](https://twitter.com/LISAatWesternLaw)
- Instagram: [@LISAatWestern](https://www.instagram.com/LISAatWestern)

The Court of Appeal for Ontario Dismisses Defamation Claim over Workplace Investigation Report



Published by:
Yola S. Ventresca and Deborah A. Boswell
Lerners LLP (London)

In its recent decision in *Safavi-Naini v. Rubin Thomlinson LLP*, 2023 ONCA 86, the Court of Appeal for Ontario unanimously upheld the dismissal of a defamation claim against a workplace investigator for her workplace investigation report. Specifically, the court decided that the defamation action amounted to

harassed her. The resident hired a publicist and her allegations were covered in national, provincial, and local media.

In response, NOSM retained an investigator to investigate her complaints. The program director and faculty member were the respondents in the

“By protecting an investigator’s reports from a defamation claim, the Court of Appeal has reinforced the ability and importance of ensuring that workplace investigators are able to freely conduct their work and make findings, even though one party may not agree with those findings.”

“Strategic Litigation Against Public Participation” (“SLAPP”) and the contents of the investigation report were protected by the doctrine of qualified privilege.

Background

A medical resident at the Northern Ontario School of Medicine (“NOSM”) alleged that both her program director and a NOSM faculty member sexually

investigation. The investigation was required under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 (“OHSA”).

After completing her investigation, the investigator submitted executive summaries of her report to NOSM. These summaries were not publicly disseminated, although each respondent and select staff at NOSM received the summaries. The

summaries contained the investigator’s findings, including her findings about the resident’s credibility.

The resident subsequently commenced an action against the investigator (and her law firm) alleging that the summaries were defamatory. In response, the investigator brought an anti-SLAPP motion to dismiss the action, pursuant to s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Under s. 137.1, courts must dismiss any proceeding that arises from an expression related to a matter of public interest, unless the responding party establishes that: (i) there are grounds to believe that the proceeding has substantial merit and the moving party has no valid defence; and, (ii) the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression in issue.

Superior Court of Justice Decision

The motion judge granted the motion to dismiss. He held that: (i) the summaries related to a matter of public interest; (ii) the allegedly defamatory statements were communicated in a situation of qualified privilege; (iii) the investigator did not act with malice (a finding of which would have barred her qualified privilege defence); and, (iv) the public interest in protecting the summaries outweighed the public interest in permitting the resident’s lawsuit to continue.

The resident appealed.

Court of Appeal Decision

The Court of Appeal upheld the motion judge’s decision.

The court concluded that the investigator's summaries concern general matters like sexual harassment and workplace harassment over which the public has substantial interest. However, the court noted that "the mere fact that an expression relates to sexual and workplace harassment, on its own, will often be insufficient to bring it within the scope of public interest". The court further stated that if this were not the case, then "the anti-SLAPP framework would apply - in most cases - to defamation proceedings stemming from #MeToo workplace allegations".

The court held that it must consider all the facts and the context of the case, beyond just the mere fact that the expression related to harassment. Here, the resident acted to publicize her underlying harassment allegations. The court deemed this act to be "the

antithesis of trying to keep the matter private". The court also noted that the allegations and resulting investigation arose at a public educational institution.

The court upheld the motion judge's conclusion that the investigator's summaries were protected by the defence of qualified privilege. The court applied the established rule that qualified privilege exists if the communicator has a duty to publish the information and the recipient has a corresponding duty or interest to receive such information. The court concluded that based on the OHSA, the investigator had a duty to provide her report to NOSM and NOSM (and its employees) had a corresponding duty or interest to receive this report.

Significance

Safavi-Naini v Rubin Thomlinson LLP provides a helpful analysis of how the

anti-SLAPP legislation and qualified privilege apply in the context of a workplace harassment investigation.

The Court of Appeal confirmed that given that there is an obligation to investigate allegations of workplace harassment under OHSA, the investigator's report was protected by qualified privilege. In such matters, investigators are tasked with the responsibility of making findings and preparing thorough, intelligible reports. By protecting an investigator's reports from a defamation claim, the Court of Appeal has reinforced the ability and importance of ensuring that workplace investigators are able to freely conduct their work and make findings, even though one party may not agree with those findings.

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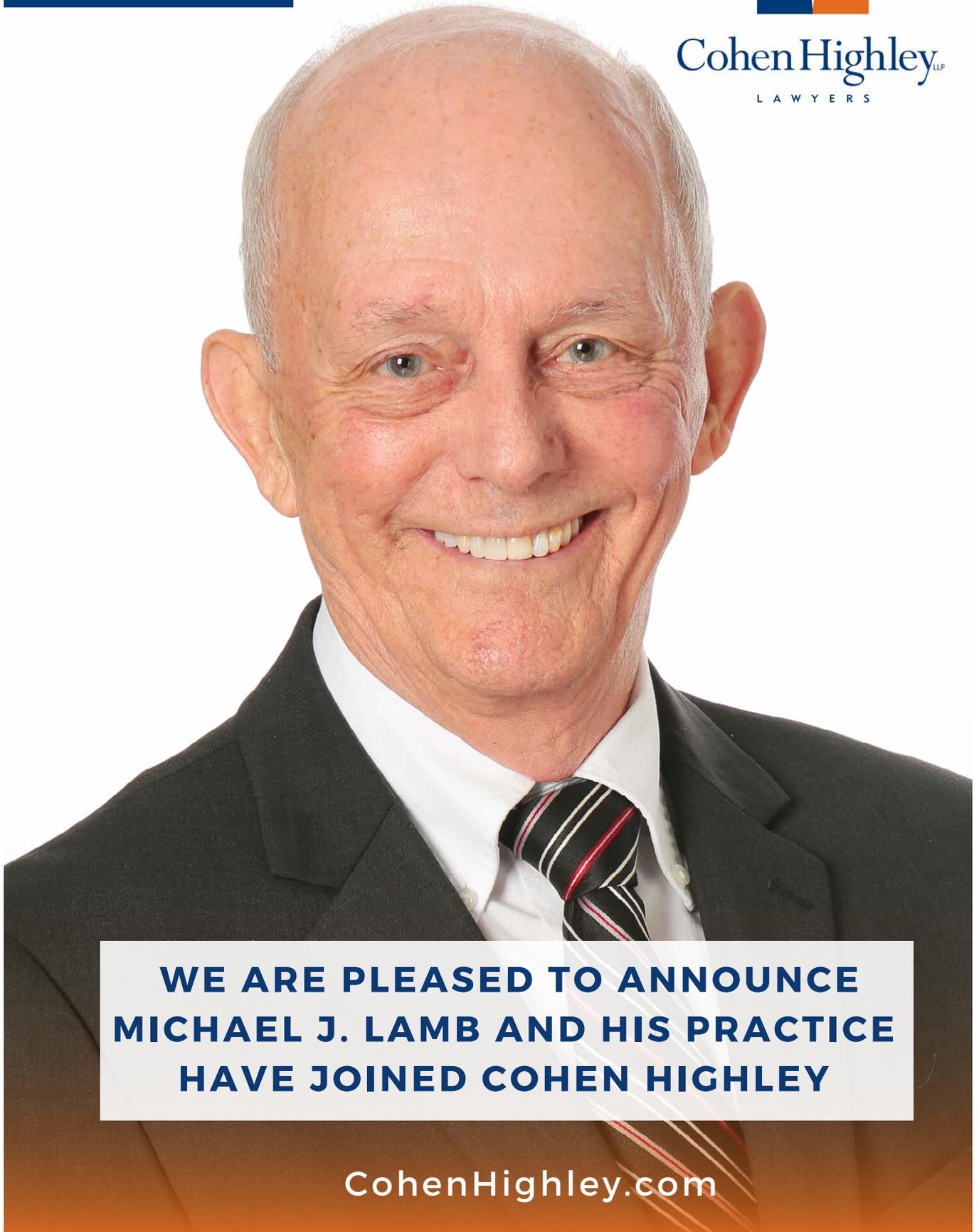
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MLA Events – Highlights



Contributed by:
Grace Smith and Michael Lamb

August 23/Aug 25, 2023

The MLA successfully hosted its Small Firms/In-House Annual Mini-Golf Tournament and Social, co-chaired by Grace Smith and Michael Lamb, in the penultimate week of August. The event, originally scheduled for August 23rd, 2023, was bifurcated due to the rain, with the Social taking place on August 23rd and the Mini-Golf Tournament being adjourned to August 25th.

The Social was held at Asher’s Lounge at Ivey Spencer Leadership Centre and offered an opportunity for attendees ranging from sole practitioners to small firms to in-house municipal lawyers to experience a fun night of interactions with colleagues, with a wide variety of delicious food and drinks abound, including a fun ‘slider bar’. Our attendees engaged in interesting discussions about various practices of

law, including real estate, litigation, and legal professionalism.

The Mini-Golf Tournament took place at the Tin Cup on a nice Friday afternoon. The lively event concluded with an informal award ceremony at the Waltzing Weasel. The trophy for the team with the lowest cumulative score went to Cohen Highley, which included Kayla Bonnar, Raechal Mills, Kate Robinson and Mike Lamb. The award for the lowest individual score was given to Sachit Tatavarti from the City of London. A big thanks to Cohen Highley for its generous sponsorship in providing prizes to our winners!

MLA Events – Upcoming

2023 MLA Awards - Voting Open!

PLEASE CHECK YOUR EMAIL

MLA lawyer members will have received an email invitation to vote for the amazing nominees for the 2023 MLA Awards which will be presented at this year's Opening of the Courts Ceremony on September 19th. Award recipients will be selected based on a combination of voting by the MLA membership and the Awards Committee's review of the nomination forms.

The deadline for voting is Friday, September 8th. Your votes will be anonymous.

AWARD FOR DISTINGUISHED SERVICE recognizes exceptional career contributions and/or achievements by MLA members to the legal profession and/or a law-related benefit to the community including mentorship related to the profession of law and/or leadership roles in the community. Those who will receive the award will have made a significant contribution to the profession of law, whether as a solicitor in effectively performing services in that position, as a barrister in attaining an excellent reputation in the courts, as an academic, or for a single act of notable distinction and/or innovation in the practice of law that advances the ideals of the profession.

AWARD FOR ACCESS TO JUSTICE recognizes individuals who have demonstrated a commitment to providing commendable legal services to those in need through Legal Aid Ontario or through pro bono legal services and/or offered academic contributions pertaining to the study of legal aid and/or created innovative measures or built links between lawyers and community organizations/advocates to promote better access to justice in Middlesex County.

RISING STAR AWARD recognizes individuals who have distinguished themselves in the practice of law, who advances the ideals of the profession, demonstrating community involvement, and have been practicing for less than 10 years.

AWARD FOR PHILANTHROPY recognizes exceptional contributions and/or dedication by MLA members to the community by supporting not-for-profit organizations and/or performing charitable services.

16th Annual Mentoring Dinner: “New Workplace, New Strategy?”

Thursday, September 14th

If you have been practising law for 3 years or less or if you are an articling or recent summer student, please join us for our Annual MLA Mentoring Dinner at Ivey Spencer Leadership Centre! Enjoy cocktails on the patio followed by an incredible 3-course meal overlooking Ivey Spencer's lush green spaces while engaging in meaningful discussions over each course.

This event will feature talented and experienced mentor lawyers tackling the theme of 'setting your path in a new workplace'. Through the evening, mentors will focus dialogue on how we can improve our practice of law while engaging equity, diversity, and inclusion in wholistic and integrated ways. As a legal community, London has so much to offer – and the MLA and our mentors want to encourage newer members of the bar to join us for a night of open discussion and knowledge-sharing.

A list of our key mentors at this year's event will be announced soon!

[REGISTER ONLINE NOW!](#)

195th Opening of the Courts

Tuesday, September 19th

4:30-4:45 pm: Procession

4:45-6:00 pm: Ceremony

6:00-6:45 pm: Reception

7:00-9:00 pm: Bench & Bar Dinner

Please join us for the 195th Fall Opening of the Courts as we come together to celebrate our colleagues, our community, and make important connections as a busy year begins for the bench and bar! Our keynote speaker will be Ali Chahbar, Chairperson of the London Police Services Board. We look forward to welcoming new calls since 2022 and our Local Administrative Judges will share an update on the state of the courts, including recognition of their colleagues who have been appointed to the bench since 2022.

[REGISTER FOR THE CEREMONY/RECEPTION HERE](#)

[REGISTER FOR THE BENCH & BAR DINNER HERE](#)

Member Updates

We will be finalizing the 2023-2024 MLA Members' Directory soon. You can always access the up-to-date membership details through our [online members' directory](#). Please let us know if you move.

Jelena Buac – please note the law firm's name is Family Lawyers Collective LLP, and there is no fax

Beth Belanszky – Economical Insurance is now Definity Insurance and email has changed to beth.belanszky@definity.com

Stephanie Doucet – firm name has changed to Doucet Family Law Professional Corporation, and email is stephanie@doucetfamilylaw.com

Brendan Farrer – Economical Insurance is now Definity Insurance and email has changed to brendan.farrer@definity.com

Nicole Foster – new Call at Salim J. Khot-LPC, 362 Wharncliffe Rd. S., N6J 2M1, ph: 519-858-4958, nicolef@sjklpc.com

Sabreen Ghenniwa – new paralegal member at Neighbourhood Legal Services, 910-383 Richmond St., London N6A 3C4, ph: 519-438-2890 x22, direct ph: 226-977-0258, fax: 519-438-3145, sabreen.hgh@gmail.com

Michael Haight – new Call at Harrison Pensa LLP, 1101-130 Dufferin Ave., London N6A 5R2, ph: 519-679-9660, direct ph: 226-797-4821, mhaight@harrisonpensa.com

Tatiana Hulan – new Call at Harrison Pensa LLP, 1101-130 Dufferin Ave., London N6A 5R2, ph: 519-679-9660, direct ph: 519-661-6758, thulan@harrisonpensa.com

Rebecca Kaeser Reiss – the firm name has changed to Doucet Family Law Professional Corporation, and email is rebecca@doucetfamilylaw.com

Mahwash Khan – new member in a non-practicing role at Siskinds LLP, 1-275 Dundas St., London N6B 3L1, ph: 519-672-2121, direct ph: 647-805-8699, mahwash.khan@siskinds.com

Louise Mimmagh – please note the law firm's name is Family Lawyers Collective LLP, and there is no fax

Anita Osmani – new Call at Harrison Pensa LLP, 1101-130 Dufferin Ave., London N6A 5R2, ph: 519-679-9660, direct ph: 519-661-6768, aosmani@harrisonpensa.com

Madison Relouw – new Call at Family Law Group, 1-1579 Hyde Park Rd., London N6H 5L4, ph: 519-672-5953, fax: 519-672-8736, mrelouw@familylawgroup.ca

Alice Rho – please note the law firm's name is Family Lawyers Collective LLP, and there is no fax

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Will Notices

Mary O'Donnel Scott Budd

Anyone knowing of the Last Will and Testament for Mary O'Donnel Scott Budd, born December 14, 1934, died on July 29, 2023 of London, Ontario, please contact Michaela Fazio at 519-344-0777, mfazio@faziolaw.net.

Larry Eugene Ford

Anyone knowing of a Last Will and Testament for Larry Eugene Ford, born August 24th, 1964 and

died on or about June 9th, 2023, of London, Ontario, please contact Brian Ford at 778-862-9264, wildguitarman1@gmail.com.

Joseph Eugene Huard

Anyone having knowledge of a Last Will and Testament for Joseph Eugene Huard, born March 3, 1948, who died on August 11, 2023, please contact Frederick A. Mueller at (519) 673-1300 or email: fred_mueller@rogers.com.

Marilyn Elizabeth Jackson

Anyone knowing of a Last Will and Testament for Marilyn Elizabeth Jackson, born July 24, 1949 of Woodstock, Ontario, please contact Tracey Jackson at 519-280-1506, email: tdjackson78@gmail.com.

John Malcolm Noyes

Anyone knowing of a Last Will and Testament for John Malcolm Noyes, born May 23, 1959, last resided, London, ON,

please contact the law office of Siskinds LLP at 226-213-7426, email: sharon.owen@siskinds.com.

Robert William Sneddon

Anyone knowing of a Last Will and Testament for Robert William Sneddon, born November 30, 1942 and died July 26, 2023 of London, Ontario, last in Woodstock, Ontario, please contact Lorraine AKA Laurie Sneddon at 519-608-1977, email: sirbo8@icloud.com.



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