

THE
MIDDLESEX LAW
ASSOCIATION

Smail



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April 2024 Issue

Thank you to all the contributors and advertisers for supporting this quarterly edition of the Snail.

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The deadline is noon on **June 25, 2024**

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Middlesex Law Association Newsletter

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President's Message



Contributed by:
Nicola Circelli / Nicola Circelli Law and MLA Board President

During my tenure on the Board of Trustees, the Middlesex Law Association has undergone many changes. Our new Board structure has led to increased CPD programming and Paralegals have now begun to grow our membership. I hope this Spring brings a renewed sense of hope to our lives and the Profession as we head into another exciting chapter.

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:

Jacob Aitcheson (Lerners LLP), Rasha El-Tawil (Siskinds LLP), Jacqueline Fortner (Dyer Brown LLP), Hilary Jenkins (McKenzie Lake), John A. Nicholson (Cohen Highley LLP), Anna Szczurko (Siskinds LLP), Natalie Carrothers (Lerners LLP), Leslie Ibouily (Shillington McCall), Geoff Snow (Snow Lawyers), Gregory R. Willson (Lerners LLP), Stacey Pipicelli (Fanshawe College), Ashley Caldwell (McKenzie Lake), Anita Osmani (Harrison Pensa), Anju Fujioka (Beckett Personal Injury Lawyers), Nicole Rogers (Aviva Trial Lawyers) and Claire Houston (Western Law).

The Executive Committee is comprised of myself, Jacqueline Fortner as Vice- President, Gregory R. Willson as Treasurer, and Jake Aitcheson as Past President.

During the next year, the Board of Trustees will be focused on 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; corporate commercial (litigation); corporate commercial (solicitor); personal injury; small firms, solo practices, and 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.

Please attend the Straight From the Bench Conference on May 6th at the Hilton London downtown - the early agenda looks very exciting - and the Personal Injury Conference set for June 21st at the London Club. Our committees work very hard at putting these events on and we really look forward to your attendance, EDI, Professionalism and Substantive hours included.

Finally, I want to thank our outgoing President, Jake Aitcheson. Jake joined the Board in 2016 and served as President of the MLA since the spring of 2023. As a Board, we benefited from Jake's hard work, dedication, and leadership. With an unwavering positive attitude, Jake saw the Board through a period of transition to our practice area committees. His significant contributions to the membership will be everlasting and I look forward to working with him this year.

Nicola Circelli, MLA
President

Practice Resource Centre News



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

Donation

Our thanks go out to Alf Mamo for donating a copy of the *Annual Review of Family Law 2022-2023* to the MLA library. This is always a popular resource with our family law practitioners, and we greatly appreciate any donations from our author members.

Looseleaf Texts and E-Resources

We have a looseleaf subscription agreement with the legal publisher Thomson Reuters that includes access to the e-version of our print subscriptions through its ProView platform. Thomson Reuters is moving most titles off its ProView platform and into subject bundles in Westlaw's Topical Texts & Annotations collection. Unlike our ProView access, these titles cannot be chosen on an à la carte basis so we are currently negotiating with Thomson Reuters to acquire some of these bundles so that our members will still have access to the most current information. This may result in a move to e-access only for a significant portion of our looseleaf titles, but it also means that there are no filing delays that come with traditional print versions and no missing pages. Access will be available through Westlaw on all library computers, and we are always happy to find excerpts for you. The format change won't likely happen until June when ProView is discontinued, and we will update you as things are finalized.

Free Online Resources

While you do have to come to the library to access information through Westlaw or Lexis Advance Quicklaw, there are resources available for free from your office. We highlighted the

LSO's [AccessCLE](#) database in our last newsletter article and wanted to remind users about a couple of other great resources: CanLII and HeinOnline.

CanLII

[CanLII](#) is funded through a portion of your Law Society fees and you certainly get what you pay for with this ever-expanding service. Its goal is to make Canadian law accessible for free on the Internet and this has grown to include not just primary legislation and case law, but secondary resources too. There is an advanced search function for searching across databases, and the program highlights search terms within the retrieved documents. All decisions are provided in both html and pdf format and all documents are clearly identified using neutral citations.

CanLII's extensive commentary includes [books](#), [articles](#), [journals](#), to name a few, and the excellent [CPD papers](#) from the County of Carleton Law Association, all searchable through CanLII's search engine.

HeinOnline

Do you need to see some Ontario legislation from the 1930's or an old English case report out of The English Reports? Or maybe you need to see an article from The Advocate's Quarterly or The Canadian Journal of Family Law. You can access 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. 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.

[ca](#). HeinOnline gives you access to a wide variety of US, Canadian and International law journals, Canada's Supreme Court Reports, federal and provincial statutes, and the full reprint of the aforementioned English Reports case reporter series. There's even an iPhone/iPad app so you can access it from your portable device. Contact the Law Society's Great Library today to get your login information and check out the service at <http://www.heinonline.org/>

Self-Represented Litigants Information

Have you been approached by an individual who was not able to retain you but who needs some resources to handle their own legal matter? The Great Library at the Law Society of Ontario has re-designed its resource guide and launched a more user-friendly version called [Resources for Self-Represented Litigants](#). Bookmark that site to pass on the next time you are approached by someone needing guidance on a legal issue.

New Books

Bennett, Frank. **Bennett on commercial leases in Ontario, 2nd ed.**, LexisNexis, 2023.

Bennett, Russell. **Canada's Cannabis Act: annotation & commentary, 2023/2024 ed.**, LexisNexis, 2023.

Berryman, Jeffery. **Law of equitable remedies, 3rd ed.**, Irwin Law, 2023.

Beynon, Andrew et al. **Modern first nations legislation annotated, 2024 ed.**, LexisNexis, 2023.

Botting, Gary. **Canadian extradition law, 6th ed.**, LexisNexis, 2023.

Brownstone, Justice Harvey. **Tug of war: a judge's verdict on separation, custody battles, and the bitter realities of family court**, ECW Press, 2009.

Butkus, Mavis. **2024 annotated Ontario Landlord and Tenant statutes**, Thomson Reuters, 2023.

Casey, Brian. **Arbitration law of Canada: Practice and procedure, 4th ed.**, Juris Publishing, 2022.

Ceyssens & Childs. **Ontario Police Services Act, fully annotated, 2023 ed.**, EarlsCourt Legal Press, 2023.

Coughlan, Steve & Glen Luther. **Detention and arrest, 3rd ed.**, Irwin Law, 2024.

Diab, Robert & Chris D.L. Hunt. **Search and seizure**, Irwin Law, 2023.

Donahue Donald J. et al. **Real estate practice in Ontario, 10th ed.**, LexisNexis, 2023.

DuPerron, Dana, ed. **Mitigation in Ontario employment law**, LexisNexis, 2023.

Fleming, Jack. **Ontario landlord & tenant law practice, 2024 ed.**, LexisNexis, 2023.

Garellek, Michael and Virginia Torrie, **2024 annotated Bank Act with associated regulations**, Thomson Reuters, 2023.

Gorham, Nathan et al. **Prosecuting and defending drug cases: a practitioner's handbook, 2nd ed.**, Emond, 2023.

Karimjee, Moiz. **Issues in criminal trials and summary appeals law, 3rd ed.**, LexisNexis, 2023.

Koturbash, Judge Gregory. **Guide to conducting sentencing hearings in Canada**, LexisNexis, 2023.

Kowarsky, Paul. **The Justice of the Peace in Ontario: practice and procedure**, LexisNexis, 2018.

Krushelnicki, Bruce. **Practical guide to the Ontario Land Tribunal, 3rd ed.**, LexisNexis, 2023.

Lavender, T. Stephen. **2024 annotated Ontario Human Rights Code**, Thomson Reuters, 2023.

Lavender, T. Stephen. **2024 annotated Employment Insurance Act**, Thomson Reuters, 2023.

LSO. **12th human rights summit**, 2023.

LSO. **26th estates and trusts summit --day 1 and 2**, 2023.

LSO. **28th annual intellectual property law: the year in review**, 2024.

LSO. **31st immigration law summit day 1 & 2**, 2023.

LSO. **Annotated powers of attorney for property and for personal care 2024**.

LSO. **Annotated will 2024**.

LSO. **Eight-minute family law lawyer 2023**.

LSO. **Civil appeals: the year in review 2023**.

LSO. **Intensive child protection training primer 2023**.

LSO. **Safeguarding real estate transactions 2023**.

LSO. **Six-minute real estate lawyer 2023**.

MacDonald, James C. **2024 annotated Divorce Act**, Thomson Reuters, 2024.

MacDonald, James C. **2024 annotated Ontario Family Law Act**, Thomson Reuters, 2023.

MacFarlane, Julie. **The new lawyer: how settlement is transforming the practice of law**. UBC Press, 2008.

McLeod & Mamo. **Annual review of family law 2022-2023**, Thomson Reuters, 2023.

McLeod, Madsen, Fryer, Kilpatrick. **McLeod's Ontario family law rules annotated 2023-2024**, Thomson Reuters, 2023.

Mew, Graeme. **Law of limitations, 4th ed.**, LexisNexis, 2023.

n/a. **Canadian master tax guide, 79th ed., 2024**, Wolters Kluwer, 2024.

Painter, Charles. **Minimum maintenance standards for municipal highways**, LexisNexis, 2023.

Payne, Julien. **Canadian family law, 9th ed.**, Irwin Law, 2022.

Randazzo, Daniel. **2024 annotated Ontario Labour Relations Act**, Thomson Reuters, 2023.

Rose, David. **Law of traffic offences, 5th ed.**, Thomson Reuters, 2023.

Saunders, Rennie, Garton, **Federal Courts Practice 2024**, Thomson Reuters, 2024.

Seel, Keith & Wenjue Knutsen. **Management of nonprofit and charitable organizations in Canada, 5th ed.**, LexisNexis, 2023.

Segal, Murray. **Annotated Ontario rules of criminal practice 2024**, Thomson Reuters, 2024.

Sherman, David, ed. **Practitioner's Goods and Services tax annotated, 48th ed, 2023**, Thomson Reuters, 2023.

Snyder, Ronald. **2024 annotated Canada Labour Code**, Thomson Reuters, 2023.

Stark, Jo-Anne. **Mastering the art of legal coaching: the legal professional's guide to empowering clients**, Tellwell Talent, 2020.

Sugar, Stephanie. **Franchise law in Canada, 2nd ed.**, LexisNexis, 2023.

Tamaro, Normand. **2024 annotated Copyright Act**, Thomson Reuters, 2023.

Waddams, Stephen. **Law of contracts, 8th ed.**, Thomson Reuters, 2022.

Wallace, Patricia H. **Effective advocacy in family law**, LexisNexis Butterworths, 2004.

Watson & McGowan. **Ontario civil practice 2024**, Thomson Reuters, 2024.

Watt, Beedell, Regimbald, Regan & Estabrooks. **Supreme Court of Canada practice 2023**, Thomson Reuters, 2023.

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Auerback, Stephen. **Annotated Municipal Act, Volume 3**, Thomson Reuters

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

Bullen, Edward et al. **Bullen & Leake & Jacob's precedents of pleadings, 14th ed., Volume 1**, Sweet & Maxwell, 2001.

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

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

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

Honsberger, John. **Honsberger's bankruptcy in Canada, 5th ed.**, Thomson Reuters, 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

n/a. **Martin's Annual Criminal Code 2023.** -copies 1 and 5 both missing

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

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

Poyser, John E.S. **Capacity and undue influence, 2nd ed.**, Thomson Reuters, 2019.

Samfiru, Lior. **Termination of employment**, Emond, 2018



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Welcome new MLA Trustees



Ashley Caldwell

Ashley practices in the area of corporate and commercial law, with a focus on franchising, licensing and distribution. Ashley is counsel to both franchisors and franchisees and is experienced in the review and negotiation of franchise agreements, the purchase and sale of franchised businesses, compliance with provincial franchise legislation, and the resolution of franchise disputes. In addition to her franchise practice, Ashley

advises on a variety of corporate commercial matters, including share and asset acquisitions and divestitures, corporate reorganizations, shareholder agreements, commercial leases and other commercial contracts. Outside of the office, Ashley enjoys cheering for the Detroit Lions at their home field and spending time with friends and family.

Ashley is excited to join the Middlesex Law Association and contribute back to the legal community of her hometown. Working as a solicitor, she is looking forward to integrating more solicitor content into MLA programs and getting to know more colleagues within the local legal community.



Stacey Pipicelli

Stacey is the Associate Dean of the School of Public Safety at Fanshawe College. Before transitioning into education, Stacey served as the Director of Operations for a specialized group at Harrison Pensa LLP, focusing on Small Claims Court matters. This experience equipped her with invaluable insights into legal operations and strategic management.



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Stacey's journey at Fanshawe College began in 2012 when she joined as a faculty member and curriculum developer. She played a pivotal role in the launch of the Paralegal Program, contributing to its original curriculum development and faculty team. Over the years, she has dedicated herself to enhancing the competency of graduates, making a tangible impact on the legal profession in Southwestern Ontario. Her dedication to fostering a culture of equity, diversity, and inclusion is evident in her efforts to build strong relationships within the community, fostering trust and respect for the paralegal profession. She sees her role on the MLA Board as an excellent opportunity to continue to serve the paralegal community through creating paralegal focused Continuing Professional Development events.



Anita Osmani

Anita is an Associate at Harrison Pensa LPP, practicing Family Law. She is passionate about all things family and advocating for her client's during difficult and emotional times. Anita obtained her Juris Doctor from Windsor Law in 2022 and was called to the Ontario bar in 2023. This is Anita's first year as a Trustee of the Middlesex Law Association. She is looking forward to working with all of the remarkable people who serve the Association and excited for the privilege of offering her insights to help shape the future of the legal profession in our area. In her free time, Anita enjoys hosting (particularly creating aesthetic tablescapes), playing board games, and watching historical drama films."



Anju Fujioka

Anju has dedicated her practice to representing survivors of sexual and gender-based violence (SGBV). Here in London, she works primarily as a civil litigator, representing survivors across the country. Recently, she also worked as a Canadian SGBV Expert, training members of the Ministry of Justice of The Gambia, in an initiative funded by Global Affairs Canada.

Anju believe strongly in the importance of mentorship and strengthening communities. She had the fortune of collaborating with Western Law, as a guest lecturer on trauma-informed practices and supervises the LISA (Legal Information for Sexual Assault) program. In addition to providing free and confidential legal information to students who have experienced sexual violence or abuse, LISA allows law students a unique experiential learning opportunity. She also serve on the boards of Anova, the Women's Legal Action and Education Fund (LEAF), and the Fight to End Homelessness.

This year, she will lead the MLA board's EDI subcommittee and endeavour to put together valuable, non-tokenistic, and actionable programming on the subject. Anju extends an open invitation to MLA members to reach out with any suggestions and is open to contributions and discussion. She hopes to engage a broad and more representative cross section of MLA members in our CPD events and social activities.



Nicole Rogers

Nicole is pleased to be returning to the Middlesex Law Association Board as a Trustee for the 2024 -2025 term after what can only be described as a very long hiatus (She was last a Trustee some time around 2008). In that time, she's raised children, moved firms, moved homes, and has been dedicated to surviving the practice of law through life's changes.

She is currently Associate Practice Counsel leading a group of young insurance defence litigators at Aviva Trial Lawyers, based in the London office. With older children now into adulthood and taking up far less of her time, she thought the moment was right to return to giving back to the profession.

What struck Nicole the most on returning to the Board was the level of enthusiasm and dedication with which the current trustees approach their roles. It is with good reason that the Middlesex Law Association is one of the strongest associations in the province. Coming from a time when we struggled to recruit trustees and when initiatives like Straight From the Bench and the Personal Injury Conference were a novelty, she's pleased to see these programs going strong so many years later and with so much support from members (have you registered yet? If not, you should!).

Nicole is thrilled to be part of such a strong group of lawyers who care so deeply about the profession and the well-being of MLA members. She is looking forward to rolling up her sleeves this term and continuing the great work being done by the Board.

February Bench and Bar Meeting



Contributed by:
Leslie Ibouily / Lawyer, Shillington McCall LLP

The turnout was excellent for this virtual meeting, with nearly 100 MLA members and additional regional lawyers attending. This was a significant Bench and Bar Meeting as the MLA had the opportunity to welcome Justices Pomerance and Mitchell to their first Bench and Bar meeting in their new roles as Regional Senior Justice for the Southwest Region, and Local Administrative Judge for London, respectively. We were also very pleased to congratulate Justice Carnegie and Justice ten Cate on their respective recent appointments to the Superior Court of Ontario.

The Bench and Bar Committee are pleased to provide you with the following summary of the discussion at this meeting.

Opening remarks of Justice Pomerance

Justice Pomerance advised that as the result of the recent appointments of Justice Carnegie and Justice ten Cate to the Superior Court of Ontario, Justice McArthur will be transferred to Kitchener, Ontario. In February 2024, Justice Munroe reached mandatory retirement age. Justice Pomerance indicated that she anticipates that there will be an appointment to fill Justice Munroe's position.

Justice Pomerance provided an update with respect to the use of technology in the Court system, and cited Chief Justice Morawetz who has made clear that the Court is paperless, and there is no plan to go back to a paper-based Court system. The Court will continue to use CaseLines as a mechanism to streamline access to materials and hearings. While the Court has the ability to conduct in-person hearings again, there are a number of proceedings that are well-suited for Zoom hearings. Justice Pomerance acknowledged that over the last few years, the Court has not been able to offer appropriate access to justice to civil litigants as the result of backlog, the pressure of Jordan in criminal cases, and the prioritization of criminal and civil matters. The Court



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INDEPENDENT MEMBER FIRM

has launched initiatives to address this issue in a meaningful way, one being civil long trial sittings, and another one being the civil trial "blitz" sitting which permit judges outside of the Southwest Region to judge-alone trials virtually. Justice Pomerance confirmed that there will be another virtual setting in November 2024, which will be led by Justice Tranquilli.

CaseLines

The use of CaseLines is intended to streamline access to materials and hearings. CaseLines invitations are sent from Court Services and pleadings bundles are available in CaseLines. When Counsel receive an invitation to CaseLines at the outset of an action, they should upload the pleadings into the pleadings bundle. Counsel are encouraged to contact the Court Services if they are experiencing any technical issues related to CaseLines. The use of hyperlinks in materials is

mandatory. Ideally, Counsel should be hyperlinking references to cases internally as well as externally e.g. CanLII. Counsel may also consider hyperlinking a list of cases at the end of their factum, and/or the part of the factum where they are making their arguments. Justice Pomerance recognized that hyperlinking requires additional effort, it is however enormously helpful to the judiciary.

The MLA Practice Resource Centre, as well as the SCJ website has an online list of resources, including up to date practice directions, that can assist Counsel in ensuring compliance. The Court is striving to be paperless, even when it comes to jury trials. There are various courtrooms equipped with screens allowing jurors to review documentary exhibits. However, in cases where there may be sensitive documents, and in order to respect the privacy of an extremely sensitive

document, a paper copy may be provided to the jurors.

Motions and Pre-trials

Long motions are presumptively virtual. The Court will give a great weight to the preference of Counsel, when determining whether a motion or other proceeding should be conducted in-person. That being said, Counsel would have to provide the Court with a compelling reason to depart from the presumptive virtual approach, and all parties must have consented to it. If the request is made well in advance, the Court would be able to assess the needs and availability for that specific week with respect to criminal and family matters. A pre-trial conference could likely be conducted in-person in the hopes of encouraging settlement. A request can be made to the trial coordination unit on an ad hoc basis. Calendy was implemented successfully as a pilot project in London, ON,



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and will be used to schedule virtual sittings in November 2024. However, it is unlikely that Calendy would be implemented for regular use in London, ON at this point in time. The use of Calendy may be explored for 2025 long trial sitting.

Simplified procedure

A trial record is not required in order to have a simplified matter on the civil assignment court list. Once the certificate of readiness for pre-trial conference has been filed, it will trigger having the matter placed on the civil assignment court list. Counsel will then be able to schedule their pre-trial conference dates. As per Rule 76.11, a trial record is mandatory and will be due 10 days before trial.

Long trial sittings and disclosure of placement on running lists

MLA members have expressed concern about the lack of information provided by the Court concerning where a case is on trial running lists, and when and if a case is likely to be called for trial. Justice Pomerance

stated that Counsel should know where they are on the trial list, and changes will be made to ensure that Counsel and parties are aware of where they stand on running lists. This information will be provided for trials on the long trial sittings in 2025, and disclosure of this information for regular trial sittings will be provided beginning soon when an appropriate notice system has been developed.

Justice Pomerance stated that it is contemplated that Counsel may have two or three cases on the long trial sittings. Knowing where Counsel is on the list and likelihood of being reached, is important to ensure the appropriate use of time and resources as Counsel prepare for trial. Disclosure of where case stand on the lists will hopefully assist in that regard.

With respect to long trials running into a judicial conference week, judges are asked before being assigned to a case whether they are willing to give up their attendance to the judicial conference, as jury trials beginning before a conference week take

precedence and will continue through the judicial conference.

A speak-to status court for long sittings will take place this year approximately one week prior to the trial date to address trial readiness and to provide information to Counsel about the cases on the list and likelihood of being reached.

Administrative dismissals

Effective May 13, 2024, court staff will resume issuing and serving administrative dismissal notices and/or orders for delay for civil, Small Claims Court, Divisional Court, and family matters. This includes issuing dismissal notices and orders that have been on hold since March 16, 2020. Court staff are resuming administrative dismissals as part of the return to normal court operations following the COVID-19 pandemic. Administrative dismissals under the court rules are intended to promote the timely resolution of legal disputes, discourage delays, and increase efficiencies in the court system.

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Celebrating Don Fulton’s 60 Years of Practicing Law

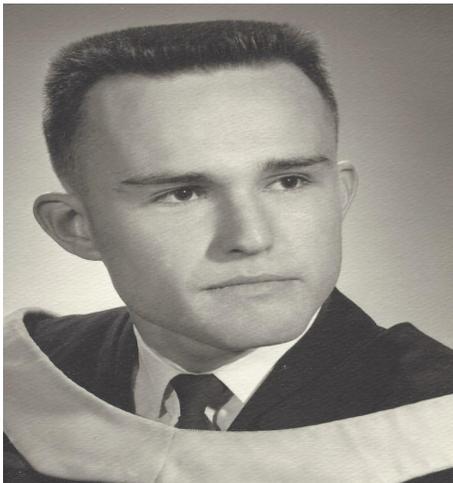
This year, we celebrate Donald W. Fulton’s 60 years of practicing law. Don was part of the first graduating class at the then University of Western Ontario’s Faculty of Law in 1962.

Adorning Don’s office are possessions that mean everything to him: photos of family and days in the military, historical memorabilia, and law books. His wit and humour are second to none, and this young 87 year-old chats business goals on a regular basis. Today, you may still find him walking on some banking trips, taking time to chat with other lawyers on his walks, and

generally, offering the much-needed humour people need. Don is good as they come in our legal profession: humble, fair, curious, kind, and ready to tell it how it is to anyone.

Over the years, he has been the president of the Middlesex Family Law Association, served as JAG in the military, and practiced with some of the best lawyers in London.

Don, we celebrate you, and thank you for all that you do.



Economics graduate, UWO, 1959.



Call to the Bar, Osgood Hall, 1964.



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Where Are All the Women At?

Empowering Women in Canadian Criminal Law: Pioneers, Leaders, and Champions



Contributed by:
Sam Puchala and Perrie Douglas

This piece was inspired by a conversation between several colleagues many months ago.

We noted there were fewer women sitting on London's OCJ bench now than when we first arrived in the practice of criminal defence.

"What happened to all the female judges?"

It was a good question. One would think there would be more gender parity in the judiciary today, not less.

We said we would write this piece to raise the question, but there were constant developments: some great wins, and some huge losses. For instance, on November 6, 2023, the Supreme Court of Canada celebrated the historic milestone of achieving its first female majority with the appointment of Justice Mary Moreau, a franco-Albertan who practiced criminal law, constitutional law, and civil litigation.

On the other hand, we lost Gretta Grant, an inspiration within the Canadian legal sphere, particularly for her advocacy on behalf of women in the profession. A local trailblazer, Grant was the first Chinese Canadian woman to be called to the bar in Canada. She practiced in London, served as Assistant City Solicitor, and was among the first generation of Legal Aid directors in Ontario, pioneering the province's Legal Aid program. Her loss is deeply felt, but we remain grateful for her contributions and inspired by the path she forged.

It is worth noting that our LAJs for both London's OCJ and SCJ, Justice Wendy Harris Bentley (a former London CLA President) and Justice Alissa Mitchell, as well as our SCJ RSJ, Justice Renee Pomerance, are now all women. The London Criminal Lawyers' Association has an all-female executive for the first time since its inception with Cassandra DeMelo as President, Nicola Circelli as Vice President, Danielle D'Alonzo as Secretary, Katie Heathcote as Social Director, and your co-authors, Sam Puchala and Perrie Douglas as Treasurer and CPD Director respectively. As an executive, we have worked to address issues in the criminal law system head-on and have made efforts to foster community in criminal law through various events including a summer baseball social and monthly CPD lunches.

Despite these strides, challenges persist on the path to gender equality within the legal profession. Women continue to encounter systemic barriers, including gender bias, unequal representation in leadership roles, and wage disparities. Addressing these entrenched inequities requires a concerted effort from stakeholders across the legal spectrum, from policymakers to legal practitioners, to dismantle institutional barriers and foster a culture of inclusivity and equity.

Women are not merely participants in Canada's legal system; we are integral architects shaping the landscape of criminal law. From ground-breaking lawyers to esteemed judges, our

presence resonates with significance across historical and contemporary contexts. As Canada continues its journey toward gender equality, the empowerment of women within the legal profession remains essential, not only for the realization of justice, but also for upholding the fundamental principles of democracy and human rights.

So where are all the women at? We are here—we are the leaders of the Middlesex Law Association and the London Criminal Lawyers' Association. We are opening our own firms in droves and fearlessly defending our clients.

We are pioneers, champions, and we can't wait to see what the future brings.

“As Canada continues its journey toward gender equality, the empowerment of women within the legal profession remains essential, not only for the realization of justice, but also for upholding the fundamental principles of democracy and human rights.”

How to Properly Draft Restrictive Covenants (Non-compete Provisions) in Franchise Agreements



Contributed by:
Ashley Caldwell / Lawyer, McKenzie Lake Lawyers LLP

Restrictive covenants, or more commonly referred to as non-compete clauses in franchise agreements, are contractual provisions that attempt to prohibit a franchisee from utilizing the knowledge or expertise that they have acquired from a franchisor for the purpose of operating a competing business following the expiration or termination of a franchise agreement. For a franchisor, the importance of enforcing a restrictive covenant post-termination of a franchise agreement is to prohibit franchisees from using the franchisor's proprietary information in the operation of a business that could compete with or negatively impact the franchise system.

Although the underlying purpose of a non-complete clause may be regarded as legitimate, Canadian courts have had to balance the freedom of parties to enter into these contracts against restrictions on trade. This has led to court decisions that have set out several principles, that if followed, can help to ensure that restrictive covenants in franchise agreements will be deemed enforceable.

How do You Properly Draft Restrictive Covenants?

In general, non-compete provisions are presumptively unenforceable, unless

such covenants are determined to be reasonable. The reasonableness of a restrictive covenant is reviewed under certain qualifications: protection of the legitimate proprietary interest of the franchisor, the geographic scope,

temporal scope, and the use of clear unambiguous language.

Proprietary Interest

First, the franchisor must establish that it has a proprietary interest in which it is seeking to protect. In essence, they must demonstrate: i) what makes the franchisor's product or business unique; ii) why the franchisor requires protection and; iii) what is at stake for the franchisor

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if the protection is not granted. Typically, franchisors will be deemed to have proprietary interests in **specific** trade secrets, recipes, and techniques, as well as other confidential or proprietary information, including knowledge of the franchisor's customer base.

When non-compete provisions are drafted to protect nonspecific proprietary interests, it may be difficult for a franchisor to demonstrate that they have developed a unique franchise system that requires protection from duplication.

Temporal and Spatial Scope

The length of time that a departing franchisee will be subject to a post-termination non-competition covenant, and the size of the area in which the departing franchisee cannot compete, are both restrictions that must be limited to only what is reasonable

and necessary to adequately protect the franchisor's proprietary interest. A restrictive covenant that is too long or covers too large of an area will likely be found to be unreasonable.

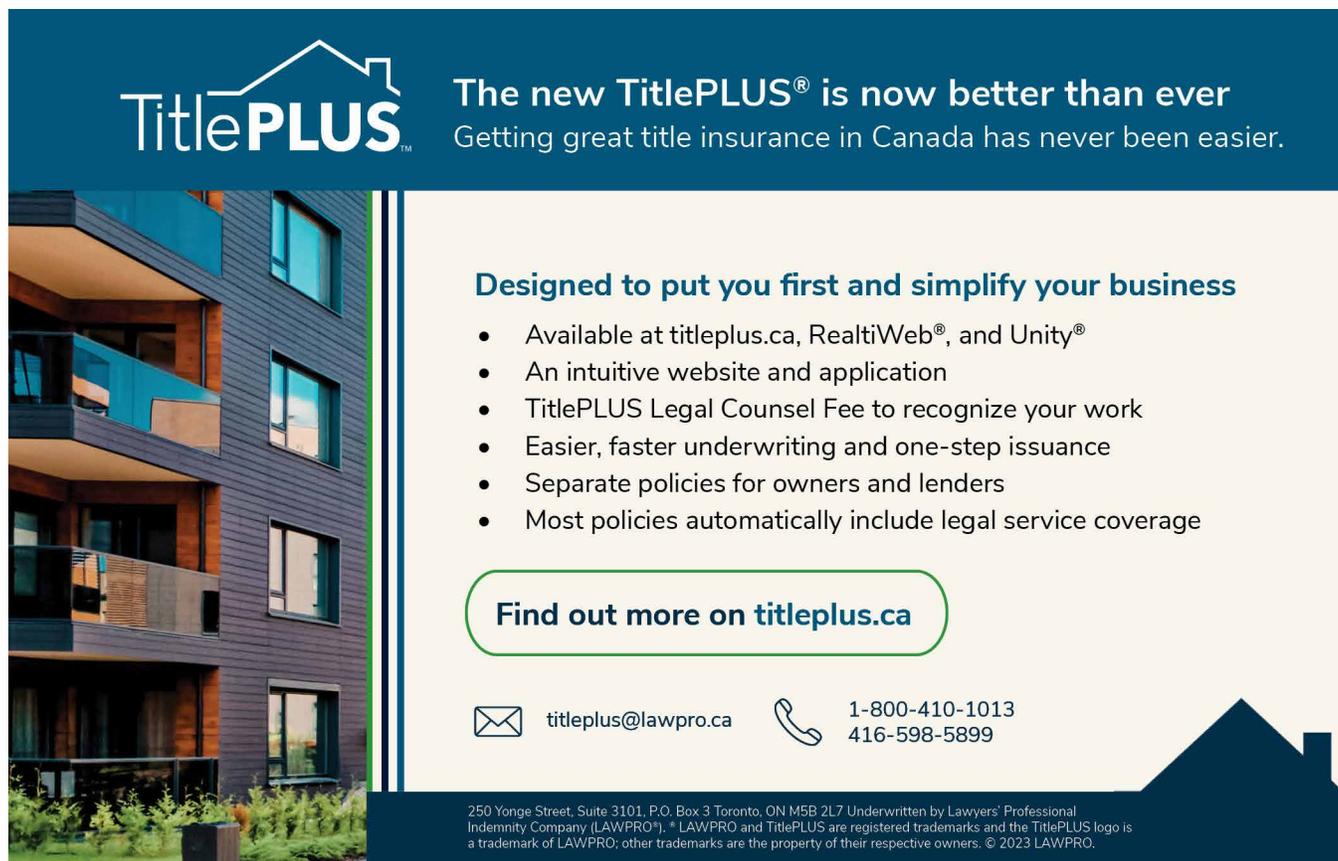
In most cases, courts have found restrictive covenants to be reasonable if they extend for up to two years. Longer non-competition provisions can be enforceable, but will often require more extensive justifications, such as demonstrating the highly specialized nature of the franchisor's business activities.

The geographic scope of a restrictive covenant is more likely to be the cause of non-enforceability issues. Courts have generally agreed that restrictive covenants should be drafted to ensure that such restrictions only cover the actual or intended market territories of the franchisor or other franchisees.

Avoiding ambiguity

Restrictive covenants should be drafted in clear and unambiguous language. A leading case on ambiguity in restrictive covenants comes from British Columbia, where the non-compete provision defined the geographic scope as the "Metropolitan City of Vancouver"¹. In this case, the Supreme Court of Canada refused to enforce the restrictive covenant due to its ambiguity, as the "Metropolitan City of Vancouver" is not a defined term or a distinct geographic area. Of significance, the Supreme Court ruled that courts should not employ the doctrine of the "blue pencil severance" to attempt to rewrite or read down unenforceable provisions in order to make such provisions enforceable. This decision demonstrates that courts will not be overly flexible when interpreting restrictive covenants, as the parties drafting the contract have an obligation to ensure that the covenants are clearly defined.

¹ Shafron v. KRG Insurance Brokers (Western) Inc., 2009 SCC 6, [2009] 1 S.C.R. 157



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The Kate Middleton Photo Scandal: Applying a Legal Analysis



Contributed by:
Lauren A. Cullen / Associate Lawyer, Siskinds LLP

On March 10, 2024, Kate Middleton posted a photograph of herself and her three children to celebrate Mother's Day in the United Kingdom. This was the first photograph released of Kate following a reported abdominal surgery which gave rise to a number of conspiracy theories about her whereabouts and wellbeing. After the photo was posted, online sleuths quickly deduced that the image had been altered, prompting an apology from Kate for her "experiment with editing".

While this editing may have been easily spotted, other altered images are not as easily identified. As AI technology grows in popularity, so does the concern about people's ability to discern which images are real and which are edited. The legal system places great importance on ensuring the integrity of evidence presented in court. Much like the online sleuths with Kate Middleton's photograph, the courts take steps to verify the authenticity of photographs. Without knowing it, the public has applied many of those steps in their investigation of Kate Middleton's photo:

1. Chain of Custody: Before the admissibility of a photograph is considered, the chain of custody is established. This means documenting the path the photograph takes from the moment it is captured to its appearance in court. This is the essential piece of information that we don't know in Kate Middleton's case. We don't know who took the photograph, when it was taken, or who else

handled the photo other than Kate before it was posted online.

- 2. Metadata Examination:** Metadata is information embedded in digital photographs that details the camera settings, date, and time of capture. When such an investigation is taken in the legal system, forensic experts are often relied on to examine the metadata. With the photo of Kate Middleton, some but not all of the metadata was available. The available data established that the photograph was shot on a Canon 5D mark IV and edited twice on a 2022 version of Photoshop, although what edits were made could not be determined. Similarly, the location of the photograph was established (Adelaide Cottage, Kate and William's family's home in Windsor) but not the date it was taken. If this photo was submitted to the court, this data would raise a red flag that would prompt further investigation.
- 3. Expert Testimony:** In court, digital forensic experts are called upon to analyze the photo for signs of manipulation. The general public has scrutinized Kate Middleton's photo, but the information they have is limited. Forensic experts would use specialized software on the photograph to detect alterations.
- 4. Comparison with Originals:** With Kate Middleton's photo, the public has called on Kensington Palace to release the unedited version of the photo. The Palace has refused. This

has been contrasted by Prince Harry and Meghan Markle's photographer, who produced the original version of their pregnancy announcement photo when it came under scrutiny. The original photo confirmed that the only change that had been made was adding a black and white grade to the original colored photo. Kensington Palace's refusal to release the unedited version of Kate Middleton's Mother's Day photo has fuelled the scandal. This would not be tolerated in a Canadian court of law if a photograph is to be admitted.

- 5. Testimony from the Photographer:** Neither Kate Middleton nor Kensington Palace has advised who took the Mother's Day photo of Kate and her children. Likely, if the photographer comes forward as they did with Prince Harry and Meghan Markle's scrutinized photo, much of the controversy could be put to rest. In court, the testimony of the photographer can add credibility to the photograph's authenticity by confirming the details surrounding the capture.

Conclusion:

Canadian courts are committed to maintaining the integrity of the judicial process. Ensuring that photographs admitted into evidence have not been tampered with is critical. On the information the public currently has, Kate Middleton's Mother's Day photograph would not be admissible in a Canadian court. All evidence indicates that the photograph has been altered, without confirmation as to how it has been edited or production of the original image. It would fail the verification process.

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Consent issues with Sora text-to-video AI



Contributed by:
David Canton / Lawyer and Trademark Agent

OpenAI just [announced](#) their [Sora](#) text-to-video diffusion model. It can generate realistic-looking one-minute videos based on simple text input. While it is not yet available for general use, the site has several examples. They are amazingly realistic. OpenAI admits that it can struggle to show a few things accurately, but it is orders of magnitude better than Dall-E was when it debuted just over a year ago.

This is simultaneously fascinating, compelling, disruptive, and terrifying.

Using this technology to create fake news or mislead people is going to be a real problem. Fundamentally this comes down to consent and deception.

AI fakes and consent

Consent in the context of needing

permission to use someone's likeness or creative works.

Deception in the context of misleading viewers that what they are seeing is real.

This technology is not evil per se — there are lots of legitimate uses for it. There are contexts that even fake video about a person can be a [legitimate tool](#). For example, it would be fine for Harrison Pensa to create a video of me walking down the street reciting this blog post. Provided that Harrison Pensa does that with my knowledge and permission, and it is identified as AI-generated and not really me.

We have written before about [reporting during a time of misinformation](#), and whether there is a need for [regulation to control AI replicas](#).

Nefarious purposes

Never underestimate the inclination of bad actors to use this tech for inappropriate or illegal purposes. That could range from fraud targeted at individuals, to [false celebrity endorsements](#), to politicians trashing their opponents, to nation-states interfering in the politics of other countries.

OpenAI's website talks about safety steps they are working on to try to reduce misuse. That would include rejecting things like "... extreme violence, sexual content, hateful imagery, celebrity likeness, or the IP of others." And including watermarks to identify output as Sora AI-generated.

This type of platform control is important. But that alone won't be enough. Videos that might seem innocuous when generated could be used for misleading purposes. For example, a video of a crowd in a specific setting could be used on social media to claim an event happened that did not.

Social media and publishing platforms will need to be vigilant around this.

[Emerging laws around AI](#) may or may not be able to deal with these issues effectively.

We as viewers of this content have a role to play. We need to be skeptical that anything we see is true. But that is easier said than done when it looks realistic. Or when it rings true because of confirmation bias. And who has time to fact-check everything we see?

This leads to me ponder the irony of writing this post if it turns out that Sora is not what it is billed to be.

[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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Court of Appeal Moves the Needle in Favour of Creditors

Contributed by:

Dennis G. Crawford / Lawyer, Crawford Lawyers

Two decisions of the Ontario Court of Appeal made in the past year have the potential to significantly diminish the effectiveness of creditor-proofing techniques commonly used by companies and businesses.

FNF Enterprises Inc. v Wag and Train Inc.

The first such case was [FNF Enterprises Inc. v Wag and Train Inc.](#) The company Wag and Train Inc. was the tenant of the landlord FNF Enterprises Inc. pursuant to the commercial lease.

Before the end of the lease, the sole owner of Wag and Train Inc. engaged in a creditor-proofing technique known as “asset-stripping” or “value-stripping”. She set up a new corporation and transferred all the assets of Wag and Train Inc. to that new corporation. The new corporation then carried on the same business in another location and abandoned the rented premises before the end of the lease. The prior corporation (Wag and Train Inc.) thus became a shell corporation with no assets, and FNF Enterprises Inc. had no way of recovering damages from

Wag and Train Inc. for breach of the commercial lease.

The Court of Appeal ruled that the landlord could not pierce the corporate veil and bring a claim against the owner of Wag and Train Inc. in her personal capacity, but *could* bring an oppression claim against the owner of Wag and Train Inc. in her capacity as a director of the corporation. The landlord had standing under the [Business Corporations Act](#) to bring an oppression claim against the corporate director because, as a creditor of the defendant corporation, it qualified as a “complainant” within the meaning of the [Act](#).

Ontario Securities Commission v Camerlengo Holdings Inc.

The second case was [Ontario Securities Commission v Camerlengo Holdings Inc.](#)

The defendant Camerlengo Holdings Inc. was owned by Fred Camerlengo. Back in 1996, when he first set up his company, Fred transferred his house to his wife for nil consideration. A reasonable assumption to draw from this transaction is that Fred was attempting to put the house out of reach of his and his company’s creditors. In so doing, Fred was doing only what many similarly-situation businesspeople have done for decades: moving assets into the name of family members to protect them from potential seizure.

It should be noted that Camerlengo Holdings was not in trouble with the Securities Commission: it had borrowed \$200,000.00 from an entity called *Bluestream*—and *Bluestream* was in trouble with the Securities Commission. In this lawsuit, which it commenced in 2019, the Securities Commission was trying

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to recover that \$200,000.00 loan from Camerlengo Holdings so that it could seize those funds in partial satisfaction of the moneys that were owed by Bluestream to the Ontario Securities Commission.

Reversing the motion judge's decision, the Ontario Court of Appeal ruled that a creditor could, under the [Fraudulent Conveyances Act](#), attack a prior transfer of assets from a co-owner to his wife, even though the transfer of the property had taken place many years before the creditor became a creditor of that company. Obviously, when Mr. Camerlengo transferred his house to his wife in 1996 he did not do so to protect his asset from the Ontario Securities Commission, because his company did not owe any money to the Ontario Securities Commission at that time. Nevertheless, the Court of Appeal held that a subsequent creditor *who was not a creditor at the time of the transfer* can still attack a transfer under the [Fraudulent Conveyances Act](#) if it was made with the intent to "defraud creditors generally, whether present or future".

It is important to note that in both these cases, the creditor has not yet recovered against the respective defendants: the Court of Appeal simply ruled that FNF Enterprises Inc. could *proceed* with a claim under the [Business Corporations Act](#) and the Ontario Securities Commission could *proceed* with a claim under the [Fraudulent Conveyances Act](#).

These legal precedents mean that, in this future, these commonplace creditor-proofing techniques are likely to be considerably less effective. While they may delay creditors, they will likely not ultimately defeat motivated and well-resourced creditors.

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Straight From the Bench Conference 2024



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KEYNOTE:

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We welcome the following incredible speakers:

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- Craig Wilkinson, MEA
- Mary-Anne Strong, Beckett Injury Lawyer
- Dale Edens, Eden Dales Social Work
- Stephanie Greenwald and Cala Mitra, RSM
- Victoria Edwards, Siskinds LLP
- Greg Willson, Lerner LLP

Some highlights of the agenda include:

- *McCurdy et al v Maille et al*: Discussion with Vicki Edgar and Alexa Duggan
- Engineering Data and its use at Discovery with MEA
- The Trauma Informed Practice with Dale Edens (EDI)
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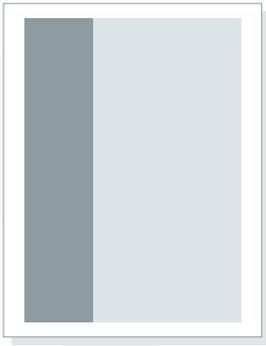
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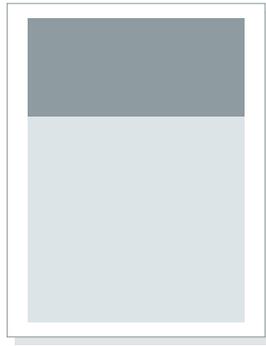
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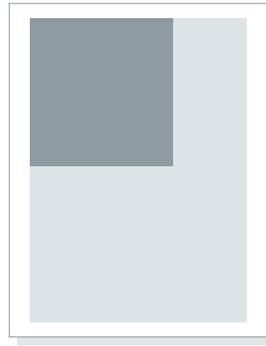
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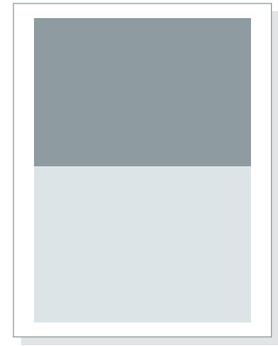
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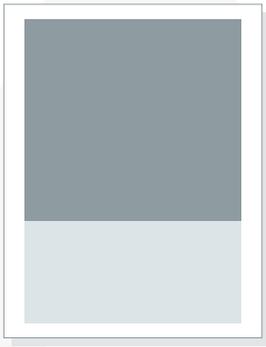
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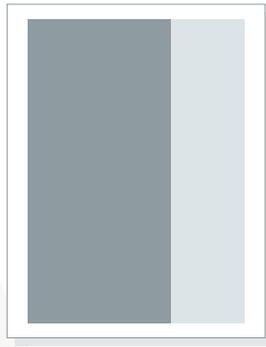
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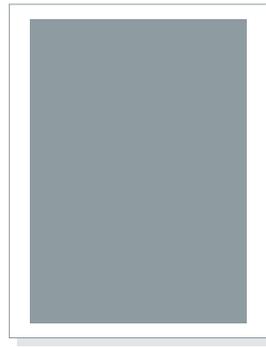
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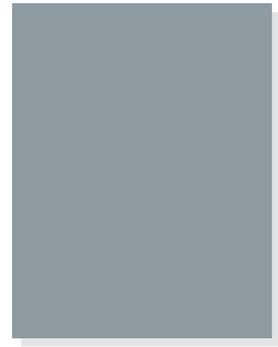
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