



NCLA NEWSLETTER

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Make Every Attendance Count

By: C. Gregory Kay, Hustler Kay Kurji & McCourt

I have recently completed six years of service on the Ontario Family Rules Committee. This committee is composed of 14 judges, 11 lawyers, 2 persons employed in courts administration and the Attorney General or a person designated by the Attorney General.

One of the main themes that informed the discussions at meetings of the committee during my term was the need to have rules and practices in place to ensure that every court attendance is productive. Long gone are the days when counsel and judges can take the position that "It is only a Case Conference" resulting in counsel attending in court without being fully prepared to deal with substantive issues.

There are two main reasons that support the principle of making every attendance count. Firstly, court time is precious and in many jurisdictions court dates are scarce. Secondly, legal costs mount with each attendance. Escalating legal costs have a negative impact on accessibility to the court process.

During my time as a member of the committee, significant changes were made to Rule 13 requiring the delivery of a Certificate of Financial Disclosure prior to the Case Conference. If both parties fulfill their obligation to fully complete the Certificate, a productive Case Conference will be held.

The Rule changes effective July 1, 2018 dealing with Confirmation Forms can also produce an effective Case Conference provided counsel comply with the letter and spirit of the rules. The comments made by the judges on the committee were unanimous in their expectation that counsel are to have meaningful discussions with one another before arriving at the courthouse on the day of the Conference. Judges are not satisfied with a perfunctory completion of the Confirmation Form without counsel actually speaking to one another and without clearly setting out in the Form the issues to be dealt with. Judges generally look upon an empty courtroom with disfavour as they wait for counsel to commence their discussions on the date of the Conference. Counsel who routinely practice in this manner are showing disrespect to the court.

In order to ensure compliance with the court process, Rule 17 (18) has been amended twice during the last two years to give the court expanded powers to order costs against an unprepared party at a Conference. While judges are often reluctant to order costs at a Conference, doing so is a powerful tool to ensure the efficient conduct of a case.

Given the extreme scarcity of Conference dates in Northumberland County, counsel should do their utmost to be in a position to resolve as many issues as possible at each and every Conference in a family law proceeding.

FOLA Update

By: Katie Robinette, Federation of Ontario Law Association



Hello Northumberland County Law Association Members and Happy September!

Thanks for providing me with some space in your newsletter - My name is Katie Robinette and I'm the new Executive Director of FOLA.

What a first few months! I've spoken to, and/or met with, each of the members of FOLA's Executive, with travels taking me to meetings in Owen Sound, Ottawa, Thunder Bay, Newmarket, Peterborough, London, and Hamilton and have had meetings here (where I live) in Toronto with the representatives from the TLA.

I've also emailed each Association President and introduced myself to each Librarian.

As everyone is well aware, Ontario has a new government and I've wasted no time meeting with some of the new players at Queen's Park and setting up formal meetings with the Premier's Office, the Attorney General and her staff, the Finance Minister's staff, and MPP's and their staff. It's a busy time over Queen's Park and we want to ensure that the new team both knows about FOLA and understands our issues.

I've also had the opportunity to meet with Malcom Mercer, the new Treasurer of the Law Society of Ontario, as well as some of his staff, have met and/or spoken to various representatives from practice-specific Associations (like the Trial Lawyers Association), and met with provider partners like Advocate Daily, Lawyers Financial, and CPD Online. With a background in politics and government relations, I may know some of the players at Queen's Park, but all these people are new faces and personalities for me. So those meetings have been particularly useful.

By far the highlights of my time to date with FOLA have been touring the local Law Libraries and learning about their history and the important role they play in the lives of lawyers. I've also enjoyed touring the Law Association Lounges inside courthouses (and touring the courthouses themselves). Some of you have wonderful space. And some could use some further updates. But it's been valuable to me to come in and have a look around.

But just as important have been the one-on-one discussions with some Association Executive Members who have helped to fill me in on issues of great importance to them (and to FOLA's Executive) - issues such as licensing, family law reforms, title insurance, legal aid, and changes to the criminal code (Bill C-75).

And because FOLA is here to serve you, one of the big things on my plate is to improve the way FOLA communicates with you and to better articulate and show FOLA's impact as the voice of Ontario Lawyers. To that end, I am working on redesigning FOLA's website to make it more user friendly and up to date. I'll also be building out landing pages for Associations that don't have a website to ensure that potential members at least have access to a contact point and improving ways for lawyers to connect with Law Associations that do have websites. In the near future, I'd like to build out a members' portal where Association Members can be granted access to discuss issues, submissions, and proposed reforms, sign up for a new mentor/mentee program, and have access to resources such as helpful tips on leveraging Articling Students, running for Benchers Elections or Association Executive Positions, and offer special deals like member discounts for tech/office resources.



FEDERATION OF ONTARIO
LAW ASSOCIATIONS

FÉDÉRATION DES ASSOCIATIONS
DU BARREAU DE L'ONTARIO

I'll also begin tracking analytics so that FOLA can begin to measure impact, learn what's useful to you, learn where visitor traffic is coming from (social media, search, other website links, newsletters, etc), and make better use of social media and video as ways to drive engagement, awareness, and as a means of communication and education.

I do welcome any and all input and will be reaching out from time to time directly to Association Presidents and Librarians for advice. But I'm easily accessible and

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open to hearing from any member at any time. I can be reached at katie.robinette@fol.ca. As well, feel free to connect with me on LinkedIn: <https://www.linkedin.com/in/katiewrobinette/>

Accidental Polygamist?

By: Sheldon Casey, Nathan Baker Law

Polygamy is an interesting area of law that does not get a lot of public attention. This article is designed to answer certain sought out questions, whether they are based on curiosity or for some other reason. The Criminal and Family law implications of having a polygamist lifestyle or having relationships that resemble polygamy will be the main focus of this article.

Following the trial in Bountiful B.C., polygamy has been described as a way to manipulate vulnerable groups and is a practice that the Criminal Justice System strongly prohibits. Unfortunately, this does not take into account healthy consensual polygamist relationships. According to [s. 293 of the Criminal Code](#), polygamy is defined to include multiple marriages or conjugal unions. The term “conjugal unions” is designed to include marriages that are not recognized by law but are held out as such. This mainly purports to religious marriages or marriages that are valid in another country but are not recognized in Canada.

The B.C. Court of Appeal said that “in Canada, bigamy is distinguished from polygamy by the requirement of multiple state sanctioned marriages. Individuals who enter into multiple marriages but do not attempt to do so through the civil marriage process are not captured by the bigamy offence” (Reference re: [Criminal Code of Canada \(B.C.\), \[2011\] B.C.J. No. 2211](#)). Adultery was not intended to be included in the offence of polygamy. Even in cases where two individuals are living together but are both married to other people, the case law suggests that it is not meant to fall under criminal liability ([R. v. Tolhurst, R. v. Wright \(1937\), 68 C.C.C. 319 \(Ont. C.A.\)](#)).

Therefore, the question to be asked is whether any marriage process occurred. Common-law relationships occur even without intent, but if any celebration of such is undertaken then a crime may be taking place.

The impact of this in family law is something better left to that portion of the bar but it can only be a matter of time before someone seeks support from multiple partners. If the matter ends up as a criminal union then such a claim may be stopped.

The law of polygamy appears to focus heavily on the manner in which we label our relationships. If a multi-party relationship is labelled as a cohort of married spouses, or as a “conjugal union”, then criminal charges could potentially be laid. From a criminal perspective, monogamy seems the way to go.



Defence Medical Assessments in Personal Injury

By: Warren WhiteKnight, Bergeron Clifford Personal Injury Lawyers



My practice focuses on personal injury, insurance denials, and medical malpractice suits. In the normal course of a case I will hire a liability expert, one or multiple medical experts, an occupational therapist, a vocational

assessor, a future care cost assessor, and an accountant or economist. Most of the Defendant's work can be done using only the documentary record with no need for engagement with the client.

What about a Defence medical assessment?

A Defence assessment can only happen in two ways – 1. by Court Order (s.105 CJA and r.33 Rules of Civil Procedure), or 2. on consent (r.33.08 Rules of Civil Procedure). Usually however, I simply get a letter with no notice that says “we’ve scheduled an examination of your client on bad day with Doctor Writegood.” They don’t ask, they just tell. The letter then says “if your client fails to attend there will be a cancellation fee of 12,000 gummy bears”.

What to do?

Reply thanking them for the letter, and remind them that a medical assessment can only happen on consent, or by Court Order. State that you’ll review the reasonableness of the request (a topic for another article), check the date, and then the parties can try and agree on consent terms for the assessment. Remind them that you didn’t agree to the assessment, may yet oppose it, there is no Order, and so you won’t be responsible for payment of any gummy bears until final agreement on terms.

Send them a draft of terms and ask for comments. Once you agree then they can either file the motion for a consent Order, or provide an undertaking to abide with the terms, and importantly, to instruct their medical expert accordingly.

What terms do I care about?

Payment of travel expenses for my client. Be specific. Don’t say “reasonable expenses”. The point of the terms

is to avoid fighting down the road. How long is the assessment, and where is it? Does your client require a chaperone? Flights? Hotels? Meals? Put a capped \$ figure to it, and then agree to provide receipts.

Resumes. Questionnaires. Consents. You need these well in advance. If they’re not ok then you have time to deal with it. No ghost writing. You don’t want ANYONE participating in the preparation of the research, record review, or report drafting or editing, except for the doctor. Remember, the exam can only happen on consent, or by Order. Consent for what? Order for what? For an assessment with Dr. Writegood. Not their student, not staff, not a quality assurance manager at the referral outfit. Be careful with the consent your client signs. It will usually need to be amended to remove permission for third party disclosure and review.

There are other details to be worked out, and each set of terms needs to be tailored to the specific case and expert in question - a two-day Neuropsych is different from an in-home Occupational Therapy exam for example. The moral of the story is don’t accept the Defence demand at face value. The outcome of the assessment will have pivotal bearing on your client’s case, and thus you should make every effort to establish ground rules for the assessment that will protect your client and the process.

OBA Celebrates Pride



On Sunday, June 24th at 2:00pm under the OBA banner, NCLA member Christine Roth joined the 2018 Pride March in Toronto.

The 38th annual March started at the corner of Church Street and Bloor, and participants marched all the way to Yonge-Dundas Square.

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Christine has also been recently elected to the OBA council for our region, congratulations Christine!



Stay Current with Canadian Law Blogs List

By: Alan Kilpatrick, Law Society of Saskatchewan Library Blog

It is essential for members of the legal profession to stay current with new developments in the legal field. However, this can be challenging. The multitude of blogs, websites, and information resources available online can make the task of staying up-to-date seem overwhelming.

Are you familiar with the *Canadian Law Blogs List* available at LawBlogs.ca? The *Canadian Law Blogs List* describes itself as "open directory of Canadian blogging lawyers, law librarians, marketers, IT professionals and paralegals in Canada." It was launched in 2005 by Steve Matthews, founder and CEO of Stem Legal.

The *Canadian Law Blogs List* makes it easier to stay well-informed of developments in law. It is a single online location that collects and categorizes authoritative legal blogs. The blogs included in the directory are reviewed for authority, credibility, and currency. The *Canadian Law Blogs List* can be browsed by legal practice area, category, and jurisdiction. Readers can subscribe by RSS feed or email.

The Canadian Law Blog List homepage features recent posts from the blogs included in the directory. I encourage you to check it out.

Think Twice About Free Services from Google

By: Andrea Cannavina, for Slaw.ca

So I belong to this listserv of mostly attorneys and everyone is talking about how they use Google for this and Google for that and all I can think is ... is it just me?! Why would anyone wish Google to be scanning and indexing their business records and documents – let alone a bunch of attorneys?

start of rant

Of course, you KNOW – any time your data touches a Google server it is being scanned and indexed. Right?

Seriously – you are giving every keystroke/word <-as best as speech recognition can figure out the words I imagine – to Google just by using it. Oh and Google = not just search but, of course, gmail, chrome, anything done on a chromebook. All are collection points. Google was built to scan/index and it's doing that to your and your clients' info.

Google
is watching you!

As for those using Google Voice – are you sure you're getting all your calls? Who are you going to call if you realize, 3 days later, that your phone has stopped ringing?? See – it's not when tech works that you have to worry – it's when it doesn't. Pay the \$20 per month to have a business VoIP line or use unified messaging to work your cell as a business AND personal mobile device and stop using a free service, especially Google, for everything!

Jumps off soapbox

Spotlight on Historic Cases

George Brogden and Thomas Henderson Trial

In the 1850s Port Hope's industry was booming – though the town itself remained small enough for everyone to know each other. This is why it came as no great surprise when George Brogden took a loaded revolver to the wharf, and in front of around three hundred people, shot and killed Tom Henderson, as he stood at the bar of the *Arabian*, a large steamer ship which was docking. It wasn't a surprise because in a small town, where everyone knows each other, George had known Tom, and had felt wronged by him.

George Brogden was born to William Brogden and Elizabeth Wallace in 1831, in Port Hope. He had two brothers and three sisters, and he attended school in Port Hope. George was called to the bar on 8 June 1852, and he found employment with the local firm of Weller & Brogden, located on Walton Street. On 2 February 1854 he married Matilda Sophia Hornby, with whom he had one son, George M. Brogden (b. 11 August 1855 d. 27 September 1856).

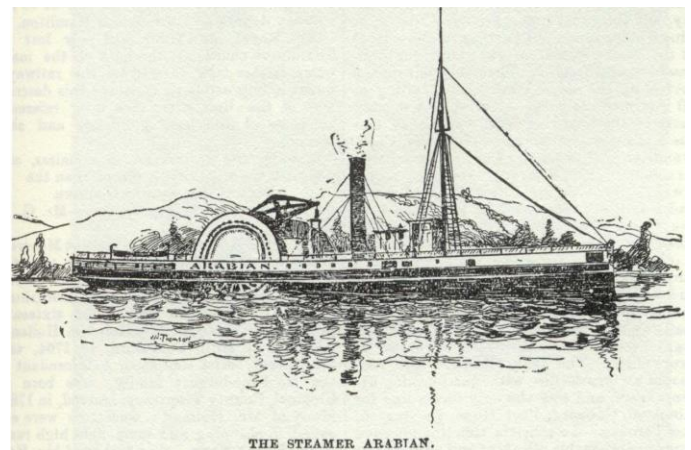
Thomas Henderson has a similar story, he was born and raised in Port Hope, attended public school with George Brogden. He was the great uncle of Leila Koerber, better known by her stage name, Marie Dressler. Tom had left Port Hope for California and Australia to finish his studies, and returned to the area as a barrister. Upon his return George was already married, and a father, and he and Tom renewed their boyhood friendship. After a short period of time George was informed of the existence of some letters that Tom had been writing to George's wife, Matilda. After this discovery, George confronted Tom, and Tom threatened George. George then confronted Matilda, and discussion became heated – he shoved her away from him, and Matilda immediately left their Augusta Street home and went to Tom; a few weeks later, Tom and Matilda eloped.

On 23 September 1856, a Tuesday evening, Tom Henderson was returning to Port Hope, after concluding some business, aboard the steamer ship the *Arabian*. About three hundred residents of Port Hope had gathered at the wharf to watch the large ship dock. This was when George Brogden made his appearance; he took a loaded revolver to the wharf and shot and killed Tom as he stood aboard the steamer. After it was over, George walked into town and turned himself in.

Tom's brother, George Henderson, offered a different account of the history between George and Tom, placing

most of the blame on George's wife. George Henderson claimed, in an editorial he wrote for a Port Hope newspaper, that Matilda often looked for companionship outside of her marriage to George. In the letter he claims that George turned Matilda out of their home on 21 July, at which point she went to Tom, who promptly sent her via steamer ship to her mother in Niagara.

George Henderson's letter describes the days following the shooting, he writes about seeing George Brogden being *"paraded round the barrooms and public streets, and exposed to the friends and brothers of the man he so cowardly assassinated for a worthless, guilty woman, who had imposed upon him from their first introduction, and as she often expressed herself, only married him for a home."*



Whatever the true story, trial began on 31 October, and George was defended by Sir Thomas Galt, and prosecuted by Solicitor General Smith. Over the course of the trial, it was clear that George had the public's support in his actions. A coroner's jury returned a verdict, signed by sixteen of eighteen jurors, it read:

"We, the undersigned jury men, empanelled to enquire how and by what means Thomas Henderson, deceased, came by his death, on our oaths, do find the said deceased came to his death by means of a bullet discharged from a pistol in the hand of George Brogden; and we do further find that said George Brogden committed such act under great and justifiable provocation, and would express the strongest reprobation of that course of licentiousness on the part of the deceased, which produced such a fearful retaliation."

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When instructing the jury, Sir John Beverly Robinson declared it impossible, in his view, that there could be a plainer case of murder. Despite the witnesses and presence of an obvious plan on George's part, the jury disagreed with the judge; after a half-hours' deliberation they declared Brogdin not guilty. Evidently the jury felt that a fair repercussion to betraying marital vows and marrying your friend's wife was equal to murder.

Travelling & Learning: Conference Season 2018

CALL

In May I attended the Canadian Association of Law Libraries (CALL) Conference, held this year in Halifax, thanks to a generous bursary from LibraryCo. While attending, I joined the CALL Professional Development Committee, and am looking forward to working with them. Some very brief highlights of the conference (*full details are available – come and see me!*):

Plenary: Cannabis

This plenary began with a brief background on Bill C-45 (Cannabis Act), and Bill C-46 (to amend the sections of the Criminal Code that pertains to impaired driving). Speakers broadly defined the purpose of Bill C-45 and Bill C-46. This plenary ended with a discussion around those with disabilities and the issues surrounding monitoring home growth, and consumption - if you can only have it at a legally owned residence, what if you are renting or living in a shelter?

Connecting Through Digital Transformation

Dr. Sandra Toze discussed how we should be thinking more about how we can reinvent ourselves with the tools we have. The job of an information professional is to embrace and recognize the potential, and the skills and knowledge to manipulate data are gaining importance. She stressed that librarians are collaborative by nature. A weakness she identified, which members of OCLA are certainly facing in light of FOLA and The Law Society's new "LIRN" plan, is the continual need to demonstrate value.

The Crown, The Copyright, and The Law

Kim Nayyer gave a brief history of copyright law, and a comparison of Canadian copyright law to other countries; by 1834 there was no mention of copyright in statutes or decisions in the US, and this has not

in statutes or decisions in the US, and this has not changed today. She also spoke about "Royal Prerogative" which appears in the act. Royal Prerogative first appears in the 1710 Statue of Anne, which is modern copyright law's basis. In 1988 a UK Statute finally removed reference to Royal Prerogative, with no mention of them today; though Canada still uses/makes reference to it.

AALL

In July I was travelling again, this time to the American Association of Law Libraries (AALL) Conference, in Baltimore, MD. Seven other members of the Ontario Courthouse Librarians Association (OCLA) attended as well. Brief highlights of the conference (*for full details – come and see me!*):

Keynote Speaker: John Waters

The keynote speaker was Baltimore native John Waters (best known for his 1988 movie *Hairspray*). He spoke out against capital punishment, the importance of diversity and incorporating race into legal research, and overall applauded librarians as being "brave, smart, pissed-off, and against censorship".

Library Services for Communities Living in Fear

For me this presentation really highlighted to huge differences between the legal systems in Canada and the US. The main speaker was from the Enoch Free Public Library and she spoke about the April 2015 Baltimore riots, and how after it was over, the library was able to partner with Maryland's legal aid office to start huge legal outreach program for the communities that needed their help the most. She also spoke briefly about a new legal clinic for sex workers that they have begun this year.

American Animals and the Fictionalization of Crimes against Libraries

This session was presented by author Travis McDade who focused on cases of rare book theft, giving particular attention to one that was featured in the movie "American Animals". His talk focused on the would-be thieves Spencer Reinhard, Chas Allen, and Eric Borsuk, as well as the staff of the Transylvania University rare book collection (which has first edition copies of James Audubon's *Birds of America* and Charles Darwin's *On the Origin of Species*). Travis also spoke about the aftermath for the librarian who was assaulted, and other dangers of working with rare books.

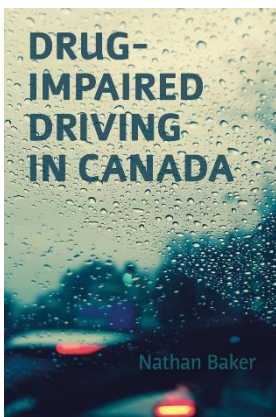
Members' News

Racine Law

Some exciting news coming from Port Hope's *Racine Law Professional Corporation*. Along with principal, Melanie Racine, two additional lawyers have joined the practice. On July 1st, Bruce Coleman joined the Racine Law team. During the same week, articling student Colin Lyon was called to the bar and has now officially joined Racine Law as a lawyer specializing in Real Estate.

These changes coincide with the upcoming move of Racine Law to the retail space of 48 Walton St. This allows for client meetings on the ground floor in a fully accessible space. NCLA Members are invited to join Racine Law on 12 September 4-6pm for an Open House!

Member Publication



NCLA Member Nathan Baker's new book, *Drug-Impaired Driving in Canada*, is forthcoming from Irwin Law. Nathan explores the complex issues surrounding the legalization of marijuana and what it means for the criminal code, and for your client. Congratulations on your publication!

From Irwin Law:

"Drug-Impaired Driving in Canada is a ready reference for prosecutors, defence lawyers, and the judiciary, covering the matters unique to drug-impaired driving cases. Key areas covered include the DRE, the SFST, specimen testing for drugs, specialized experts, new provincial and federal legislation on the topic, and caselaw in this developing area. This text provides a breakdown of the intricate issues that pervade drug-impaired driving cases."

Mann McCracken & Associates

On 1 July 2018 Holden Agnew-Pople became partner at Mann McCracken & Associates. Holden is a true Port Hoper at heart, having been born and raised there, he returned to work at Mann McCracken & Associates in 2015. Congratulations, Holden!

Richter Law



Richter Law has a new associate, Mr. James Lisowski, effective immediately. James hails from the Belleville area but studied and practiced in Thunder Bay until April of this year. James brings a considerable amount of criminal law experience with him and will be an excellent addition to our firm. James can be contacted directly at james@justicelawyers.ca

Highland Shores CAS

Hello colleagues, my name is Karen Osachoff. I am legal counsel for Dnaagdawenmag Binnoojiiyag Child & Family Services ("DBCFS") but am currently filling in for Dave Curtis as legal counsel for Highland Shores Children's Aid Society. I expect to be here until December 3, 2018 when I will be returning to DBCFS to launch our child wellness agency, Ministry designation February 28, 2019.

Member Moving

The NCLA would like to extend its best wishes to member Casey Hayward, of Aleesha J. Camp Professional Corporation. In December of this year he and his wife Jennifer will be relocating to London, Ontario.



From the Library

Website Updates

There have been a lot of updates to the NCLA website in the last couple of months, including:

- *Public Resources* section has been updated with an added page about Legal Aid
- *News & Events* sections has been updated to include a CPD Topic/Speaker Suggestions form so members can request specific content
- *Members Only* section has been updated with useful tips such as: when to gown, use of electronics in the court room, and how to cite judicial decisions

Reminder: check your listings on the NCLA membership directory to ensure accuracy!

New Shelving

After a few delays in delivery the NCLA Library will be having new shelving installed at the end of September. Library users may experience a disruption in service (particularly those using the criminal law section). In order to ensure you get the documents you need, please feel free to contact the librarian prior to your trip to the library. We apologize for any inconvenience, and are looking forward to this opportunity to refresh the NCLA Library space!

LexisNexis Advance Update

Lexis for Microsoft Office is in the process of being installed on all Library reference computers. What this means for Library patrons is that a tab for LexisNexis will appear in the Microsoft Word ribbon. Some of the benefits include:

- While drafting a document you can identify all of the cases you've cited in your document and then link to Lexis Advance to review the case itself.
- Lexis for Microsoft Office adds the citation signal indicators to help you determine whether the case is still "good law".
- If you need to perform your search directly in Lexis Advance, you can launch it directly from the Lexis for Microsoft Office ribbon.
- When using the PDF conversion utilities, you can convert your PDF documents to Word format. This lets you use the tools available in Lexis for Microsoft Office to examine PDF-based documents you receive from opposing counsel and identify research inconsistencies.

NCLA News

CPDs

NCLA CPD replays are beginning to wind down for the 2018 season, but there is still time! If there is anything you'd like to see the NCLA run, this year or next, please contact the librarian!

THE NORTHUMBERLAND COUNTY LAW ASSOCIATION

Executive Committee



President:	Alison Lester
Vice President:	Meghan Adams
Secretary:	Bridget Jokitalo
Treasurer:	Nadim Kurji
Library Chair:	Morgan Payne
Member-at-Large:	Kady McCourt
Member-at-Large:	Kiran Grewal

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