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MIDDLESEX LAW
ASSOCIATION

Snail



October Issue

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

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President's Message



Contributed by:
Karen Hulan / Beckett Personal Injury Lawyers and MLA Board President

This message is largely one of thanks to our engaged bench and bar.

Many of you attended the Fall Opening of the Courts recently. This was the Middlesex Law Association's second time hosting the event and it was the largest gathering we have held since 2019. It was a welcomed opportunity to see each other in person after a long time apart. We have already started working on an improved event for 2023. Contact us if you would like to be involved in the planning of that event.

Thank you to Law Society Treasurer Horvat, Justice Grace, Justice Henderson, Justice Carnegie, and Justice Mitchell for participating in the event. Addresses from the Unified Family Court and the Ontario Court of Justice are included on pages 20 and 21 of this newsletter. Thank you to Brian Hill, Ron Hill, and Al Day for joining us from N'Amerind (London) Friendship Centre. Thanks to the London Police Service and Ontario Provincial Police for arranging the Colour Guard. Thank you to Michel Castillo for leading us through the anthems.

On behalf of the MLA, I would like to extend a special thank you to Regional Senior Justice Thomas for attending as keynote speaker. The theme for this year's event was "celebration". Justice Thomas highlighted the judicial system's adaptation to new technology as one of the positive changes in the last two years, but he also addressed some of the harsh realities facing our courts and reminded us of the role we each have in improving access to justice. I encourage you to read his remarks on page 18 of this newsletter.

Ensuring that the public has timely access to the Courts has been a challenge made worse by the

pandemic. Reference to "backlogs" has become a part of conversations we frequently have with one another and too often have with our clients. Many of you are already doing your part to address some of the challenges to which Justice Thomas referred. MLA members are meeting politicians and informing them about the need for more judicial resources. You are members of organizations that prepare submissions to provincial and federal decision makers on issues of access to justice. In your practices, you are using alternative dispute resolution options, which can provide your clients with fair and reasonable solutions and alleviate court caseloads. Your peers see what you are doing and appreciate your work.

Congratulations to everyone who was nominated for the 2022 MLA Awards. The lists were long. We are surrounded by many talented lawyers who work hard for their clients and contribute to our community. Congratulations to recipients, Marie Tukara (Distinguished Service), Salim Khot (Access to Justice), Mana Khani (Philanthropy), and Samantha Puchala (Rising Star). You can read more about these individuals and their work in this edition of the newsletter.

Our [sponsors](#) and [volunteers](#) made this event possible. Thank you to our sponsors for your generous contributions (and to my law firm for an unsolicited doubled amount as a sign of support). The committee was comprised of our Bench and Bar representatives, our Executive Director, new lawyers, senior lawyers, and lawyers practising in criminal, family, and civil law. There were lawyers from private practice and in house counsel. We even had a Crown Attorney! This committee was a perfect example of the direction that the MLA is moving in.

Thank you for volunteering your time.

Finally, I want to thank Jennifer Foster, our first Executive Director, for the work she has done in this new position. Those who know Jennifer know that she is detailed oriented, organized, creative, calm, and I think my favourite quality of all, sincere. She has been a vital part of moving the MLA in the new direction we adopted. Like most transitions, this one has had some bumps, but Jennifer rose to the challenge and did so with warmth and grace and for that she has our gratitude.

I am pleased to welcome [Tracy Fawdry](#) to the MLA as our new Executive Director. Tracy started in this role on September 26 and is already busy getting up to speed with the inner machinations of the MLA and the multiple CPD programs being offered this fall. You can reach Tracy at tracy@middlaw.on.ca. We look forward to working with you, Tracy.

Happy Thanksgiving to all of you.

Karen Hulan
 PRESIDENT





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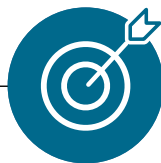
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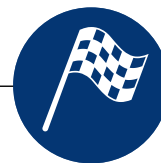
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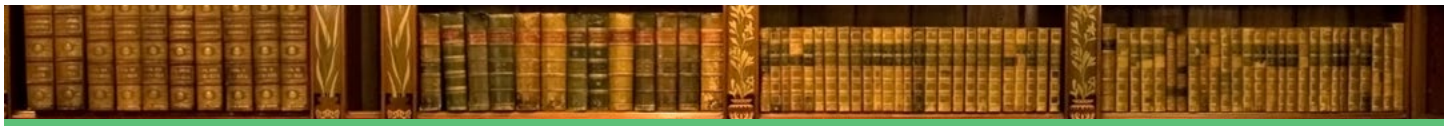
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Practice Resource Centre News



Contributed by:
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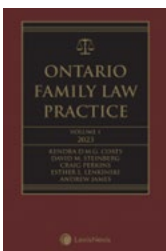
No Reference Services October 12-14

We will be attending the annual fall conference with our colleagues in the county and district law association libraries for the first time in person since 2019. The Legal Information and Resource Network (LiRN), which administers grants and provides strategic leadership to law association libraries, will provide an update on its activities and initiatives for the year, including 2023 budget discussions with the LSO. There will be practical sessions on things like our new e-resources, social media management, and other system-specific features, plus sessions on drawing users back to the library, vicarious staff burnout, and a roundtable by geographical area to discuss common, situations in our libraries.

Please note we will be unavailable to assist you with your reference questions or general association emails on those three days but will respond to your emails the following Monday.

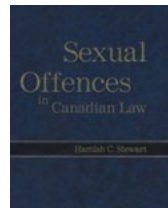
Special Missing Titles Profile

We always have our list of missing titles in each issue, but there are two new titles that have gone missing in the past few months that we would like to highlight in case you thought you had signed one of these out but missed that step on the way out of the library. And, since a picture is worth a thousand words...



Ontario Family Law Practice 2022

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



Sexual Offences in Canadian Law

We have updates waiting for this title!

Library Resources Update

The pandemic demonstrated to us that while our members still needed the library's services and resources, they didn't necessarily need them from traditional hard copy books and expensive-to-maintain looseleaf resources. The majority of reference questions that we have answered in the past 2.5 years (psst...[send us questions](#)) have used the two main research databases, Westlaw and Lexis Advance Quicklaw, or e-versions of our texts and looseleafs through services such as Thomson Reuters ProView or vLex's Irwin Law database.

Our current contracts with Thomson Reuters, for both our looseleafs and Westlaw, are coming due and there are new options to transfer some of our looseleaf titles to Westlaw and away from the clunky ProView platform. This would mean that we would no longer maintain print subscriptions to these titles and they would only be available through Westlaw, either from one of the user computers in the library or via a reference request to us (seriously, [send us your questions](#)).

Right now, this might cover the areas of family, estates, real property, employment, and some of Thomson Reuters' litigation titles. We are still running the numbers but will let you know when the proverbial ink is dry on the contracts.

New Books

Bennett, Frank. **Bennett on bankruptcy, 24th ed.**, LexisNexis, 2022

Desloges, Chantal et al. **Canadian immigration and refugee law: a practitioner's handbook, 3rd ed.**, Emond, 2020

Hiltz, D'Arcy. **Guide to consent and capacity law in Ontario, 2023 ed.**, LexisNexis, 2022

Hull, Ian. **Power of attorney litigation, 2nd ed.**, LexisNexis, 2022

n/a. **Martin's annual criminal code 2023**, Thomson Reuters, 2022

Olivo, Laurence and Mary Ann Kelly. **Civil litigation, 4th ed., Revised**, Emond, 2022

Penney, Steven. **Criminal procedure in Canada, 3rd ed.**, LexisNexis, 2022

Sharma, Raj and Aris Daghighian. **Inadmissibility and remedies**, Emond, 2021

Sopinka, John. **Law of evidence in Canada, 6th ed.**, LexisNexis, 2022

Tustin and Lutes. **Guide to the Youth Criminal Justice Act, 2022/2023 edition**, LexisNexis, 2022

Watson & McGowan. **Ontario civil practice 2023**, Thomson Reuters, 2023

Watt & Fuerst. **2023 Annotated Tremear's Criminal Code**, Thomson Reuters, 2023

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



Missing Books

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

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

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

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

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

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

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

LSO. **Accommodating age in the workplace, 2015**

LSO. **Duty to accommodate in the workplace, 2016**

LSO. **Six-minute administrative lawyer, 2018**

MacFarlane, Bruce A. **Cannabis law**, Thomson Reuters, 2018

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

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

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

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

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

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DEADLINE IS NOON ON OCTOBER 25

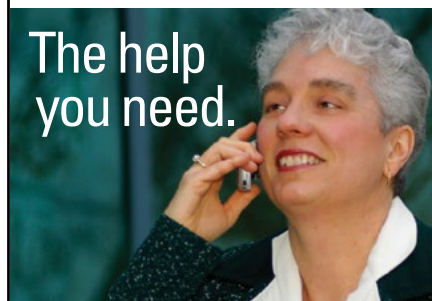
We encourage submissions in the range of 200-500 words, with a maximum limit of 1,000 words for news and opinions, and a limit of 2,000 words for articles on law and legal issues.

Contact Tracy Fawdry

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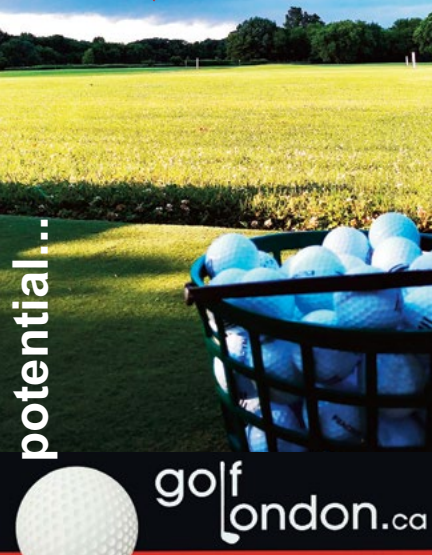


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Interview with Tracy Fawdry, the incoming Executive Director of the MLA



Contributed by:
Jennifer Foster, outgoing Executive Director of the MLA

The MLA would like to extend a warm welcome to Tracy Fawdry, the incoming ED.

Please stop by the Practice Resource Centre and say hello when you have a chance.

Where were you born and raised?

I was born and raised in Sarnia, Ontario and enjoyed growing up next to Lake Huron with its amazing sunsets. I still have family in the area, so I visit often, enjoying my inspiring and exceptionally active nieces and nephews.

Tell us about your past experiences in leadership with not-for-profit organizations.

My first not-for-profit leadership experience was as Executive Director of the Learning Disabilities Association – London Region where I designed and developed programming for children, youth, adults, and parents. I was able to grow the organization's revenue base, staff complement, and diversity of program offerings over my eight years in the role.

In the world of higher education advancement, I led two faculties in their alumni relations and development goals, building new engagement programs and development strategy to support faculty research and community priorities. In this role, connecting alumni professionals with student development and mentorship was a key goal, which will translate well to my work with the MLA.

Most recently, I was a key member of a three-person leadership team for an education research and think-tank organization, managing all fund development and communications for

the organization. This work enabled me to utilize my skills in research knowledge translation as well as leading a national engagement project on the Future of Public Education.



What attracted you to the ED role with the MLA? What excites you about your new position?

I was very drawn to a leadership role with a small, dedicated team where collaboration is essential to building successful outcomes. I also enjoy working with expert volunteers, dedicated to their profession and their colleagues, as well as their community. As a member-driven organization, I look forward to working closely with the Board of Trustees and various committees to co-plan and design a suite of offerings that build professional capacity at all career stages. I am also excited to steward rewarding, ED-supported volunteer engagements with the MLA for lawyers in the region.

What does the MLA mean to you? What can the MLA do to support its members?

As I begin my onboarding process, I view the MLA as a strong organization with a history of exceptional dedication by its members. As the MLA's first Executive Director, Jennifer Foster, moves on after doing an astounding amount of work building core operations, processes, and culture, I look forward to leading the organization into its next stage of evolution, guided by the Board of Trustees and strategic plan. As well as growing the number and breadth of topics under the CPD banner, I hope to ensure that the membership is consulted, surveyed, and co-creates the suite of engagements that build their professional interests and collegiality in a way that represents the strength of Middlesex as a law association leader. This is a vision that will hopefully integrate the design of new types of engagements as well as maintaining the current high-quality offerings that the membership appreciates and expects.

What are your interests outside of your professional life?

My happy place is in nature. This takes the forms of gardening, hiking, kayaking, or doing long walks along the plethora of London and area trails. A really good cup of coffee – a daily need – and a good book – an occasional yet treasured need, also bring much enjoyment to my life. Lastly, staying connected to the ways and interests of youth through my close relationships and time spent with nieces and nephews, is always a me-time priority.



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6 privacy & tech shifts you might have missed



Contributed by:
David Canton / Harrison Pensa LLP

The Summer of 2022 seems to have gone by in a flash, as has time generally since COVID started.

Now that Fall is upon us, here are some things to ponder that may have been glossed over.

1. There has been a lot of buzz recently about new tech such as [NFTs](#), Web3, the [metaverse](#), and AI. There is confusion and speculation around what they are, and legal issues around them. If these affect your business, it might be worth looking at them from a broad perspective, including [legal and ethical](#). If your business is not impacted at the moment, it would be worth considering whether they might provide future opportunities.
2. In Ontario at least, there have been many small but important changes in employment law over the last year. Many of those were triggered by COVID issues. They include [surveillance disclosure](#), off-hour [disconnect policies](#), unenforceability of non-competes, and [gig worker changes](#). Your Human Resources department needs to be on top of these changes.
3. [New privacy laws](#) are proposed, and consumer awareness of privacy issues seem to be on the rise. While the new laws won't be in place for some time, it is never a bad idea to review, perhaps in a privacy impact analysis, your personal information handling practices. What personal info do you collect, why do you actually need it all, and when and how do you dispose of it? Consider privacy policies, procedures, consent, and [documentation](#) in light of proposed laws, especially for new tech or uses you are developing.
4. Look at your promotion, branding, and trademarks. Do things like the [death of cookies](#) require a new approach? Are you protecting your brands by [registering them as trademarks](#)? If contemplating a new brand, it is important to make sure that it is one that you can actually use and protect.
5. [Cybersecurity](#) is an always present but changing risk that must be kept on top of. Cybersecurity best practices constantly change and need to be adopted to address emerging threats. Tech measures alone are not enough – [employees must be trained](#) to do their part

as well. It is especially important to consider when designing new products and making changes to systems.

6. COVID resulted in many doing business differently, such as [working from home](#). Some changes were done quickly without a lot of thought into issues that went along with it – such as privacy, security, HR, and employee relations. We are now seeing changes in attitudes and issues around work/life balance, work culture, productivity, retention, the great resignation, and quiet quitting. It would be a good time to ponder these issues in a broader context, and how to best deal with them from both a short- and long-term perspective.

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

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Condoms and Consent



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

In a recent decision in [R. v. Kirkpatrick, 2022 SCC 33](#), the Supreme Court of Canada (SCC) held that consent to engage in sex with a condom and without a condom are fundamentally and qualitatively different physical acts.

The complainant testified that she met Mr. Kirkpatrick online and then in person to determine if they wanted to have sex. Her evidence at trial was that she communicated to the accused that her consent to sex was premised on his use of a condom. They had sex twice. The first time he wore a condom. The second, he didn't. She realized only after he ejaculated inside her.

At trial, the accused's charge was dismissed following a no-evidence motion based on the SCC's decision in [R. v. Hutchinson](#), 2014 SCC 19, which provides a two-step process for analyzing consent. Kirkpatrick argued that the Crown failed to prove an essential element in the actus reus of sexual assault: the absence of the complainant's consent.

In *Hutchinson*, the first step is to determine whether the complainant consented to engage in the "sexual activity in question" (*Criminal Code*, RSC 1985, c C-46, s. 273.1(1)), which is defined by reference to the specific physical sex act involved. If the complainant consented, or her conduct raises a reasonable doubt about her consent, the second step is to consider whether there are any circumstances under s. 265(3) or s. 273.1(2)(c), including fraud, that vitiate her apparent consent.

Fraud under s. 265(3)(c) requires proof of the accused's dishonesty, which can include non-disclosure, and a deprivation in the form of significant risk of serious bodily harm from that dishonesty. In *Kirkpatrick*, the accused argued that the complainant's agreement to sexual intercourse the second time was enough to establish consent to the sexual activity in question, as she consented to the physical acts, and there was no evidence of fraud. He was acquitted and the Crown appealed.

The British Columbia Court of Appeal (BCCA) judges split on the reasoning as to which *Criminal Code* provision applied in examining consent: s. 273.1(1) or s. 265(3)(c). Nevertheless, they set aside the acquittal and ordered a new trial. The accused appealed to the SCC.

All judges of the SCC agreed that the accused's appeal should be dismissed but were divided on the reasons.

Reasons for the majority were delivered by Martin J. (Moldaver, Karakatsanis, Kasirer, and Jamal JJ. concurring). Joint concurring reasons in the result were provided by Côté, Brown, and Rowe JJ. (Wagner C.J. concurring).

The majority held that condom use, when it is a condition of the complainant's consent, forms part of the "sexual activity in question" under s. 273.1 of the *Criminal Code*. They found that this interpretation provides a harmonious reading of the relevant provisions in context and accords with Parliament's purpose of promoting personal autonomy and equal sexual agency.

Conditional consent to sexual touching with a condom "goes to the heart of the specific physical activity in question" and the existence or non-existence of subjective consent, and there is no need to resort to the doctrine of fraud and its

stringent legal requirements. Voluntary agreement to sex with a condom cannot be taken to imply consent to sex without one (*Fitzpatrick* at para. 50).

The majority held that vitiation of consent by fraud under s. 265(3)(c) may still arise in other cases but does not apply when condom use is a condition of consent. They reasoned that the requirement to prove deception and a deprivation misdirects the inquiry by shifting the focus to how the accused behaved and whether he attempted to or deceived the complainant about his lack of condom use instead of asking whether the complainant subjectively wanted the touching to take place.

The minority, although concurring in the result, found that *Hutchinson* squarely applied and the majority reasoning violated the doctrine of stare decisis since in their view, *Hutchinson* categorically held that condom use is not part of "the sexual activity in question". They held that when a person agrees to have sex on the condition that their partner wear a condom and that condition is circumvented, the sole pathway to criminal liability is the fraud vitiating consent analysis under s. 265(3)(c). Applying *Hutchinson*, the minority found there was some evidence that the complainant consented to the sexual activity in question, but a new trial was required to determine whether her apparent consent was vitiated by fraud.

Although differing in their reasons, the SCC agreed with the BCCA that the acquittal ought to be overturned and the matter was remitted for a new trial.

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Get in touch – we'd love to hear from you.

The Digital Charter Implementation Act: Canada's Attempt to Modernize Its Privacy Laws



Contributed by:
Alysia Christiaen / Lerner's LLP

On June 16, 2022, the federal government introduced Bill C-27, the Digital Charter Implementation Act, to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act, and the Artificial Intelligence and Data Act.

This article focusses solely on the implementation of the [Consumer Privacy Protection Act](#), or CPPA, which sets out the privacy obligations of private sector organizations and the powers of the Privacy Commissioner.

The CPPA answers the need to modernize Canada's privacy legislation framework. It makes clear that the economic interests of Canadian businesses are to be balanced with the protection of individuals' privacy.

Following are some of the important considerations that business owners, including lawyers and law firms, need to be aware of moving forward under this new regime.

Anonymized versus de-identified information

The CPPA distinguishes anonymized information (irreversibly and permanently modified personal information such that an individual cannot be identified from it) and de-identified information (modified personal information such that direct

identification of an individual is not possible, though a risk remains). Anonymized personal information is exempt from the application of the CPPA.

Privacy management program

Every organization must have a program that includes policies, practices, and procedures respecting the protection of personal information. This includes: how requests for information and complaints are received and dealt with; training and information provided to the organization's staff respecting its policies, practices, and procedures; and the development of materials to explain the organization's policies and procedures. In developing a compliant program, an organization must consider the volume and sensitivity of the personal information under its control. Organizations are required to provide access to their privacy management programs on request to the Privacy Commissioner.

Transferring information to service providers

Organizations may transfer personal information to a service provider if they ensure that equal protection of the personal information is in place. The most common means to affect this will be through a contract, but other methods are permitted.

Appropriate purposes

Whether or not consent is required, an organization may collect, use, or disclose personal information only

in a manner, and for purposes, that a reasonable person would consider appropriate in the circumstances. An organization must determine at or before the time of the collection of any personal information, each of the purposes for which the information is to be collected, used, or disclosed, and *record* those purposes. (This is the closest the government comes to imposing a requirement on private businesses to conduct a privacy impact assessment.)

Consent

Unless provided otherwise in the act, an organization must obtain an individual's valid consent for the collection, use, or disclosure of the individual's personal information. Consent must be obtained at the time or before the personal information is collected. The CPPA provides a list of information that must be provided to the individual for consent to be valid, which includes *the names of any third parties or types of third parties to which the organization may disclose the personal information*.

Exceptions to consent

The CPPA allows an organization to collect or use an individual's personal information without their knowledge or consent if made for a *business activity* listed in the legislation, and if a reasonable person would expect the collection or use for the activity, and it is not for the purpose of influencing the individual's behaviour or decisions.

An organization can collect or use an individual's personal information without their knowledge and consent if

for the purpose of an activity in which the organization has a *legitimate interest* that outweighs any potential adverse consequence on the individual, provided that a reasonable person would expect the collection or use for the activity, and it is not for the purpose of influencing the individual's behaviour or decisions. However, there are conditions that must be met before an organization can rely on the legitimate interest exception.

The CPPA codifies that personal information can be *transferred to a service provider* without an individual's knowledge or consent.

The right to be forgotten

With limited exceptions, individuals have been given the right to be forgotten. By written request, an individual can have their personal information permanently and irrevocably deleted by an organization.

Security safeguards

An organization must protect personal information through physical, organizational, and technological security safeguards. The level of protection provided by those safeguards must be proportionate to the sensitivity of the information. In establishing its security safeguards, the organization is to consider the quantity, distribution, format, and method of storage of the information.

Algorithmic transparency

If an organization uses an automated decision system to make a prediction, recommendation, or decision about the individual that could have a significant impact on them, it must, on written request by the individual, provide them with an explanation of the prediction, recommendation, or decision. The explanation is to include the following: the type of personal information that was used to make the prediction, recommendation, or decision; the source of the information; and the reasons or principal factors that led to the prediction, recommendation, or decision.

Data mobility

If organizations are subject to a data mobility framework, an individual can request to have their personal information transferred between the organizations. No guidance has yet been provided as to what types of organizations will be included in the data mobility framework.

De-identification of personal information

Measures used to de-identify information must be proportionate to the purpose for which the information is de-identified, and the sensitivity of the information. A prohibition on the use of de-identified personal information is set out in the act, with limited exceptions.

Powers of the Commissioner

In most circumstances, following a complaint, the Privacy Commissioner will investigate.

Complaints may be initiated by an individual or the Commissioner. After investigating a complaint, the Privacy Commissioner can initiate an inquiry. Each party is guaranteed a right to be heard and can be represented by counsel.

Monetary penalties

After completing an inquiry, the Commissioner can recommend that the Personal Information and Data Protection Tribunal impose an administrative penalty if an organization has breached certain provisions of the CPPA.

The maximum penalty for all the contraventions is \$10,000,000, or 3% of the organization's gross global revenue in the financial year preceding the penalty, whichever is higher.

Right of action

If the Privacy Commissioner finds that an organization has contravened the CPPA, and as a result of that contravention an individual suffers a loss or injury, that individual can bring an action for damages against that organization.

Whistleblower protection

Organizations are prohibited from acting against a person who notifies the Privacy Commissioner of the organization's contravention of (or intention to contravene) the CPPA.

Offence and punishment

Organizations that contravene certain provisions of the CPPA, or that obstruct an investigation, inquiry or audit by the Privacy Commissioner, may be fined a maximum of \$25,000,000, or 5% of the organization's gross global revenue in its financial year before the one in which the organization is sentenced, whichever amount is greater.

Too far or not far enough?

The preamble in Bill C-27 to the *Digital Charter Implementation Act* indicates that the protection of the privacy interests of individuals with respect to their personal information is essential to individual autonomy and dignity, and to the full enjoyment of fundamental rights and freedoms in Canada. However, it stops short of creating privacy as a human right, as did its predecessor. It appears the federal government is trying to balance flexibility and innovation of businesses, with a strong privacy regime to protect the personal information of individuals.

Alysia Christiaen is a privacy lawyer, assisting businesses to comply with their privacy and data security obligations and responding to privacy breaches. Connect with Alysia via [Twitter](#) or [LinkedIn](#). This article originally appeared as a blog posted to the [Lerners LERNx](#).



Hockey Canada – Reckless or Responsible?



Contributed by:
Rob Talach / Beckett Personal Injury Lawyers

You are about to hear support for Hockey Canada's fiscal management of sexual abuse litigation from the most unusual source, a victim's advocate and plaintiff personal injury lawyer.

If you have been on Mars for the past year, you may not know that Hockey Canada recently had a most public and rude reminder of the issue of sexual abuse by hockey players. It was revelations of sexual debauchery and group sexual assault of a young woman by members of the 2018 Men's World Junior Hockey team following their gala dinner here in London which shocked the nation and pushed Hockey Canada into the limelight. A police investigation without charges, a civil lawsuit which was quickly settled, and an internal probe that was never completed, all added to the intrigue and outrage.

By way of full disclosure, it was the sexual abuse litigation team at Beckett Personal Injury Lawyers who represented the plaintiff/victim in the related civil litigation as well as coordinated her overall response to police, media, and internal investigation inquiries. I was therefore asked by the MLA to address in this article one aspect of the matter that strangely got a lot of attention, being the existence of a fund to pay out uninsured sexual abuse cases.

The existence of Hockey Canada's National Equity Fund (the "Fund") was discovered at the parliamentary sub-committee hearings in July of this year. The Fund drew upon minor hockey membership fees. In fact, just last week it was reported by The

Canadian Press that of the \$20.80 of the membership fees that is directed towards "insurance", 65% of that sum goes to the Fund. Most significantly is the fact that the Fund has been used over the years to the tune of at least \$7.6 million to settle sexual abuse lawsuits. The media depiction of a secret slush fund used to pay off victims of sexual abuse by hockey players caused upset amongst hockey parents, politicians, and the general public. Hockey Canada's public relations-driven response was to declare that the fund would no longer be used for that purpose. Was that the right and responsible decision, though? Was the existence of the fund reckless in the first place?

In examining issues around the Fund and sexual abuse in hockey, we need to dispassionately separate the issues. There is no question that a culture of misogyny and sexual assault need to be eliminated from hockey. Prevention should always be the main effort but there needs to be secondary focus on what to do when the unthinkable does happen. A robust and transparent mechanism of response needs to include access to funds to compensate victims.

As most lawyers know, contemporary insurance will not cover intentional torts such as sexual abuse; however, they are depicted within the pleadings. This is because of clear exclusionary clauses within the insurance policies for "intentional or criminal acts". This line of reasoning received judicial support with the 1976 Supreme Court of Canada decision in [Co-operative Fire & Casualty Company v. Saindon](#), [1976] 1 SCR 735 and was solidified in their better known 2000 decision in [Non-Marine Underwriters, Lloyd's of London v. Scaler](#), [2000] 1 SCR 551. Whether the act was intentional, but the harm

was not, is irrelevant. No fancy drafting in an effort to wrap the intentional tort in the language of negligence will save you either. In July of this year, the Ontario Court of Justice issued another one of the many decisions confirming that barrier to accessing insurance for cases of intentional and criminal acts in the decision of [Butterfield v. Intact Insurance Group](#), 2022 ONSC 4060 (CanLII). Acknowledgment to London's very own Mr. Doug Wallace in that matter on behalf of Intact.

So, if insurance is not an option for covering sexual assault lawsuits, what does an institution do? A good example of what not to do is the Catholic Church's reaction to sexual abuse lawsuits. For some Dioceses, the reaction has looked like an ostrich drafted it. A perfect example is the Archdiocese of St. John's (Newfoundland), which, due to a recent ruling surrounding abuse at the notorious Mount Cashel, is now proceeding through bankruptcy court. The existence of that potential liability has been known by the Archdiocese for decades but instead of building up something akin to Hockey Canada's Fund, they have been wishing upon a star and doing nothing to create a contingency plan. Now the poor parishioners of that region will pay the financial tab and victims will ultimately be undercompensated.

In contrast, Scouts Canada, another institution that has seen its fair share of sexual abuse lawsuits over the years, was ready for the loss of insurance coverage. Since exclusionary clauses first started appearing and Courts ruling in support of them, Scouts have been saving for a rainy day. In my practice experience, it has been raining recently with most of the Scout cases I resolve being funded strictly by Scouts Canada itself. This was a responsible

step taken by Scouts many years ago to create a contingency fund and is consistent with their motto, Semper Paratus – Always Prepared!

Hockey Canada's former vice president of insurance and risk management provided to the subcommittee this summer a statement that addressed the birth of the Fund. Mr. Glen McCurdie stated, "When we were first faced with this situation, we had financial issues to deal with in terms of unfunded claims coming at us from hockey players, professionals and otherwise." He went on to indicate that the Fund was created in response and assisted in compensating victims, outside of insurance coverage up until present day. Though I don't know the source of the funds within Hockey Canada that compensated my client, I can only assume that the Fund also aided our settlement since no insurance policy in

2018 would ever cover sexual assault.

Presently, due to the misinformed and emotional response of media and the public, aided by the public relations response of Hockey Canada, there is no immediate Fund or source of compensatory funds for victims of sexual abuse within Canadian hockey. Yes, there still is the financial vastness of Hockey Canada overall, but without dedicated contingency funds, it can be, and will be, more difficult to get settlement funding. This has held true with respect to the Catholic Church, where their approach has resulted in the need to sell churches or restructure programs to fund what are otherwise foreseeable liabilities. The recent plethora of FOR SALE signs on churches in Newfoundland serve as monuments to their unpreparedness.

Nobody wants to see hockey programs curtailed due to Hockey Canada's

inability to address the unfortunate reality that you can't prevent all sexual abuse. You still need to plan on how you will compensate victims for the real and tremendous harm that results. The Fund, though not a perfect plan (due to the lack of transparency), was still a good plan. Let us hope that a replacement source of dedicated funding for victims is created to replace the Fund. Victims, and Canadians as a whole, deserve a comprehensive approach to the issue of sexual abuse in hockey, which must include an ability to compensate. If you are involved in hockey, or just love the game, please make your voice heard. The Ontario Branch Manager of Risk, Registration and Insurance is [Ms. Taylor Endrody](#) and she can be reached by email at tendrody@ohf.on.ca. Take a minute and make a difference.



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- THE 194TH -

Fall Opening of the Courts



Contributed by:

John Nicholson / Cohen Highley LLP Lawyers and MLA Board Trustee

On September 15, the Middlesex legal community came together for the first time since 2019 to celebrate the 194th Fall Opening of the Courts at Museum London. The event was a great success.

The theme of the ceremony was "Celebration" - and indeed there was much to celebrate from the past three years. Many of the speakers remarked that when we were faced with the unprecedented challenges of the pandemic, the legal community responded with hard work, cooperation, collegiality and innovation to ensure the continued functioning of the justice system in Middlesex. We also celebrated seeing each other in person again, toasting glasses at the reception that followed the ceremony, and reconnecting with colleagues whom we had not seen in a long time. We also celebrated the life of Queen Elizabeth

II, and accession of King Charles III with the first singing of God Save the King in most of our lifetimes.

While there was and is much to celebrate in our past achievements, we were also reminded by our speakers - particularly our keynote speaker Regional Senior Justice Thomas and Brian Hill of the N'Amerind (London) Friendship Centre - that there is much work that still needs to be done to ensure justice and the preservation of the rule of law in Middlesex, and in Canadian society more broadly.

Justice Thomas reminded us that to ensure a functioning legal system requires continual work, and continual investment. The pandemic forced us out of the paper-based system of the 1800's, and into the 21st Century - but just barely. Justice Thomas asked us to continue to urge governments to continue to invest in the kind of technology that the future demands, and to invest in the court staff that are vital to the proper functioning of the administration of justice.

Mr. Hill reminded us that seven years have now passed since the Truth and Reconciliation Commission released its Call to Action in 2015, which included numerous specific calls to action to improve the justice system for Indigenous Canadians. Mr. Hill asks us all to re-read those calls to action and consider what we can each individually do to further the goals of truth and reconciliation in all of our work.

The MLA is also extremely grateful to Justice Grace, Justice Henderson, and Justice Carnegie for their remarks. We also thank Justice Mitchell for leading us in the renewal of our oaths of office, and we thank LSO Treasurer Horvath for speaking at the ceremony and welcoming all the lawyers who were called to the bar during the past three years into the Middlesex legal community. It was wonderful to meet our new colleagues and celebrate their calls to the bar.



Addresses from the Bench



Contributed by:

Keynote Speaker: The Honourable Bruce G. Thomas

Regional Senior Justice for the Southwest Region, Superior Court of Justice

I want to thank the Middlesex Law Association and specifically the organizers of this event for the time and care they have put into this ceremony and the inclusiveness you have demonstrated.

That inclusiveness is an important part of my comments to you today which I will come to a bit later in my remarks.

Judicial assistants have now commented over two decades that I seem incapable of generating decisions that exceed 15 pages. They suggest perhaps it is my attention span. They may be right. But this is my way of telling you I will not require the 15 minutes I have been allotted.

The theme here today is quite rightfully one of celebration. The ability to hold the 194th Opening of the Courts celebration in London “in person”. To celebrate our cautious emergence from the most serious public health crisis any of us have experienced. To celebrate recent Calls to the profession, recent judicial appointments, and to reflect on those lost to us in the past two years. We are, by nature, social animals who need to be together.

As part of this celebration, we need to recognize how far we have come and what we have collectively achieved. In February 2020, law practices may have embraced the technology of the 21st century, but the administration of justice was decidedly stuck in the 1800’s with an inclination to move forward, but without the financial or logistical means to do so.

In a moment, it seemed we were forced to embrace a new reality (I refuse to use the term “pivot” or describe our efforts as agile). I dislike those overused

descriptions. We did not pivot with agility. We, all of us, were suddenly faced with questions about access to justice we had not considered before:

- If we can’t be in the courthouse, how do documents get before a Court?
- How do we consider even emergency applications?
- What about parenting issues and child support?
- What about bail hearings, interim injunctions, and emergency orders?
- Can we ever hold a trial proceeding virtually?

Let me step away for a moment from the spirit of celebration to discuss some harsh realities. This Province has historically underfunded the administration of justice. In 2020, the Executive of all three Courts recognized that, from the tragedy of the pandemic, emerged an opportunity to advance to a more modern way of doing business. We needed to seize that opportunity. Initially, the Ontario Bar Association was instrumental in providing Courts with Zoom lines to at least allow for a means to conduct remote proceedings. All Courts have continued to press the Ministry of the Attorney General to recognize the opportunity to leave the cumbersome paper path behind. We all need to continue to urge government to invest now in the kind of administration of justice that the future demands: to provide adequate technology; to upgrade declining physical structures; and to provide a decent wage to court service employees from whom we demand so much. Court services staff who not only must be physically present but now also technologically savvy. The Court Services Division of the Ministry of the Attorney General cannot attract or retain employees. Even when we have adequate means to conduct a hearing,

we are left with the very real possibility that there will be no available in-court staff. This is not a reflection on the efforts of local supervisors but rather the failure of the province’s staffing model.

Governments have been slow to fill judicial vacancies. The application for appointment to the Superior Court has become comparable to a PhD thesis. Gifted potential applicants – lawyers who could be appointed now – choose not to expend the time and effort on a task that appears to them to be unlikely to bear a benefit.

In addition, as a Court we realize we must rationalize our newfound processes. What can be virtual? What must be in person? We must remember that there are proceedings that demand “in court” advocacy – that skill that has been the foundation of the life of the barrister. Not all court proceedings easily lend themselves to a video monitor. This, for us, is a work in progress. To know how to best conduct a myriad of appearances will take time and even then, we must be flexible and understand that further change may be necessary. Our Court continues to press government to acquire an end-to-end software platform that will allow for filing, scheduling, and the uploading of all materials. One stop, not multiple overlapping steps. We have come so far but as a Court we recognize there is still so much to do.

Let me move into the second part of my comments, which demands a broader focus.

We have much to celebrate about the administration of justice in this country. We have a vigorous and healthy legal profession. A profession whose members mirror the community it serves. We have judicial officers who are unhindered by concerns of re-election and unhampered by political

biases. We have a constitutional document that adapts to social change and does not require an analysis of the language of 18th century authors.

But all of us must be vigilant. There has been an erosion in this country to the rule of law. When portions of the community connected and empowered by social media can promote events – the effect of which challenge our view of a civilized society – not halfway around the globe – but here in Canada. Events that seek to suggest that individual rights can trump the collective good. The banner of populism cannot be used to cloak lawlessness. An article in the Toronto Star this weekend written by Robin Sears decried the rising threat of political violence. His thesis was that we must develop a broad consensus on the boundaries of acceptable discourse and behaviour in this country and then we need to react and enforce the

breach of these boundaries. Trust me when I tell you that the same kinds of threats are being levelled daily against participants in the administration of justice in this Province.

We all must demonstrate to the citizens of this country that the rule of law is worthy of their respect. But respect is not acquired by a law degree, a Call to the Bar, or the appointment as a judge. Respect is earned by the hard work we must continue to do. While we celebrate what we have, global issues remind us of what happens when broad portions of the community believe they have been left out – left behind. That brings us back to inclusivity. We must do our best to remain relevant to the racialized, the poor, and now to the working poor. We must litigate in a manner that is efficient and cost effective. Counsel must understand that advancing every possible argument

may not in fact advance the client’s cause. Judges must better manage the apparently unmanageable and must work hard to focus litigants on the real issues, not only in the courtroom but in their judgments. We cannot afford to have judges generate long legal treatises, the production of which delays our attempt at justice. Ours are finite resources - resources that are out of the reach of a significant portion of those we should be serving.

Our institutions are worthy of preservation. In fact, as a civilized society, we must demand their preservation. All of us have a part to play in that. Sadly, our failure in that would be more than unfortunate – our success, cause for real celebration.

Thank you.



Contributed by:

The Honourable Justice Paul J. Henderson

Senior Administrative Justice, Superior Court of Justice (Family Branch)

It has been three years since I stood at this podium.

I don't recall specifically what I said as to the state of the Family Court (nor do you, I'm sure) but no one could have foreseen the changes coming in March 2020 and continuing to this day.

As it became clear COVID was not going to be a three-week inconvenience, a push was put on for technology to facilitate court operations in a safe manner. Now Zoom, OneDrive and CaseLines are part of the everyday lexicon.

Technologically, we have moved from the 1950's to about the year 2000. We will be current with the introduction of end-to-end filing and scheduling, which is anticipated in the next three to five years. At this point, paper files are a quaint relic of the past and counsel are able to make several court appearances in different courts without leaving the comfort of their office.

Our weekly schedule looks nothing like it did three years ago. In our court, most attendances are virtual with the exceptions being case and settlement conferences and trials. Anecdotally, we have found we obtain more settlements, temporary and final, with in-person conference appearances.

While technology was a necessary introduction, it has come with a cost.

Files take longer to process, from the court office to the judge's office. Consequently, the court cannot hear as many cases as pre-COVID, and the weekly schedule reflects this reality. As a result, timeouts are significant for conferences and motions. We are committed to reducing these timeouts.

We started hearing trials last September with a backlog of

approximately 400 trials. That has been reduced but not as much as I would like. We are currently scheduling trials into next September. I close this point with a note of caution to the bar: that judges have been instructed to ensure trials are completed in a timely fashion and that counsel comply with the time limits set out in the Trial Scheduling Endorsement Form.

Another cost of technology has been access to justice. We have people in our court who have limited access to devices and Wi-Fi. This makes it difficult for them to meaningfully participate in a hearing. In-person trials assist but greater involvement of Duty Counsel, which I'm told is coming, earlier in the proceedings would lead to a fairer result sooner.

I'd like to close on two points. First, in addition to the changes I have noted, the Family Court has witnessed changes to its Bench. Justice Sah is an addition to our complement from four to five judges. Over the past two years, she has exhibited enthusiasm, energy, and judicial competence. She will replace me as Administrative Judge in the new year. Most recently, we have the addition of Justice Hassan, a local talent, who replaced Justice Mitrow who elected supernumerary status. She has done so well over the summer that she has been assigned to trials in the current sittings.

Secondly, I'd like to close with a few acknowledgments. Facing the challenges that COVID presented to the court system required incredible dedication and commitment by countless people. The following list is not to be inclusive but includes those people I dealt with as Administrative Judge for the Family Court in London:

- Our Trial Coordinators, Doris Hagarty

for Family, and Joy Beattie for the "Tower", and their respective staff. Regardless how hard anyone else worked, nothing, and I mean nothing, would have been accomplished without these trial coordinators. Without their 12- to 14-hour days, six days a week, the system would have collapsed in the first year. If anyone is entitled to a COVID medal, it is these people.

- RSJ Thomas - While Justice Thomas sat on RSJ Council and was absorbed in its issues, he continued to sit on matters in Southwest Region and if you had any question as LAJ, you could count on an answer within ten minutes regardless of how busy he was. He has impressed the Chief so much he has been asked to stay on an extra year as our RSJ.
- Chief Justice Morawetz and RSJ Council
- Senior Family Judge Stephenson and Tami Moscoe and members of the Consultation Committee
- My LAJ Colleagues in Southwest Region
- My judicial colleagues on the Family Bench - you were awfully patient and worked exceedingly hard
- Members of the Family Law Working Group, which includes Nadine Russell and Matthew Villeneuve from this Bar
- Catharine Bates, Supervisor of CSD and Darcy Lampkin, Manager of Court Operations and their staff
- And you, the Bar, for your patient cooperation adapting to all the changes.

On that note, I say thank you.

Contributed by:

The Honourable Justice Michael Carnegie

Local Administrative Justice (Incoming), Ontario Court of Justice

It is a pleasure to stand before an in-person audience, after two and a half years of largely virtual connection and bring greetings on behalf of LAJ McHugh and our RSJ LeRoy who could not be with us this evening.

I must confess, having been appointed to the Ontario Court of Justice on March 12, 2020, for two years I have been left wondering, “where did everybody go?” This evening, I see many community stakeholders present, as they have been behind the scenes over the course of the pandemic, and in many respects, it is their hard work that prevented the administration of justice from falling off a cliff. While the pandemic is certainly not over, I believe we can all be proud of how we worked together – problem-solved and modernized our practices with unprecedented efficiency to get to this point where, we hope, we can see the other side. I believe public service is a calling – and all of you have answered that call and in doing so, have gone above and beyond your duties.

Just being here this evening feels like an accomplishment as we now jointly take on the challenge of further change – hopefully returning to a ‘new normal’. Remember, two years ago, who would have conceived that we would be regularly, and effectively, conducting trials by videoconference or hybrid variations – let alone routinely doing Case Management by Zoom? Of course, the last two and a half years have taken a tremendous toll on all of us, but what we have learned

cannot be forgotten as we transition from pandemic survival to backlog management.

The unfortunate reality is that in the Ontario Court of Justice alone, between March 2020 and March 2022, the pandemic alone accounted for more than 60,000 cases added to our provincial backlog, for which Middlesex County has its share. Naturally, our clearance rates cratered during the first year of the pandemic and have been thankfully rising steadily ever since. In London, I am pleased to report that our clearance rates have, by and large, held remarkably steady. We have apparently learned, perhaps the hard way, to focus our finite resources where they can do the most good. I hope these lessons continue, but the backlog of cases in our system that are now beyond 18 months unsurprisingly has significantly increased causing tiers of Case Management efforts to work through. It will take us perhaps years to work through these effects of the pandemic – years more of additional pressure on us all. From what I have seen these past two years, with continuing innovation, courageous decision-making, and compromise, and a whole lot of patience, I am confident we can meet this new challenge.

Since our last in-person Opening of the Courts ceremony, there have been many changes to the character of the OCJ bench that I would like to acknowledge. We have seen colleagues retire from our ranks, including Justice Schnall and Justice Douglas – or transition from full-time to per diem, including Justice Skowronski and Justice McKay – or transferred from our location, including Justice Maclure and Justice Poland. We have welcomed a few new additions, including yours truly, and Justice

Darroch (who, unfortunately for all of us, will be moving on to Kitchener), and we look forward to having Justice Sigurdson join us in the New Year. All of which means that we are, at present, two judges short of our seven official complement, which has put additional pressure on our OCJ staff and has caused a regular parade of per diem judges who have kindly assisted with pleas and JPTs.

Even more change has occurred for our Justices of the Peace that I would like to acknowledge. We have seen the retirement or transition to per diem of a great number of colleagues, including Justices Emrich, Forster, Hurst, Rodney, Shortt, Hodgins, Marquette, Miskokomon, Aharan, Cotter, Hurst, Johnson, MacDonald, Neilson, Radulovic, Robertson, Seneshen, Stewart, and Taylor. We have also welcomed new colleagues, including Justices Kovach, Gorcynski Plate, Sims, Waugh, Bessegato, Byskal, and Oudekerk. Now that we are all more often in the building together, I look forward to meeting all of them soon.

In closing, I wish to reiterate my gratitude to all the stakeholders in this community who have assisted the OCJ in staying afloat and encourage them all to be patient with me as I take over the reigns from LAJ McHugh. I expect that patience, creativity, and flexibility will continue to be required in the near future as we determine how our recovery process will evolve, but history has demonstrated that the stakeholders in Middlesex County are definitely up to the task. From all our local judiciary, I wish everyone a safe and healthy year.

Thank you.



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Interviews with the 2022 MLA Awards Recipients



Contributed by:
Genevieve Samuels / Samuels Family Law and MFLA President



Access to Justice Award: **Salim J. Khot**

*The MLA Access
to Justice Award
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, promoting better access to justice in Middlesex County.

Salim Khot from Salim J. Khot Legal Professional Corporation was called to the bar in 1995 having previously practiced law as a barrister and solicitor in India. Salim practices in wills, estates, immigration, and all areas of family law. He is on the panel of the Office of the Children's Lawyer and the Ministry of Children, Community, and Social Services, and was the 2021 Middlesex Family Law Association winner of the Edward J. Mann award, which recognizes exceptional lawyers who demonstrate a commitment to helping low-income clients in the pursuit of access to justice.

What does "access to justice" mean to you?

To me, access to justice means that every individual has the opportunity to have their story heard and have an advocate who is on their side regardless of how difficult the issues are or how limited their resources are. It is important to make clients understand their rights and their obligations and tell them we – as lawyers – provide them with opinions and options, and will take their voices to court with the most sincere conviction and effort.

You work with children in connection with the Office of the Children's Lawyer. Is representing minors different than working with adults? If so, how is it different?

Working with minors is different because there is a vulnerability due to their age, the exposure to conflict before the OCL becomes involved, and advocating for the child's position. As an OCL, the child client's position is unique as they are the centre of the litigation and are innocent in the issues at hand. I advocate on their behalf while simultaneously protecting them from further conflict. There has been a significant shift in family law where the child is no longer viewed as chattel and that they are, in fact, autonomous beings. I try to ensure the child's position is being respected as that of an autonomous person.

As you look to the future, what changes do you foresee in the practise of law?

In the practise of law, I see a lot of changes with respect to gender inclusivity and addressing gender exclusion issues. I also foresee the courts will learn how to address disabilities with a new perspective. I also see the legislation shifting to further recognizing the child's rights to their parents and emphasizing that right is held by the child.

The pandemic has allowed us to experience virtual court appearances. It has significantly shifted the previous system and efficiencies have increased in most areas. I hope Zoom and other virtual platforms will continue in order to expedite matters for motions, regular procedural appearances, and "to be spoken to's". If technology were to become the norm, I would

like to see greater access to justice by providing support for those who do not have the resources to access the technology. However, I do fear that technology would take over and remove our opportunities to see colleagues in person and build those relationships.

How can experienced lawyers best mentor new calls to the bar?

The first thing that I always do is remember that I was once in their shoes. I always want to ensure they remember that everyone makes mistakes and part of the learning process is to fix the mistakes as we go on. I tell all new lawyers "Learn to say the worst of the things in the best of the ways." As experienced lawyers, we should be mindful of the new calls' strengths and weaknesses and never push them beyond their capacity before they are ready, while also sharing experience and wisdom wherever possible. I always remind my mentees that clients come and go, but our fellow members of the bar are here to stay and deserve respect and professionalism when working together. We are officers of the court and have a responsibility to the client, courts, to our fellow colleagues, and to the general public; there has to be a fine balance in acting appropriately.





Distinguished Service Award: **Marie Tukara**

The MLA Distinguished Service Award

recognizes exceptional career contributions and achievements by MLA members to the legal profession including mentorship related to the profession and leadership roles in the community.

Marie Tukara is a partner and head of the Family Law Department at Siskinds. She was called in 1989 and has practiced as a family law litigator and negotiator for 33 years. She is also the primary and senior agent for the Family Responsibility Office for London and has been for 24 years. Marie is involved with managing the Dispute Resolution Officers as the co-chair of the DRO implementation committee.

What drew you to a career in family law?

Oddly enough I did not take any family law courses in law school, so I had no exposure to family law. Moreover, although I worked in the clinic at law school, we only worked on landlord/tenant and criminal files; there were no family files like there are today. I knew I wanted to litigate after doing a criminal trial in second year and getting a conditional discharge for the client on an assault charge, but I was not interested in criminal defence. It was not until my articles in Windsor and working on a lot of family law files that I discovered my passion for it. I liked the fact that I could help families in need at a very trying time in their life and found that rewarding and fulfilling. I wanted to litigate, and in family law you certainly get into court a lot. I also realized I had the temperament for this type of work. I could be sympathetic and emotionally supportive to my clients but at the same time I was able to separate myself and not get involved, which is why I have lasted 33 years doing this work.

How has the practice of law changed since you began your career as a lawyer?

Where do I start? So much has changed

over the years. With the advent of fax machines and email the pace of the practice increased and became more demanding. When I started practicing in 1989 not everyone was using fax machines and lawyers were still mailing letters. It would take time to get a response to a letter you sent out. It would not be immediate like today and clients realized that this process took time. You had breathing room. Today, other counsel and clients expect an immediate response, and everything is moving at a faster pace. Further, with emails and social media you now have to worry about what your clients are posting or saying, which can come back to haunt them. The system at court has changed with electronic filing and appearances by Zoom. I never saw this coming, nor did I think I would only be at court in person - not including Zoom attendances - maybe a few times a month when I used to be at the courthouse 3-5 days a week. I have some clients I have only met through Zoom and not in person.

Law can be a challenging profession.

What has brought you professional satisfaction and happiness?

Helping clients in need and getting a fair result. What makes my day is when a client acknowledges my hard work and thanks me either by a note or in person. It reminds me of why I continue to do this work. I also do pro bono work and helping someone who can't afford my services makes me feel fulfilled too. The fact I have been able to help mentor young lawyers over the years either directly in my firm or indirectly with the family law bar at court is also very satisfying. Although the icing on the cake is when a client refers their child to you who is dealing with a separation and you helped them get what used to be called custody of that child all those years ago (I know I am really aging myself!) -- the fact they trust you speaks volumes.

What advice would you give to new calls to the bar as they begin their own legal careers?

Just remember you went into this profession to help people. Don't look

at your clients only as file numbers. They are human beings who bring with them their own issues and baggage even before they get to you. Never be afraid to reach out to the senior bar for guidance. No question is a silly question.



Philanthropy Award: **Mana Khami**

The MLA Philanthropy Award recognizes

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

Mana Khami from Harrison Pensa Lawyers LLP was called to the bar in 2010, is a partner at Harrison Pensa, and has devoted herself as a volunteer to many organizations, including Western Law's Community Legal Services, the Ontario Bar Association, London Lawyers Feed the Hungry, the Regional HIV/AIDS Connection, and Cross Cultural Learning Centre.

General litigation encompasses many areas of law. Do you have a specialization that most interests you?

My practice is mainly focused on employment and labour, commercial litigation, and professional negligence. I enjoy all of those areas.

How would you describe practicing law in Middlesex County?

The bar in Middlesex County is so collegial. It really is such a great community to be a part of. There is respect; there is mentorship; and there is a sense of community where we work hard, but also have fun.

You have taught students at Western Law (Civil Procedure and Litigation Practice) and mentored students at Western University. What impressed you about students looking to enter the legal profession?

I am always in awe of what my students have accomplished, before law school,

during law school, and after being called to the bar. Their resumés are filled not just with legal experience, but also a lot of volunteer work.

You have a lengthy resume of volunteer work. What advice do you have for lawyers looking to start volunteering with any organization?

Get involved as much as you can. Give back to your community. Do work that is meaningful to you, and you will enjoy what you do every step of the way.



**Rising Star Award:
Samantha Puchala**

*The **MLA Rising Star Award** recognizes individuals who have distinguished themselves in the practice of law, advancing the ideals of the profession, demonstrating community involvement, and have been practicing for less than 10 years.*

***Samantha Puchala** from Conron Law Professional Corporation has worked in criminal law for six years. In addition to carving out her niche in her legal practice, Samantha is actively managing Conron Law, tutoring law students as they prepare to write the bar exams, and is the Treasurer of the London Criminal Lawyers' Association. She is also involved in the Association of French Speaking Jurists of Ontario, whose goal it is to promote French in the legal profession.*

What do you enjoy most about practising criminal law?

Being able to help clients through what is usually the most trying time in their lives. I love getting clients out of jail, getting charges dropped, and there's no feeling like walking out of a courtroom following an acquittal! It is truly an honour and a privilege to advocate for those who need someone in their corner, to tell their side of the story, and to defend their most fundamental rights and freedoms.

Carolynn Conron credits you with improving practice management at your firm. What advice do you have for small firms/sole practitioners in organizing and managing their practice?

Discuss your roadblocks with colleagues, because doing so can inspire solutions. I also recommend reading articles in the Harvard Business Review and other sources that contain helpful advice on how to become a better executive. Finally, I like to meet regularly with representatives of various service providers and ask a lot of questions/ share a lot of feedback with them. That's how I got us started with Clio (practice management software), Xero (accounting software), and Aleri (cross-examination software). This engagement has also allowed for better rapport-building with our financial, telecommunications, and other operational contacts.

You are involved with the Association of French Speaking Jurists of Ontario, whose goal it is to promote French in the legal profession. How can the profession increase access to French services in Middlesex County?

Hire more French-speaking candidates and learn more about the importance of access to justice in French through CPD programs and other events offered by various organizations, including the AJEFO and LSO. Highlighting the fact that various key actors (lawyers, judges, staff, etc.) speak French will increase awareness and demand for services in French. Many francophone clients express great relief when they realize I speak French because it finally allows them to communicate in their language of choice.

I was very pleased to see the recent appointment of Justice Michelle O'Bonsawin to the Supreme Court of Canada, a fluently bilingual Franco-Ontarian and an Abenaki member of the Odanak First Nation. I was also thrilled to see a posting for a bilingual judge in London's Ontario Court of Justice and hope to run several French trials before that judge someday.

You are a "rising star" after only a few years of practise. What career goals do you hope to achieve in the future?

I am truly lucky to be called to the bar three years ago, but with six years of experience thanks to Carolynn Conron mentoring me since the summer after my first year of law school. We have both come such a long way together since 2016. My next career steps include expanding my role with Conron Law (exciting announcements to come soon!) and becoming the best lawyer I can, continuing to focus on representing individuals accused of crimes against the person. I am particularly interested in high-stakes litigation for first-time offenders. Some have placed bets that I will become a judge someday, but in a world where anything is possible, I would instead love to be the next Marie Henein!



Will Notices

Barry Arthur Hofmans

Anyone knowing of a Last Will and Testament for Barry Arthur Hofmans, born September 5, 1959, and died September 20, 2022, of Sault Ste. Marie, Ontario, please contact Andy Hofmans at 519-809-8878 or coby12009@outlook.com.

Robert Burton Renaud

Anyone knowing of a Last Will and Testament for Mr. Robert Burton Renaud, born January 14, 1946, died August 6, 2022, who resided in Arkona, Ontario, please contact Sherilyn Sanderson, Law Clerk at Walden Law in Forest, Ontario at 519-786-2522 or estates@waldenlaw.ca.

194th Fall Opening of the Courts

– Thank you! –

The MLA thanks the following volunteers
who made the event a success:

- | | | |
|------------------|-------------------|-------------------|
| Zohra Bhimani | Karen Hulan | Folusho Osunade |
| Paul Bundgård | Hilary Jenkins | Olivia Pomajba |
| Kaitlin Cook | Qasim Kareemi | Erin Rankin Nash |
| Konrad de Koning | Sarah Lawson | Genevieve Samuels |
| Perrie Douglas | Michael M. Lerner | Emily Woods |
| Rasha El-Tawil | John Nicholson | |
| Lou-Anne Farrell | Skylar Oldreive | |

Questions & Comments

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

Rasha El-Tawil
519-660-7712
rasha.el-tawil@siskinds.com

John Nicholson
519-914-3358
jnicholson@cohenhighley.com

Hilary Jenkins
519-672-5666 x7301
hilary.jenkins@mckenzielake.com



Sole Practitioners & Small Firm Lawyers Social Event

Sole practitioners and small firm lawyers came together on September 8 at Toboggan Brewing Co. to reconnect with colleagues and to meet lawyers who practice in other areas of law. We look forward to hosting more social events like this one.

Thank you to our Co-Chairs, **Nicola Circelli** of Nicola Circelli Law and **Samantha Gordon** of Scott Petrie LLP, for their help in organizing the event!





Wills, Estates & Trusts Lawyers Social Event

Lawyers who practice in wills, estates, and trusts came together on September 20 at Toboggan Brewing Co. Many of those who attended the event commented they were happy to reconnect with their colleagues in a social setting. Others commented they were pleased to put faces to the names of lawyers they had never met in person. We look forward to having more successful events like this one.

Thank you to our Co-Chairs, **Erin Rankin Nash** of FP Law and **Lou-Anne Farrell** of Harrison Pensa, for their help in organizing the event!



REGISTRATION OPEN

Better Together, Even When Clients are Apart: Synergies between Estates and Family Law

Thursday, October 6, 2022

1:00-3:00pm / online via Zoom



This program contains 2 hours of Substantive content.

Speakers: Jennifer Wall & Matthew Bota, Harrison Pensa Lawyers

Moderator: Hilary Jenkins, McKenzie Lake Lawyers

In this program, Jennifer and Matthew will discuss the areas of intersection between wills and estates and family law, including when family lawyers and wills and estates lawyers should be consulting one another. They will also discuss important topics where cooperation is vital, including:

Family Law Act elections

- What are they?
- Process and deadlines
- Information that clients need to know to make an informed choice about whether to elect, and obligations and responsibilities for counsel for the estate and the surviving spouse

Gifts and inheritances from the family law perspective

- The critical role of timing and form for inheritances
- How to opt out of the *Family Law Act*'s default treatment of excluded property to protect what is important to your client and their family
- How and when the estate lawyer should approach conversations about domestic contracts

Trusts

- Is an interest in a trust property from the family law perspective?
- How to treat trusts from income and property perspectives under family law
- Drafting considerations

Integrating family law contracts and the estate plan

[Register online now!](#)

The Real Estate Update - Fall 2022

Wednesday, October 19, 2022

1:00-3:00pm / online via Zoom



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

Speakers: Jeffrey Lem, Director of Titles for the Province of Ontario, Ministry of Government and Consumer Services

John Goudy, Scott Petrie LLP

Michael J. Lamb, Michael J. Lamb Law

Chairs: John Goudy, Scott Petrie LLP

Matthew Wilson, Siskinds LLP

This fall's real estate program welcomes back Jeffrey Lem, the Director of Titles. Jeffrey will address changes to and developments in real estate law, and the *Land Titles Act*. As always, he will answer your questions, provide direction and practical tips. The second part of the program features John Goudy speaking about the *Drainage Act* and Professor Michael Lamb will take us back to basics with best practices for Agreements of Purchase and Sale.

Please consider registering for this popular program if you are a solicitor or real estate clerk.

[Register online now!](#)

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

Thursday, October 20, 2022

1:00-3:00pm / online via Zoom



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

Speakers: Laura Camarra, Camarra Law

Anju Fujioka, Beckett Personal Injury Lawyers

Claire Houston, Faculty of Law, Western University

Zahra Vaid, Lerner LLP

Chairs: Hilary Jenkins, McKenzie Lake Lawyers

Tinashe Madzingo, Diamond & Diamond Lawyers

The Court recently recognized a new tort of family violence. Victims of family violence now have access to a new civil remedy that acknowledges the unique suffering that victims face when they experience violence from a loved one.

Recognition of this new tort makes it essential,

now more than ever, that family lawyers and civil litigators know how to recognize and respond to clients experiencing family violence.

This program aims to cover practical and procedural considerations and strategies that family and civil litigation lawyers must know when dealing with clients who are victims of family violence.

During this program, you can expect to learn:

- the anatomy of the new tort of family violence;
- when to seek the advice of a family lawyer or a civil lawyer;
- skills for a trauma-informed lawyer;
- how the tort of family violence interacts with parallel proceedings (criminal, child protection, divorce);
- how the tort of family violence interacts with existing torts; and
- considerations when navigating different courts (family vs. civil) and jurisdictions (unified vs. non-unified courts).

[Register online now!](#)

SAVE THE DATES!

More details coming soon!

CPD for Sole Practitioners and Small Firm Lawyers on Practice Management & LSO Audits:

Wed. October 26 & Thurs. October 27
1:00-2:00pm, online via Zoom

Wills, Estates, and Trusts Update:

Thurs. November 10
9:00am-12:00pm, online via Zoom

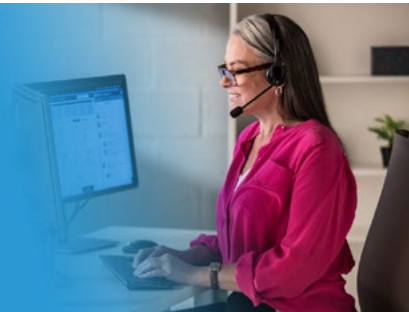
In-House Counsel CPD on Working with Information & Data:

Thurs. November 17
9:00am-1:00pm, online via Zoom

Catastrophic Impairments and Pediatric Brain Injuries:

Wed. November 16
1:00-3:00pm, online via Zoom

Criminal Lawyers Needed



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

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

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

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Please send your resumé to:

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



Subcommittee Recruitment:

Be a Leader in Your Practice Area



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

The Middlesex Law Association continues to actively recruit members to contribute their expertise and voice to the newly-formed subcommittees detailed below.

This opportunity will raise your profile within the community, earn you a reputation as a leader in your practice area, and connect you with other lawyers in your field.

As previously reported in the Snail, the MLA has reformed the way in which it delivers CPD programming to its membership. Following the Annual General Meeting in February, the MLA formed nine distinct subcommittees, reflecting the diverse practice areas and experiences of our membership:

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

Each subcommittee is responsible for organizing informative, creative, and engaging CPD programming within the subcommittee's area of specialization and producing high quality content for publication in the Snail. Each subcommittee is overseen by a Trustee but is comprised mainly of volunteers who practice in the subcommittee's area.

For instance, as I practice plaintiff personal injury, I would volunteer with the Personal Injury subcommittee. As I'm practicing exclusively in this area, I ought to be one of the first to learn of new developments, trends, decisions, or legislative changes that have wide-ranging consequences to the practice area. If I learned of something of this nature, I would connect with other members of the Personal Injury subcommittee and discuss how we should share this information with the local Personal Injury bar. For this example, the subcommittee could plan a seminar, develop an agenda, and then recruit lawyers or other

experts to present on the topic. Having organized the substantive component of the event, the subcommittee would then delegate the execution of the program to Tracy Fawdry, the MLA's Executive Director, who would assist in securing a venue, marketing the event, securing sponsorship, receiving RSVPs and payment, etc. Following the event, one of the members of the subcommittee would then prepare a brief update for publication in the Snail. In this way, the MLA aims to leverage the legal expertise and connections of our membership to not only enhance our CPD offerings, but the overall competency of our bar.

If you are interested in volunteering within one of the listed practice area subcommittees, please reach out to me directly at jaitcheson@lerner.ca or call me at 519-640-6396 and I will put you in touch with a representative of the applicable subcommittee.

**VOLUNTEERS
NEEDED**

Contact **[Jake Aitcheson](#)**,

VICE PRESIDENT, MLA BOARD OF TRUSTEES

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

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

Member Updates

Our 2022-2023 members' directory, generously sponsored by Davis Martindale LLP, will be available soon. These updates below will be included in it. You can always access up-to-date membership details through our [online members' directory](#).

David Amin – as of Oct 1st has joined the renamed firm Menear Worrad Amin & Associates, but some contact information still to be finalized. For now, ph: 226-224-8823, management@ davidaminlaw.com

Clayton Brent – new call practicing at Harrison Pensa LLP, direct ph: 519-661-6791, cbrent@harrisonpensa.com

Alexandra Campbell – is now at Legate Injury Lawyers, ph: 226-777-8817 ext. 114, acampbell@legatelaw.ca

Rebecca Coughlan – new call practicing at Beckett Personal Injury Lawyers, rcoughlan@beckettinjurylawyers.com

Katharine Creighton – is now practicing at Lerner LLP, direct ph: 519-932-5454, kcreighton@lerner.ca

Alexa Duggan – is now practicing at Cohen Highley LLP, ph: 519-672-9330 ext. 310, aduggan@cohenhighley.com

Lauran Frijia – new call practicing at Harrison Pensa LLP, direct ph: 519-661-6709, lfrijia@harrisonpensa.com

Donald Fulton – is now with Lazar Law Firm, direct ph: 519-432-6755, reception@lazarlaw.ca

Leenat Jilani – is now practicing at Polishuk, Camman & Steele, ph: 519-858-8005 ext. 106, ljilani@pcslawyers.com

Carolyn Leblanc – new member practicing at CALLAW, 393 Odium Dr., Woodstock, ON, N4S 3S1, ph: 833-922-5529 ext. 11, fax: 587-856-0049, admin@callaw.ca

Legate Injury Lawyers – has moved to 365 Queens Ave., London, ON, N6B 1X5

Jonathan Lin – new member practicing at Harrison Pensa LLP, direct ph: 519-850-5608, jlin@harrisonpensa.com

Mark MacDonald – is now with Gore Mutual Insurance, 252 Dundas St. N., Box 70, Cambridge, ON, N1R 5T3, ph: 880-265-8600, ext. 3256, direct ph: 226-898-4956, markmacdonald@goremutual.ca

Laura McFalls – new call at Siskinds LLP, direct ph: 226-330-0447, laura.mcfalls@siskinds.com

Najia Mahmud – is now at the Elgin-Oxford Legal Clinic, 98 Centre St., St. Thomas, ON, N5R 2Z7, ph: 519-633-2638, najia.mahmud@eolc.clcj.ca

Menear Worrad – as of Oct 1st, the firm will now be known as Menear Worrad Amin & Associates, but still at the same address and contact details for now

Brendan Neufeld – as of Oct 1st, has joined the renamed firm Menear Worrad Amin & Associates, but some contact information still to be finalized. For now, ph: 226-224-8823, info@davidaminlaw.com

Tara Pollitt – is now with the City of London, City Solicitor's Office, ph: 519-661-2489, ext. 4707, tpollitt@london.ca

Brandon Roach – new call at Adams Law, ph: 519-438-6077 ext. 107, brandon@pvadamslaw.ca

Matthew Rynen – new call at Cohen Highley LLP, ph: 519-672-9330 ext. 297, mrynen@cohenhighley.com

Liam Thompson – new call at Cohen Highley LLP, ph: 519-672-9330, ext. 299, lthompson@cohenhighley.com

Barbara Warner – new member practicing at Western University, Community Legal Services, ph: 519-661-2111 ext. 80177, direct ph: 647-918-5387, bwarners3@uwo.ca

Katie Warwick – new call at Harrison Pensa LLP, direct ph: 519-661-6796, kwarwick@harrisonpensa.com

Zia Waseer – new member practicing at Waseer Law Professional Corporation, 68 Southdale Rd. W., London, ON, N6J 2J1, ph: 519-999-9676, direct ph: 647-997-9676, fax: 833-999-9676, zia@waseerlaw.ca



the MIDDLESEX LAW ASSOCIATION

October 2022
Middlesex Law Association Newsletter

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Core Purposes:

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