



# NCLA NEWSLETTER



## Coming Soon: Binding Judicial Dispute Resolution

In the New Year Tri-County (Northumberland, Peterborough, and Lindsay) will become part of the Pilot Project for Binding Judicial Dispute Resolution. Earlier in December a notice was circulated to the Family Bar from Justice Gunsolus, outlining the project.

*So, what is Binding Judicial Dispute Resolution?*

Binding Judicial Dispute Resolution (“JDR”) is a pilot project that has been developed to provide a way to reach a final resolution of less complex family law cases. Once parties have completed a case conference, they can request that the next (and final) step in their proceeding is a Binding Judicial Dispute Resolution hearing. The parties should only request a JDR hearing if they both agree that the court can fairly decide their case in a hearing of three hours or less, based only on the evidence of the two parties, without the need for cross-examining each other. The judge at a JDR hearing will first hear the parties’ proposals and discuss possible resolutions. If the parties cannot agree about some or all of the terms of their final court order, the same judge will make a final decision about any outstanding issues based on the affidavits of the parties and what they have said in the JDR hearing.

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A JDR hearing requires the consent of both parties. The links on this page provide all of the information required to prepare for and obtain your Binding Judicial Dispute Resolution Hearing. Although the information may appear lengthy, the process is fairly simple. We have tried to include samples of each form you will need and instructions for preparing them. If you do not have a lawyer, there is also information about how you can obtain legal advice and assistance in completing the forms. Forms, and more information will soon be available on the NCLA's website under the 'Library' drop down tab, with the heading "Binding JDR".

## Rule 4.2 of the Rules of Professional Conduct and the Marketing of Legal Services

C. Gregory Kay, *Kay & McCourt*

A few months ago I saw an advertisement in the *Globe and Mail* by a well known employment law firm in Toronto promoting itself as a firm that "brings a bazooka to a gunfight". In my view this ad ran contrary to the efforts of the Law Society over the last several years to encourage civility in the profession. I therefore took a look at the Rules of Professional Conduct to determine if this ad offended the rule regarding advertising.

Rule 4.2-1 states that a lawyer may market legal services only if the marketing

- (a) is demonstrably true, accurate and verifiable;
- (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive; and
- (c) is in the best interests of the public and consistent with a high standard of professionalism.

The commentary under the Rule provides that statements that suggest or imply that the lawyer is aggressive may contravene the Rule. Most certainly, boasting that your firm is bringing a bazooka to a gunfight would be an assertion that the firm will be dealing with cases in an aggressive manner.

This Rule of Professional Conduct has often been on my mind since seeing the ad in the *Globe*. More recently I have become aware of a firm in Durham Region that is offending Rule 4.2-1 in a number of ways, including on its website and on Facebook.

The firm's promotional material includes a statement that "93% of our cases won in court

from 2016 to present". Not only is this statement not demonstrably true, accurate and verifiable, it fails to comply with the requirement in the commentary under the Rule that there be a qualifier that "past results are not necessarily indicative of future results."

The Durham firm also proclaims that it was "Voted as one of the three top firms in Whitby/Oshawa in 2019 and 2020." This is an apparent reference to Readers Choice Awards.

The commentary under rule 4.2-1 includes the following. "Awards, rankings and third party endorsements which contravene this rule include those that:

- (a) do not genuinely reflect the performance of the lawyer and the quality of services provided by the lawyer but appear to do so; and
- (b) are not the result of a reasonable evaluative process."

The commentary goes on to state that "particular care should be taken in respect of awards, rankings and third party endorsements referenced in mass advertising, such as newspaper and internet advertising. Awards, rankings and third party endorsements must be particularly clear and straightforward as there is little opportunity for reflection or appreciation on the part of the potential client or to provide context."

In my opinion, Readers Choice Awards fall within the category of awards that do not genuinely reflect the performance of the lawyer and the quality of services provided. They are clearly not the result of a reasonable evaluative process and thus lawyers should not be promoting their firms based on attaining one of these awards. The aforementioned Durham firm included on their email template a request that clients vote for the firm in the Readers Choice Awards and provided the link for doing so. In other cases, lawyers simply ask friends and family members to vote and vote often. Such awards constitute a fraud on the public and as a profession we should not participate in this award process which was created by newspapers to generate advertising dollars in the wake of steeply declining advertising revenue within the industry.

[ThreeBestRated.ca](http://ThreeBestRated.ca) is another example of the promotion of legal services that mislead the public. One of the Three Best Rated Durham family law lawyers on the website is a lawyer whose licence has recently been revoked for a myriad of reasons.

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Between 2011 and 2015 the Law Society received 604 complaints regarding advertising by lawyers and paralegals. Of these complaints, 306 were initiated by the Law Society itself. It is likely that this trend has continued over the past 6 years. I encourage all members of the NCLA to take a look at Rule 4.2 and the commentary thereunder to ensure that your firm's marketing practices do not contravene this Rule.

## Santa and the Law

Nathan Baker, *Nathan Baker Law*

In *Miracle on 34th Street*, the battle over whether Santa Claus exists went to court. A similar drama played out in [RM \(Re\), 2018 CanLII 119737](#) where Ontario's Consent and Capacity Board had to consider the involuntary admission of RM initially claimed to be Santa Claus upon admission. Unlike the movie though, RM would later go on to deny being Santa stating that he had grown a beard to audition for a part as Kris Kringle and "that he would never tell a child who believed in Santa Clause that Santa Clause was not real." The Board unanimously found that RM did not meet the criteria for involuntary admission.

Canadian courts have been called on to enter the debate on whether Santa exists but have focussed on how speaking about his existence impacts parenting. In [A.H. v. I.O., 2020 NBQB 10](#), the Court reviewed when a father told his child "there is no Santa Clause nor is there any Easter Bunny" stating that "that revelation to a five year old who spends her school days with children her own age was likely difficult for L to accept and very likely a sad day in her life." This decision by the father "while not pivotal does not accord with the world the vast majority of [the child's] friends and classmates." The next paragraph in the judgment finds that the mother would be the more appropriate "prime custodial parent."

The CAS of Hamilton took the position that encouraging belief in Santa was necessary. In [Baars v. Children's Aid Society of Hamilton, 2018 ONSC 1487](#), the Court was called on to assess whether a foster couple, who did not endorse or promote Santa "because they do not wish to lie to children," would be allowed to continue fostering children if they would not endorse Santa. The Baars did not tell children that Santa did not exist, but instead changed the topic if the issue arose. The Court found that "despite the Society's insistence upon the importance the perpetuation of Santa Claus

there is no concrete evidence offered that such fictitious characters are necessary for a child's full participation in and enjoyment of these holidays." Expert evidence was called that stated that those "who celebrate the Easter Bunny are not better than those who don't." The Court concluded by finding that the CAS had violated the Baars' fundamental Charter rights and that this must be noted in the file should any other organization make inquiries into their ability to care for children.

Santa's largesse got him in trouble in [Community Fundraising Corp. v. Newfoundland and Labrador \(DGSL\), 2004 NLTD 236](#). There, Santa arrived at a bingo and, without warning to management, increased the night's prizes over the statutorily allowed limits for the night. "Santa Claus -- there being only one, according to counsel -- is a repeat offender whose activities led to the two-week suspension of the licence of another bingo operator." Santa's generosity apparently does need to be closely watched, but the Court eventually found that "the regulation, as presently worded, is an elephant gun; it is not an appropriate weapon with which to dispatch the Christmas mouse."



Back in Ontario, the OHRT in [Landau v. Metropolitan Toronto Condominium Corporation #757, 2021 HRTO 76](#) held that "decorations may be associated with or evocative of Christmas without being Christian religious symbols." It refused to take judicial notice that Santa Claus' hat was a religious symbol "which would engage the ground of creed." It seems that Santa may have transcended religion absent expert evidence to the contrary.

Santa has been used as an example to "illustrate the distinction between occupational and non-occupational hazards" including "the crass negligence of a thoughtless parent, the hearth fires are left burning on Christmas Eve, and the picturesque raiment of 'the grand old man' is consumed, and his classically magnificent

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beard sizzled to the size and semblance of a mere goatee (all of which world-circling disasters may Heaven forbend!)” in [Graham v. London Guarantee & Accident Co., 1925 CanLII 378](#). Santa was invoked in [Frasco v. Saturn 121, Inc. et al., 2015 ONSC 1535](#) where the Court found that service on 115 corporate addresses throughout Ontario over three days was unlikely as “Santa Claus has perfected the art of visiting millions of homes in a single night, [but] Mr. Frasko’s affidavit of service makes no claim to having enlisted such assistance in effecting such a miracle of personal service.”

Happy and safe holidays to everyone!

## Judicial Appointments & More

**M. Christine Roth, OBA Regional Director Central East**

I hope you all have had a wonderful Fall thus far, and are ready for Christmas.

Since the last Report, there have been further new appointments of Justices of the Peace to the Bench of the Ontario Court of Justice in our Region.



Firstly, a well-deserved appointment of His Worship Justice of the Peace, Derek Gordon Friend, on October 5, 2021, which I had the absolute pleasure to attend on behalf of the OBA. His Worship has been an active Council, and thereafter our Regional Director at the OBA, and I know that he will make a positive impact and difference to the benefit of Defence and the unrepresented on the Bench.

During the same Ceremony, Justice of the Peace, Margot Mary Douglas Ballagh was also appointed as a Justice of the Peace of the Ontario Court of Justice.

Presiding at the Ceremony were the Honourable Sharon Nicklas, Associate Chief Justice-Coordinator of Justices of the Peace, the Honourable Esther Rosenberg, Regional Senior Justice, and Justice of the Peace, Martha De Gannes, Regional Senior Justice of the Peace, as well as several of Managerial Court Staff and representative of the Law Society of Ontario.

Once again, congratulations Your Worship, Friend.

On October 12, 2021, Justice of the Peace Roger John King was appointed as Justice of the Peace of the Ontario Court of Justice for Central East Region.

Presiding at the Ceremony were the Honourable Sharon Nicklas, Associate Chief Justice – Coordinator of Justices of the Peace, the Honourable Esther Rosenberg, Regional Senior Justice, and Justice of the Peace Martha De Gannes, Regional Senior Justice of the Peace.

As Regional Director for Central East, I am working closely with our Regional Senior Justice, Justice Edwards, and the OBA to address issues our Region has with the Administration of Justice, Court Delays, and any other issues that His Honour as the RSJ is able to assist with. This includes not only identifying and reporting problems, but if we are aware of solutions, or we know of solutions that have worked in other courts within our Region and beyond, to present those solutions to His Honour. This is an ongoing communication, and I invite you all to provide me with issues you need addressing, as well as any solutions you deem practical and implementable. Our next meeting with His Honour is in mid January 2022.

Please email me, and I will ensure your issues and solutions are brought to His Honour to benefit us all; the Bar and the unrepresented.

As always, I am only an email and/or a phone call away. Please do not hesitate to reach out and be engaged.

Best wishes & Merry Christmas. Be safe.

*Christine Roth, B.A.(Hons.), LL. B./J.D.*

OBA Regional Director Central East

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## Online Whiteboard for Collaboration

Lesha Va Der Bij, CEO & Founder of Optimize Legal, *for SlawTips*

With everyone working from home, I have been looking for better tools to collaborate with my team. I recently found one that is super cool – [Miro](#).

Miro enables users to map out a workflow, brainstorm new ideas or develop a business strategy on a shared online whiteboard. To create a board, you can start with a blank canvas or use a template, such as ones for flowcharts, mind maps, or kanban frameworks.

Once in the whiteboard, it is easy to edit by clicking and dragging boxes, arrows or other shapes, or creating your own sketches with a drawing pencil. You can even add “sticky notes” if you want the traditional feel of a mapping/brainstorming exercise.

To collaborate, you simply invite your team to Miro. There is no need to share the whiteboard via Zoom during your meeting.

Being a budget-conscious entrepreneur, I am still using the free version of Miro. Paid versions look to have even more features.

## Change Your Role

Sandra Bekhor, Practice Development Coach, *for SlawTips*

For so many busy lawyers it's almost too easy to go in and do your time day after day, year after year. But at some point you may find yourself wondering if this is really what you still want to be doing.

If the answer is yes, great, just keep moving forward.  
If the answer is no, listen and change your role.

A simple but illuminating exercise to get the ball rolling in the right direction is to write your future biography. Not based on where things are headed today. But based on where your interests lie. A different area of practice, a different emphasis in your role (practice management, rainmaker, leadership) or other significant shift... Try writing it for a year from now. Three years from now. Five years from now.

Then take a step back and find the gaps.



What do you need to do differently today to set the stage for this change in your role? Can you identify opportunities, events, clients, peers, mentors, coaches or other possibilities that can help you with the transition?

Other lawyers have done it. You can too.

## NCLA News

### Membership Renewals

NCLA Membership Renewals are **due no later than 31 December 2021**. Members who have not paid their membership in full will be removed from the mailing list(s), be ineligible to attend NCLA events (virtual or otherwise), and will have reduced library privileges. This may not sound like much, but read in the next section about all the fantastic new resources that will be available through the library in the New Year.

### AGM

The NCLA's Annual General Meeting will once again be virtual, and held on **28 February 2022** – so save the date and stay tuned for more information coming in the New Year!

### Goodbye to NCLA Members – Dawood Nasir

I wanted to let you know that as of January 7, 2022, I will no longer be with the Legal Centre here in Cobourg. I will be taking a job with the Law Society of Ontario. I have been with the Legal Centre since 2014, and it has been an absolute pleasure to serve the clients, and to be part of such a great community of lawyers and paralegals.

I wish the NCLA Membership all well, and hope to be in touch with them in the future.

## Massey Family Murder

On 8 February 1915, at 6:15pm Charles "Bert" Massey (yes, those Massey's) was shot by 18-year old domestic worker Carrie Davies as he walked up the front drive to his home. Carrie was quite clear on this timeline during the events of her trial. Bert tried to run back to the street but Carrie shot him again, killing him. Her crime was witnessed by Ernest Pelletier, their paperboy who had just collected his delivery money. Carrie was arrested shortly after the murder, and made a full confession. At her juried trial, she was acquitted – so how did this happen?

At the time of his murder Bert was 34 and working as a car salesman, had a teenaged son and a wife who preferred spending time with her family in Bridgeport, Connecticut rather than socializing with Toronto's nouveau riche. Whereas Carrie Davies was an 18 year old domestic servant who had been working for the Massey family from the age of 16, when she emigrated to Canada from the UK.



...the entire case was widely regarded as a triumph for women's rights, though the final decision would become contentious within the legal community.

When Carrie was taken into custody Sergeant Kennedy of the Toronto Police questioned her regarding motive. Newspapers covering the trial have reported that Carrie told him that Bert had taken "advantage of me yesterday and [I] thought he was going to do the same today. He caught me on Sunday afternoon and I ran upstairs and then he called me to make his bed and I obeyed and as soon as I went into his bedroom he said 'this is a nice bed' and then he caught me and I pushed him aside and ran upstairs and locked my door while I dressed and then went out".

During her trial she expanded more on what had happened: "he caught me by

both hands, around the waist and side and said he liked little girls. Then he kissed me and I struggled, but he kissed me again." Carrie stated she was worried for her virtue, and this sentiment resonated greatly with the public and painted her in a sympathetic light.

The defense maintained that Carrie was a woman who had merely been protecting herself, her values, and her virtue from the depravity of her male employer. For the most part, the prosecution could not challenge these claims. The interesting part about this case, given the times, is that her victim was a member of one of the most famous and well-known families of the time; Bert was a great-grandson of Hart Massey, and Bert had met his end at the hands of a female, domestic servant because of his improper behaviour. (In the event that you were not aware, the Massey family rose to fame with their farm equipment endeavors, including Massey tractors, as well as their huge influence over the development of farming systems in Canada, which all started here in Northumberland County).

Carrie's lawyer, Hartley Dewart, entered a plea of not guilty, arguing his client was the one who had been wronged and that she had acted in self-defence. The prosecuting attorney, Edward Du Vernet, wanted a conviction of manslaughter because Massey had not actually assaulted Davies. It took the 12-man jury only 30 minutes to acquit Carrie Davies.



*Toronto Star, 1915*

Hartley was the son of E.H. Dewart, who was also a regent of Victoria College, and Hart Massey was a huge supporter of the college. In 1888, E.H. Dewart and Hart went head-to-head regarding the relocation of the College from Cobourg to Toronto. Hart was opposed to the idea, and he tried to block the move by offering \$250,000 to keep Victoria College in Cobourg, but the move went ahead in 1890. Hartley was happy to take on the Carrie Davies case for free, simply based on an old family grudge against the Massey family.

Upon conclusion of the trial the entire case was widely regarded as a triumph for women's rights, though the final decision would become contentious within the legal community. In a way, it was the Dewart family settling an old grievance with the Masseys, a story that has huge Northumberland resonance.



## From the Library

### New Books

In the final stretch of this fiscal year the Librarian has frantically been spending the surplus budget updating and adding new volumes to the library in preparation for a great 2022.

### Thomson Reuters

- [Handling Summary Conviction Offences, 2022 Edition](#)
- [Consolidated Ontario Family Law Statutes and Regulations 2021-2022](#)
- [When I Die: Financial Planning for Life and Death, 10th Edition](#)
- [Condominium Law: A User's Manual](#)

### LexisNexis

- [Alternative Dispute Resolution Practice Manual Set](#)
- [Employment Litigation Manual](#)
- [Environmental Regulation in Canada](#)
- [Feeney's Canadian Law of Wills](#)
- [Ontario Limitations Manual](#)
- [Shareholder Remedies in Canada](#)
- [Law of Municipal Liability in Canada](#)
- [Criminal Lawyers Trial Book](#)
- [Ontario Planning Law & Practice](#)
- [Federal Limitations Manual](#)
- [Wilson on Children & the Law](#)
- [Wrongful Dismissal Practice Manual](#)
- [Annot Youth Criminal Justice Act Service](#)
- [Employment in Ontario](#)
- [Ontario Residential Real Estate Practice Manual](#)
- [Personal Injury Practice Manual](#)

### Irwin Law

- [Law of Torts, 6th ed.](#)
- [Criminal Procedure, 4th ed.](#)
- [The Law of Contracts, 3rd ed.](#)
- [The Law of Property](#)

### Existing Electronic Resources

The Library currently has subscriptions to several digital databases and tools (list to follow). You can always request training

materials or assistance with them from the Librarian, who is always happy to help, or connect you with a trainer.

- AccessCLE
- HeinOnline
- LexisAdvance
- Rangefindr
- Westlaw
  - FamilySource
  - LawSource
  - CriminalSource
    - O'Briens Forms
  - Division I (Commercial and General)
  - Division IV (Leases)
  - Division V (Wills and Trusts)

### New Resources

In early 2022 there will be a soft launch of several new resources (in addition to the above list) to be made available in the courthouse libraries, through LiRN.

I cannot share the list of new resources with you yet – but there is a list, and it's exciting! Keep any eye on your inboxes in the New Year for more details.

There will be training courses for each new (and existing) resource available and you can earn CPD hours for them as well.



## Library Refresh

Another exciting thing happening in early 2022: the NCLA Library will be getting a make-over. At this point in the pandemic, we realized that not many of you have been by to see the new (gigantic) smart TV the NCLA board purchased in 2019, and had hung in the lounge (two days before the first lockdown). In addition to this change, the library will be getting a new floor. The existing floor is cracking and the tiles are lifting, so the County has agreed to give us a whole new floor.

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At the same time, the NCLA has agreed to take advantage of this opportunity, and give the walls a fresh coat of paint as well (sparing the orange wall, of course!). It's going to look like a whole new library before you know it!

## Librarian on holidays

The NCLA Library will be on holidays from **20 December 2021** and returning on **3 January 2022**. I hope you all have a safe and happy holiday season with your loved ones, and that we can all find a little peace during this crazy time. I look forward to speaking with, and hopefully seeing, you all in the New Year.



## Message from FOLA

Katie Robinette, *Executive Director FOLA*

Season's Greetings Northumberland County lawyers!

The Winter of 2022 is promising to be exciting as FOLA has decided to organize another Lobby Day on February 23, 2022! What are Lobby Days? Lobby Days are commonly used by non-profits and professional organizations as opportunities to set aside a day to meet with elected members and political staff to raise awareness of their issues. For those who did not attend our Inaugural Lobby Day in 2020, you can take a read a recap of what happened [here](#) and view some pictures [here](#).

Since 2022 will be an election year in Ontario, but with capacity restrictions still in place at Queen's Park, FOLA decided that we should move forward with a virtual Lobby Day and we hope you will join us! Lobby Day 2022 will be an excellent opportunity to discuss your concerns with some of the most important decision makers in the province and help make justice issues a priority in the next election.

More information will be provided to each registered person and pre-Lobby Day prep meetings will be held to ensure each person in each meeting is aware of issues that will be discussed. FOLA will also be providing Talking Points (all based on input from you!). You are encouraged to learn more and fill out our registration form [here](#).

As you know, FOLA regularly consults members as we prepare submissions to open calls for comment to the federal and provincial governments and the Law Society. At the time of writing this, we have three open consultations and you can look at them all [here](#). We are also preparing comments regarding the new Rules & Policies related to the Legal Aid Services Act through a joint submission with the Alliance for Sustainable Legal Aid. Legal Aid Ontario is also consulting on specific Rules on an iterative basis and you can learn more about that process [here](#).

Also, FOLA understand that your members are interested in Mental Health. January 2022 will be our 4th #BellLetsTalk Awareness campaign where we create custom tweets and images that you can copy and paste for use on Twitter to help raise awareness about mental health and wellness among lawyers and identify services and resources. Learn more [here](#). Plus, FOLA has partnered with a Mental Health First Aid-certified trainer who offers in-person and virtual programs. MHFA is the support provided to a person who may be experiencing a decline in their mental well-being or a mental health crisis. Course participants will learn how to recognize signs that a person may be experiencing a decline in their mental well-being or a mental health crisis and respond in a meaningful manner. You can learn more [here](#).

Don't forget to visit our [Member Rewards](#) page to take advantage of deals! And if you have any suggestions for companies you'd like to see listed, let us know! Email Katie at [katie.robinette@fol.ca](mailto:katie.robinette@fol.ca) and we'll look into any and all suggestions!

Remember – to stay up to date on all things FOLA, please sign up for our [newsletter](#)!

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FEDERATION OF ONTARIO  
LAW ASSOCIATIONS

FÉDÉRATION DES ASSOCIATIONS  
DU BARREAU DE L'ONTARIO



## From the President

December is such a great time of year. There are holiday lights on display, cookies and pies aplenty and we're all about to get a much-needed break from work. Everyone has worked so hard this year to keep things rolling through the pandemic. I wanted to take this opportunity to thank everyone who plays a role in the legal community in Northumberland. Thank you to the court staff, the court security officers and all those who have "held down the fort" at the courthouse. You have improvised magnificently, and we appreciate you rolling with the punches as the rules and procedures change continuously. Thank you to Ciara who has managed to run a library while not....being....in the...library. Wild. How does one do that? Well, she did ladies and gentlemen! Ciara also keeps me in line and gives me all the requisite nudges I need to ensure it appears I am being the president.

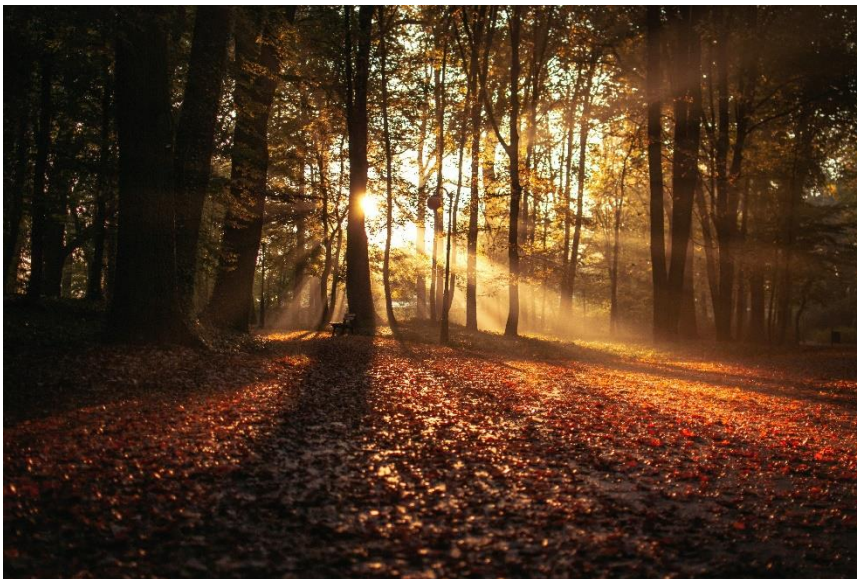
Thank you to all the clerks and assistants at all the offices across Northumberland County who have learned new ways of doing things and have worked so well together, between offices, to make things run so smoothly. Thank you to all my colleagues, lawyers and paralegals, who have continued to do what they love and have continued to influence the legal community and expand the practice of law from the safety of their home computers. Thank you to the judiciary, the Justices of the Peace and the Judges, for being patient with all of us on a daily basis. I have logged into many-a-Zoom-meeting to find out I was supposed to be on the telephone and have telephoned into several conference calls to find out I was supposed to attend by Zoom. We appreciate your patience and sense of humour.

No matter what you are celebrating this December, be sure to silence your emails and unplug your fax machines to spend time with your friends and family. They put up with a lot and know far more about the legal world

than they would like to. Unplug and spend some time outdoors doing the things that you love. Even if that's simply putting on your winter tires. Or, watching someone else putting on your winter tires. Could be fun...

The members of the Northumberland County Law Association wish all the folks in the Northumberland legal community a safe and happy holiday! We will see (on Zoom) everyone in the New Year!

Morgan Payne  
NCLA President



## THE NORTHUMBERLAND COUNTY LAW ASSOCIATION Board of Directors

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