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ASSOCIATION

Snail



September Issue

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President's Report

By: Bob Ledgley / Lerner's LLP

The phrase “dog days of summer” has always made me picture a tired hound, panting in the shade of a tree while the sun bakes everything around.

Only this year did I learn that the canine in what the Romans called “dies canicularis” is Sirius, or the Dog Star, the brightest star in the constellation Canis Major. In the summer, Sirius appears to rise and set with the sun and it was (logically) believed that it added heat, causing temperatures that, entirely coincidentally, make dogs pant. Feel free to use that in summer barbeque conversations; credit me if you wish.

The summer has flown by. The Board of Trustees held off on a planned summer gathering to see if pandemic restrictions would lift enough to give us some comfort in that. By the time some freedom came to pass, vacation schedules conflicted and we have not

convened as a whole since June. **Cynthia and Shabira** have kept the library running with its usual efficiency and **Paula Puddy and her CPD volunteers** have continued to plan for a busy fall. Your executive is in regular contact, ensuring that Association business carries on and that we are ready for what September brings.

I recently had the privilege and pleasure of meeting with **Law Society Treasurer Teresa Donnelly and Federation of Ontario Law Associations President Bill Woodward** (in person!) to chat about ongoing issues facing the **LSO, FOLA, the MLA** and others in our profession. It was truly inspiring to be able to engage face to face with these dedicated leaders and hear their thoughts. One thing that really stayed with me is the importance that **Treasurer Donnelly** places on relationships. She emphasized to us the great value she sees in developing and maintaining personal relationships within the legal community. The fact that we had that discussion during one of the first in person meetings I had attended in many

months emphasized her point. I have written here before about how much the personal interactions of the practice of law are missed. Just when I thought that I was quite comfortable at my home desk, that meeting left me wanting to get back to my many professional relationships and eager to return to my downtown desk. I know I will be seeing more of the office on Dufferin in September and I must admit I am excited to be back.

This edition of *The Snail* will help you plan your fall CPD schedule, see what's up in the resource centre and hopefully inspire you reconnect with some of your relationships that may have fallen behind over the past year and half. I hope (fourth wave notwithstanding) to see many of you out and about as we re-engage in this final third of 2021.

Siriusly.

Bob Ledgley
PRESIDENT

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

Jennifer Wall 519-661-6736
jwall@harrisonpensa.com

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Library News



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

O'Brien's Encyclopedia of Forms

A reminder that at the end of last year, **Thomson Reuters** transferred our online subscription to **O'Brien's Encyclopedia of Forms** from its cumbersome, antiquated, stand-alone site to the **WestlawNext** platform. You now have all the convenience of one-site searching with much better search functionality and document delivery options. Yes, you can finally email precedents to yourself right out of WestlawNext rather than saving documents onto our desktops to forward through your email! Simply click on the WestlawNext icon on the library computers and you will see a link to O'Brien's Encyclopedia of Forms under the Forms and Precedents content list.

Library Access

For our new members who may be unaware, the library is not staffed regularly at this time. We continue to work remotely to provide you with our regular library services. You may still access the library in our absence onsite by using the member code on the library entry pin pad. Email us at library@middlaw.on.ca for the member code. Please sign out anything you borrow (the sign-out card is in the inside front cover of all of our books) and return them in a timely fashion in the book return slot at the front counter.

Articling/LPP Students

We would like to welcome the articling and LPP students who have started

the 2021-2022 term and invite you to reach out to us for help if you haven't already. You will be heavy users of library materials and services, and we are still here (even remotely) to help you have a more successful student experience. We send out a weekly email every Wednesday, so if you haven't already gotten one of those, we may not know you are working in Middlesex County. [Please email us](#) so we will get your names and email addresses in our system and can include you in our weekly MLA Update emails and other periodic communications. We will happily explain our resources and services and show you what is available both in print and online. Finally, we aren't reporting back to your superior so please ask us for help if you can't find something or don't know where to start your search. Let us help you look brilliant!

E-Resources at the MLA Library

Another quick tip for our newer members (or for those of you who haven't read our repeated reminders in the weekly MLA Update email), all lawyers still have free remote access to the entire **Lexis Advance Quicklaw Comprehensive** package from their homes or offices. This pandemic program is running through September 30th and may be extended depending upon the current virtual court/work-from-home norm. If you haven't signed up yet, [you can do so here](#).

You also have remote access to a couple of other great e-resources as part of

your LSO fees, and these two are regular programs that will not end with the pandemic. The first is [HeinOnline](#) which gives you access to a wide variety of US, Canadian and International law journals, Canada's Supreme Court Reports, and the full reprint of the English Reports case reporter series. It's also our go-to source for older Canadian federal and provincial statutes, and the popular Advocate's Quarterly articles. To get your login credentials, simply email the LSO's Great Library staff at refstaff@lso.ca so they can verify your licencing status and get you set up. The second fantastic resource, again totally free thanks to the LSO, is [AccessCLE](#). This is the LSO's CPD materials portal, and you can search for and download any paper it has produced since the mid-2000's.

You also have free access, but only from the MLA's library computers, to **WestlawNext**, including the criminal, family and estates and trusts modules, plus O'Brien's Encyclopedia of Forms mentioned above. WestlawNext includes the Canadian Abridgement and the Canadian Encyclopedic Digest. We also have a link to **Thomson Reuters' ProView** platform where you will have full text, searchable access to any of its loose-leaf publications to which we have an active subscription. This is great if the volume is not on the shelf or if you prefer to do a keyword search rather than thumb through a table of contents or index.

Not sure what we might have? [Check out the online catalogue](#) that includes all our resources and those in the other



law association libraries and the LSO's Great Library. Still not sure what we have or where to find it? Just ask us! [You can reach us by email](#) or through the MLA Chat link from our [website](#).

New Books

Allen, John. **Handling provincial offence cases in Ontario 2021**, Thomson Reuters

Bennett, Frank. **Bennett on receiverships -- 4th ed.**, Thomson Reuters

Gold, Alan. **Practitioner's criminal precedents --6th ed.**, LexisNexis

Gold, Alan D. **Defending drinking and driving cases 2021**, Thomson Reuters

LSO. **Commercial priorities for real estate and business lawyers 2021**.

LSO. **Six-minute administrative law and practice 2021**.

LSO. **15th family law summit - Day one and day two**.

LSO. **Annotated powers of attorney for property and for personal care 2021**.

LSO. **Six-minute employment lawyer 2021**.

LSO. **Ethical issues in immigration and refugee law 2021**.

LSO. **18th real estate law summit**.

LSO. **Six-minute criminal lawyer 2021**.

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LSO. **Wills and estates refresher 2021**.

LSO. **Six-minute municipal lawyer 2021**.

LSO. **Six-minute labour lawyer 2021**.

LSO. **Annotated guardianship application 2021**.

n/a. **Martin's related criminal statutes 2021-2022**, Thomson Reuters

Segal, Murray D. **2021 Annotated Ontario Highway Traffic Act**, Thomson Reuters

Sharpe, Robert. **Charter of Rights and Freedoms -- 7th ed.**, Irwin Law

Watt, David. **Watt's manual of criminal evidence 2021**, Thomson Reuters

Missing Books

Wills & Estates lawyers in particular!
Please look for that distinctive red and white Property of Middlesex Law Association sticker on the spine of any books that might be kicking around your office/back seat/family room sofa right now!

Wills & Estates missing books:

Hull, Ian. **Challenging the validity of wills -2nd ed.**

Hull, Ian. **Macdonell, Sheard and Hull on probate practice -5th ed.** (2016)

Oosterhoff, Albert H. **Oosterhoff on wills --8th edition (2016)**

Oosterhoff, Albert H. **Oosterhoff on wills --7th edition (2011)**

Rintoul, Margaret. **Practitioner's guide to estate practice in Ontario -4th ed.**

Other Missing Books:

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

Johnston, David. **Canadian securities regulation -3rd ed.**

MacDonald, James. **2015 annotated Divorce Act**.

MacFarlane, Q.C., Bruce A. **Cannabis law. OBA. Business agreements: practice and precedent**



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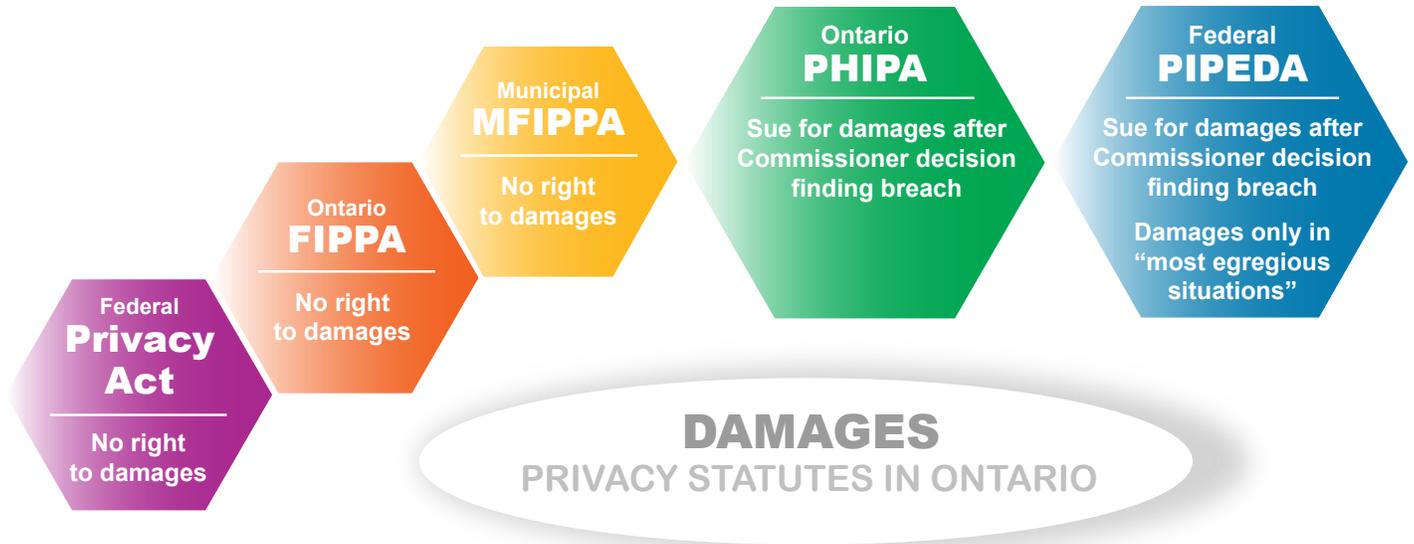
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Source: Harrison Pensa Privacy Lawyers

5 privacy statutes and rights to damages



Contributed by:
David Canton / Jacob Williams / Harrison Pensa LLP

There are five pieces of legislation that govern the protection of the privacy of personal information in Ontario.

When an individual believes their rights under any of the five Acts have been violated, the primary remedy available to them is a complaint to the relevant Privacy Commissioner. Very limited statutory damage rights are available.

Privacy Act

The Privacy Act is federal legislation that governs how federal institutions must protect personal information in its possession.

There is no explicit right to a civil action or damages if an individual's rights under the Privacy Act are violated. There is actually an explicit prohibition against civil or criminal actions being brought against any head of a government

institution for violations of the Privacy Act. As long as the institution or its agents were acting in good faith when they disclosed the information, section 74 of the Act protects them from a civil action.

Personal Information Protection and Electronic Documents Act

PIPEDA is a federal act that governs the collection, use, and disclosure of personal information by commercial entities.

After a complaint has been made to the Privacy Commissioner, a complainant may apply to the Court for a hearing in respect to the issues covered in the Commissioner's report. Under section 16(c) of *PIPEDA*, the Court can award damages to the complainant, which includes damages for any humiliation the complainant has suffered. However, Courts will typically only award damages in "the most egregious situations...such as videotaping or phone-line tapping" (*Randall v. Nubodys Fitness Centres*).

Freedom Of Information and Protection of Privacy Act

FIPPA is provincial legislation that governs both privacy and access to information controlled by provincial government agencies, boards, commissions, and crown corporations, as well as entities such as universities.

It contains no explicit right to a civil action or damages.

Similar to the federal Privacy Act, *FIPPA* explicitly prohibits civil actions "against a head, or against a person acting on behalf of or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record..." in section 62(2).

Municipal Freedom of Information and Protection of Privacy Act

MFIPPA is similar to *FIPPA*, but it applies to municipalities and other similar public entities.

Personal Health Information Protection Act

PHIPA is a provincial Act that establishes rules for the collection, use, and disclosure of personal health information by health care professionals.

Section 71 of PHIPA provides immunity for a health information custodian who exercises their powers under the Act in good faith, as well as immunity from allegations of neglect or default arising from good faith exercising of their powers.

However, PHIPA provides a statutory entitlement to damages if the Commissioner makes an order under the Act that has become final. Section 65 allows any individual affected by an order of the Commissioner to pursue damages in the Superior Court for actual damages suffered as a result of the breach of the Act. Section 65(3) also provides for an award of up to \$10,000 for mental anguish if it is deemed that the defendants acted in willful or reckless behavior.

Bottom Line

If the privacy of your personal information has been breached in Ontario by a government entity or a business, the primary recourse is a complaint to the applicable Privacy Commissioner. Damages are only available in limited circumstances, and only if the Commissioner has rendered a decision deciding there has been a breach.

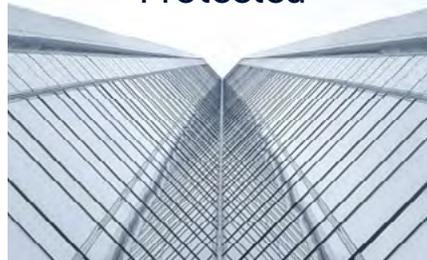
[David Canton](#) is a business lawyer and trade-mark agent with a practice focusing on technology issues and technology companies. Connect with David on [Twitter](#) and [LinkedIn](#).

[Jacob Williams](#) is a JD Candidate at Western University with an interest in corporate/commercial law, construction law, and real estate. Connect with Jacob on [LinkedIn](#).



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Report on Past CPD Programs



Contributed by:
Paula Puddy, MLA CPD Director

New registration system for our Fall CPD Programs!

The MLA has transitioned to an online registration system for our CPD programs (rather than filling out a pdf form). In fact, all your membership information is available from your profile on our new online system, called Wild Apricot. Login to review and update your profile, access and pay your annual dues invoice, and get a copy of your payment receipt and online membership card. We are no longer issuing hard copy membership cards. You can also register and pay for CPD and social events through your profile, add your dietary restrictions and allergies, and access your receipts for events also. Although changing your registration method may be a hassle the first time, it has streamlined the process and is much more efficient.

Here are instructions on how to register for CPD programs:

- View all of the CPD programs available at: [Continuing Professional Development | Middlesex Law Association](#) (middlaw.on.ca)
- Click on the program you are interested in and then click the “pricing & registration” button. This takes you to a screen with pricing and registration info.
- Click on the “registration” button on the left hand side of your screen to complete the process.
- MLA Members: all your contact information and allergies/dietary restrictions will automatically pre-fill when you log in to register.

How to log in:

- If you have already created your password in the MLA’s new membership management system, simply log in with your email and password.
- If you **haven’t created a password yet**, use the email address we have for you in our system (the one at which you received this email) and click Forgot Password.
- Create your own password and you will then be directed to your profile. Passwords were not pre-set and we do not have access to the one you create.
- Please do not start a new profile with a different address. If your email has changed, please contact us to update it in our system so you can then log into your profile.

How to pay:

- You can pay online (credit card) by clicking on the “pay online” button
- Or, you can pay via e-transfer with the specific code provided in the CPD program details
- Or, you can pay by sending a cheque to the MLA at the address below.

If you have any questions, please contact me or [Cynthia or Shabira](#).

Save the Date!

- **Thursday, November 18, 2021, 2:00pm to 3:30pm, The 5th Annual EDI seminar.** All lawyers – get your EDI hours, and learn more about diversity and inclusion! Registration forms, and a draft agenda will be available soon.
- **Thursday, December 2, 2021 1:00pm to 3:00pm, The 16th Annual Personal Injury Conference.** Plaintiff and Defence lawyers – this program is for you! Our annual PI conference features relevant topics from a balanced perspective! It is also your last chance to get your CPD hours, win some SWAG, and perhaps settle a file!? Registration forms, and a draft agenda will be available soon.
- **Wednesday, December 6, 2021, 9:00am to 12:00pm, The 17th Annual Wills, Estates & Trusts Conference.** Solicitors and estate litigators – pencil in this annual program! Our annual wills conference features relevant topics for your practice. Registration forms, and a draft agenda will be available soon.

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How to Sign-Up:

1. Go to <https://www.cpdonline.ca/purchase-options>
2. Get Started... Individual Subscription or Pay as you Go
3. Mention your Middlesex Law Association on the registration page as well as check the box that says "were you referred by your association"!



Continuing Professional Development Programs & Events 2021 held by Zoom

The Small Claims Court Seminar

Thursday, September 9, 2021
9:00am to 11:00am

The HTA/POA Seminar

Wednesday, September 15, 2021
4:00pm to 5:15pm

The 16th Annual Straight from the Bench Conference

Monday, November 1, 2021
Tuesday, November 2, 2021
9:00am to 12:30pm

Court of Appeal Keynote Speaker:

The Honourable Mr. Justice Benjamin Zarnett

Guest Speaker:

Professor Thomas Telfer
on "Mindfulness & Lawyer Well-Being"

EDI Presentation:

Professor Michael Coyle
on "Aboriginal Rights and Dispute Resolution Theory"

Chairs:

The Honourable Madam Justice Lynne Leitch, Anne Marie Frauts, Elizabeth Harding, Dara Lambe, Evelyn ten Cate, and Dagmara Wozniak

Presenters:

Regional Senior Justice Bruce Thomas, Jacob Damstra, Peter Kryworuk and more!

The 5th Annual EDI seminar

Thursday, November 18, 2021
2:00pm to 3:30pm

The Personal Injury Conference

Thursday, December 2, 2021
1:00pm to 3:00pm

The 17th Annual Wills, Estates & Trusts Conference

Wednesday, December 6, 2021
9:00am to 12:00pm

Municipality Not An Insurer of Developer: Role to Protect Public Interest, not the Pure Economic Interest of Developer



Contributed by:
Carolyn Brandow / Lerner's LLP

The recent trend to limit liability for pure economic loss to the scope and nature of an undertaking is continuing with the recent decision of the Court of Appeal for Ontario in [Charlesfort Developments Limited v Ottawa \(City\) 2021 ONCA 410](#).

The Court of Appeal overturned a trial judgment holding the City of Ottawa responsible for \$4.5 million in damages to a developer. Simply put from this case, the undertaking of a municipality accepting a fee for zoning applications does not expose a municipality to the substantial costs of a development gone wrong, even if inaccurate information from the municipality or failures to disclose information by the municipality contributed to the losses.

In this case, the developer purchased a property to redevelop for a condominium project and sued the City of Ottawa for negligent misrepresentation after the City failed to accurately inform Charlesfort of the contents of a municipal easement in 2004-2005 during the rezoning process. During the rezoning process, Charlesfort believed that the easement contained a trunk sewer and only found out, a few years later during a site plan approval process, that the easement contained an old water main, with millions of gallons of water flowing through every

hour, in unknown condition. The nature and location of the water main meant that Charlesfort could not excavate and construct its underground parking garage right up to the lot line as planned, resulting in redesign, less parking, and a delay of approximately two years.

The trial judge held that the City owed a duty of care to Charlesfort based on a close and direct relationship during the rezoning process after completing a novel duty of care analysis - an *Anns/Cooper* analysis (*Anns v. London Borough of Merton*, [1977] 2 All E.R. 492 (H.L. (Eng.)); *Cooper v. Hobart*, 2001 SCC 79, [2001] 3 S.C.R. 537). The trial judge held that the City had implicitly undertaken to take reasonable care to provide Charlesfort with accurate information about infrastructure in adjacent property that was materially relevant to the proposed redevelopment. Due to Charlesfort's reliance on the information it received from the City's planning department, the trial judge awarded damages of around \$4.5 million to Charlesfort.

The Court of Appeal disagreed with the result of the duty of care analysis, allowed the appeal and dismissed the claims of Charlesfort.

It was not disputed that an *Anns/Cooper* test is appropriate in the context of a negligent misrepresentation claim. Harvison Young J.A., writing for the court, pointed out that the *Anns/Cooper* test has recently been refined by the Supreme Court in *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63, [2017] 2 S.C.R. 855 ("*Livent*") and *16688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35,

450 D.L.R. (4th) 181. She noted that the trial judge in Charlesfort did not have the benefit of the *Maple Leaf Foods* decision.

The *Anns/Cooper* test sets out two stages for establishing a novel duty of care. The first stage requires the establishment of a *prima facie* duty of care through the application of a proximity and foreseeability analysis. The second stage asks whether there are policy reasons for why a duty of care should not be recognized. In *Livent*, the Supreme Court of Canada held that where an established proximate relationship cannot be found, courts must undertake a full proximity analysis. This involves examining all relevant factors arising from the relationship between the plaintiff and the defendant, including expectations, representations, reliance, and the property or other interests involved as well as any statutory obligations. For pure economic loss arising from negligent misrepresentation, two factors are determinative in the proximity analysis: the defendant's undertaking and the plaintiff's reliance. Through assessing all relevant factors, the proximity analysis not only determines the existence of a relationship of proximity but also delineates the scope of the rights and duties which flow from that relationship - the principled basis upon which to draw the line. The court must consider whether the undertaking is made to the plaintiff and for what purpose - an 'end and aim' rule which precludes imposing liability upon a defendant for loss arising where the plaintiff's reliance falls outside the purpose of the defendant's undertaking.

The Court of Appeal held that the trial judge erred in failing to consider adequately the scope and purpose of the undertaking that she found had been “implicitly” made. The trial judge held that on receipt of the rezoning application and fee, the City implicitly undertook to tell Charlesfort about the existence, location, and size of municipal structure such as the water main and to advise whether it played a critical role in the municipal water supply and whether the City had any knowledge of its condition. The trial judge did not analyze whether the City manifested an intention to induce, or deliberately solicited, Charlesfort’s reliance, as well as the purpose and scope of any such implicit undertaking. *Maple Leaf* held that it is the intended effect of the defendant’s undertaking that creates the relationship of proximity and duty. The purpose of any undertaking limits the scope of a party’s entitlement to rely.

Harvison Young J.A. commented that it is much more difficult to properly consider the existence and the purpose and scope of an implicit undertaking than an explicit one, partly as it is necessary to determine who the intended beneficiaries of any undertakings are. The Court of Appeal held that the scope and purpose of the City’s undertaking to process Charlesfort’s rezoning application was limited to fulfilling its statutory duty and acting in the public interest in doing so. The public interest purpose in zoning, as reflected in the statutory scheme and other policy instruments, does not, according to the Court of Appeal, suggest that the City had any duty to protect developers from pure economic loss. Zoning is only one step in a development process. There was no basis to infer that the City was intending to undertake that the ultimate project would be built or would be as profitable for Charlesfort as it had initially anticipated. To infer

that the City was guaranteeing or had Charlesfort’s economic interests in mind when it undertook to process the rezoning application could, in effect, render municipalities insurers of developers’ profits – creating a potentially limitless liability. The Court of Appeal held that there was no relationship of proximity and so no *prima facie* duty of care.

The limitation of liability to the identified intended recipient or benefactor of an undertaking where there would otherwise be potentially unlimited liability for pure economic loss continues to be the trend. Developers should be cautious to satisfy themselves rather than rely upon information from municipalities as the role of municipalities in zoning applications, absent unusual circumstances, will be limited to protecting public interests, not the economic interests of developers.

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Discrimination and Harassment Counsel



Contributed by:

Teresa Donnelly / Treasurer of Law Society of Ontario

As a prosecutor dealing with domestic and sexual violence cases for 26 years, I know how hard it can be to tell anyone that you are being, or have been, victimized.

It can also be very difficult to disclose that you are being harassed or discriminated against by a lawyer, paralegal or student member of the Law Society of Ontario (LSO). You may be concerned that telling someone may have negative implications for you personally or professionally. You may feel powerless. You may wonder what you should do.

For over 20 years, the LSO has provided the Discrimination and Harassment Counsel (DHC) service free of charge to the Ontario public including lawyers, paralegals and students. The DHC provides a confidential and safe space for individuals with complaints of discrimination or harassment by an Ontario lawyer, paralegal or student member of the LSO, based on the grounds prohibited by the [Ontario Human Rights Code](#) which are also prohibited by the LSO's [Rules of Professional Conduct](#) and the [Paralegal Rules of Conduct](#).

Individuals who reach out to the DHC can confidentially discuss their concerns with a knowledgeable and empathetic listener with cultural competence skills. The DHC service supports the LSO's statutory mandate to ensure that licensees meet standards of professional conduct.

The DHC provides statistical data to the LSO so that it can better understand and address systemic discrimination and harassment.

What types of complaints does the DHC address?

The DHC deals with many complaints of discrimination and harassment by LSO licensees and students in different scenarios including individuals reporting on:

- their own lawyer or paralegal,
- opposing lawyers or paralegals,
- LSO licensees or students in the workplace, training or educational programs, and
- LSO licensees or students in other professional contexts.

What can you expect if you contact the DHC?

The DHC will listen and provide information to assist in identifying and evaluating your options. You may also be referred to other agencies or directed to resources.

What options are available if you call the DHC?

You can expect to be informed about the different options available which may include:

- only reporting your experience to the DHC, (for some, speaking confidentially with an objective, knowledgeable outsider is all they want),
- tips and coaching if you want to handle a situation yourself,
- speaking to your union representative,
- filing an internal complaint within your workplace,
- making a complaint to the respondent licensee's employer,
- contacting the Human Rights Legal Support Centre,
- filing an application with the Human

- Rights Tribunal of Ontario or the Canadian Human Rights Commission,
- filing a complaint with the Law Society's Articling Program,
- filing a complaint of professional misconduct with the Law Society,
- contacting the police,
- seeking legal advice about a civil cause of action,
- mediation or conciliation by the DHC, or
- the DHC engaging in education or coaching with the respondent licensee to assist with compliance of professional obligations and best practices.

What other information can you expect to receive from the DHC?

You can expect to receive information to help you assess which option best suits your circumstances including:

- anticipated costs in pursuing an option,
- whether you should be represented by a lawyer or paralegal,
- information on how to obtain legal representation including the Law Society's Lawyer Referral Service,
- how to file a complaint or initiate an application,
- the processes involved in pursuing available options,
- general types of remedies why may be available, and
- the general time limits for each option,

Does calling the DHC mean that you have to follow through on these options?

The choice is yours about what you do with the information you receive from the DHC. There is no obligation to take any action.

Can the DHC help lawyers, paralegals and students understand their professional obligations?

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Fighting Back Against Dishonestly-Obtained “HVAC Liens



Contributed by:

Dennis G. Crawford / Monteith Ritsma Phillips Professional Corporation

By now, most of us are all too familiar with what I call the [Ontario HVAC Scam](#).

Door-to-door salesmen, targeting mostly elderly and vulnerable homeowners and using deceptive marketing practices to get them to sign excessively one-sided rental agreements for HVAC equipment of dubious quality.

These rental companies rent out HVAC equipment at massively inflated prices. They then assign the rental contract to an associated financing company who registers a notice of security interest against the house, without telling the homeowner. When the homeowner goes to sell or refinance their house, they are shocked when their lawyer tells them about the notice of security interest. They are even more shocked when the finance company sends the payout statement, demanding payment of \$10,000.00, \$15,000.00, or even more. All to "buy out" a rental contract for an air conditioner or water softener, the retail value of which is no more than \$2,500.00. In many cases, this is after the homeowner has already paid thousands of dollars in rental fees before "buying out" the contract, which makes the disparity between fair retail value and the amounts charged even more obscene.

The finance company does not pluck these payout numbers out of the air. They choose the highest number that is still low enough that it would cost more to take them to court. Faced with the prospect of significant legal fees, homeowners usually stomach the bill and pay out the notice(s) of security interest. They end up handing over thousands of

dollars more than the equipment is worth to pay out contracts which were obtained through illegal marketing practices, all for home equipment which they likely didn't need in the first place.

This is an access to justice issue. It is not fair that vulnerable homeowners should be forced to pay \$15,000.00 to buy out

When the homeowner goes to sell or refinance their house, they are shocked when their lawyer tells them about the notice of security interest.

a rental contract for an \$1,800.00 water softener just because going to court would cost even more. Vulnerable homeowners who are stuck in these unfavourable contracts have nowhere they can turn to for relief, because it simply costs too much money and takes too much time before seeing the inside of a courtroom.

Small Claims Court is not the answer either (even though the amounts at issue are usually less than \$35,000.00) because the Small Claims Court does not have the jurisdiction to order notices of security interest to be deleted from title.

What steps has the Government taken?

One of the last measures taken by the previous Liberal Government in Ontario was to ban door-to-door selling of most HVAC equipment, including furnaces, air conditioners, hot water heaters, and water softeners. The government was clear that this ban was designed specifically to target the Ontario HVAC Scam. This law came into effect on 1 March 2018 and, so far, all indications are that it is making hardly a dent in the prevalence of this scam. In the absence of serious enforcement measures, the ban on door-to-door selling of HVAC equipment has proved to be mostly toothless.

The current government has solicited comments on proposed changes to the *Consumer Protection Act, 2000* which would make it slightly easier for homeowners to have these "HVAC liens" deleted from title to the property in cases where the homeowner has cancelled the contract during the ten-day cooling-off period. These proposed changes have not been put before the legislature or before cabinet, and no timeline has been provided as to when they may be implemented.

If implemented, these changes to the law would still not do anything to make it harder for the financing companies to register the liens in the first place. To date, the government has done nothing to make it harder for finance companies to register a notice of security interest against real property. These companies can still register these notices without the homeowner's signature and they can still set the notices in whatever amount they want.

Banning door-to-door sales of HVAC equipment was a small victory for

vulnerable homeowners, and making it easier to delete these HVAC liens will help a little bit, but these changes go nowhere near far enough to shut down this predatory business model. For all the stories of heartbreak which have surfaced so far, the Ontario HVAC Scam has far from run its course. There are likely thousands of homes in Ontario with these HVAC liens. As these elderly homeowners move out of their houses and into long-term care, they and their children are going to be in for an unpleasant surprise when they try to sell the house. They will discover the HVAC lien(s), the finance company will hold up the sale of the house until they get paid, and the homeowners will wonder how so much of the equity in their house was eaten up by a rented water softener.

Dennis G. Crawford is one of the founding lawyers of OntarioHVACscam.com, which offers a cost-effective retainer to eligible homeowners to have "HVAC liens" deleted from their property.

Will Notices

Frances Carol Patience

Anyone knowing of a Last Will and Testament for Frances Carol Patience, born July 10, 1954 of London, Ontario, please contact Sandra Ellison at 519-933-329, email: sandraellison6@rogers.com.

Aileen Mary Munroe-Leis

Anyone knowing of a Last Will and Testament for Aileen Mary Munroe-Leis, born May 27, 1943, died June 17, 2021, last known residence 521 Piccadilly St., London, ON, please contact her son David Hartwick at 416-450-5117, email: thehartwickfamily@gmail.com. She also used variations of her names with either one or both of her last names and different orders to her first names.

Elizabeth Marie Ziegler

Anyone knowing of a Last Will and Testament for Elizabeth Marie Ziegler born August 30, likely in 1947, please contact Bruce Ziegler at 519-878-5417.

Deborah Ann Wilkins and John Norman Wilkins

Anyone knowing of a Last Will and Testament and Powers of Attorney for Property and Personal Care of Deborah Ann Wilkins and John Norman Wilkins prepared by E. Dixon Winder of London, Ontario and signed on November 3, 2000, please contact Kailey Dalgety at ph: 519-337-3847, kailey@santorolaw.com.

John Peter Cullis

Anyone knowing of a Last Will and Testament for John Peter Cullis, date of birth December 7, 1939, Birmingham, UK, died May 30, 2021 in London, Ontario, please contact Erin Rankin Nash at ph: 519-963-0162 ext. 6, email: erin@fplaw.ca.

Jack Laverne Campbell

Anyone having knowledge of a Will of the late Jack Laverne Campbell of the City of London in the County of Middlesex, Province of Ontario, who died on July 21, 2021, is requested to contact: Sara A. Nirta 239 Parkhill Main Street, Parkhill ON N0M 2K0, email: sara@nirtalaw.com, ph: 519-294-8888.

Anthony Steven Busija

Anyone having knowledge of a Will of the late Anthony Steven Busija, City of London, County of Middlesex, in the Province of Ontario, who died on June 19, 2021, is requested to contact Matthew Bota, Harrison Pensa LLP, 450 Talbot Street, P.O. Box 3237, London, ON N6A 4K3 Tel: 519-661-6752, Fax: 519-667-3362, Email: mbota@harrisonpensa.com

Dennis James Kachuik

Anyone knowing of a Last Will and Testament for Dennis James Kachuik, born April 21, 1962, and died May 9th, 2021, of London, Ontario, please contact Catherine Olsiak of SimpsonWigle LAW LLP at (905) 528-8411 or olsiak@simpsonwigle.com.



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Curious used truck sale



Contributed by:

Simon R. Davies / Sole Practitioner

The defendant was 20 something and was representing himself. I will call him Mick. Mick was also asserting a counterclaim.

Fred, a man in his 50s was suing Mick for \$330. The action arose from the sale of a used 2003 Dodge Dakota truck. He was, likewise, representing himself. The trial in Small Claims Court took a day in the Fall of 2012.

When Mick arrived at Fred's small used car lot, he took an immediate fancy to the shiny black Dakota pickup. It had 187,246 km on the odometer. Could it be ready today if he bought it, asked Mick? Well, no, said Fred. He needed time to secure a Safety Certificate so that he could register the sale and get licence plates. But Fred could deliver it tomorrow.

The price was \$7800. Mick would arrange financing overnight. Mick claimed he was a little short of cash. Fred accepted \$50 as a deposit.

At Service Ontario the following day Fred learned that Mick owed \$330 in unpaid parking fines. Mick responded to Fred's phone call stating (again) that he was short of cash. Could Fred pay the fine for him? In return, Mick would leave his Ford Focus with Fred at the dealership. Fred could also hold onto one of the two key fobs for the used pickup.

Now, I admit I was somewhat surprised to hear that Fred accepted Mick's proposal. But on July 8th Mick paid and took delivery of the pickup truck. The old Focus he left behind.

A couple of days later, Mick telephoned to complain that the pickup had a vibration when driving on the highway. It made the truck "wobble all over the road".

So, on July 11th Fred arranged for the pickup to be inspected at V's Garage.

The mechanic said that the vehicle was fine and the truck was returned to Mick.

Complaining of problems again, on July 19 Mick left the pickup back at the same garage to be looked at again. Nothing was done because Mick failed to tell either Fred or the garage in advance. Mick then took the vehicle to Jim's Auto. Mick said in evidence that Jim's mechanic told him the rear sway bar was at fault and the

licensing the truck.

Subsequently, Fred received a letter from State Farm indicating that upon payment of \$7500 they would release their lien on the Dakota. The letter was filed. It indicated nothing had been paid on the truck loan.

To address the issues raised by Mick, Fred took the Dakota to two independent garages for inspection. Of those two, the (filed) Chrysler dealership invoice stated that the upper sway bar and bushings were new but the lower sway bar had been installed at the factory. In short, there was no mechanical fault in the pickup.

In his evidence, Mick said he returned the Dakota because of the alleged mechanical defects plus he could not afford the \$600 monthly truck payments.

Mick asserted a counterclaim for \$680. In support of this he filed a receipt for \$680 paid to State Farm, in December, months after the truck had been returned. Pressed in cross-examination, Mick could not say with certainty whether the \$680 paid to State Farm was a payment for insurance coverage or a truck loan payment.

For a net cost of \$50 Mick had driven the vehicle 3535 kilometers. Was this transaction rather more like a rental than a purchase? Curious.

The judgment Fred was awarded included \$2000 storage fees, \$330 paid for fines and his costs. Mick's counterclaim was dismissed.

Was this transaction rather more like a rental than a purchase? Curious.

pickup was not safe to drive. An invoice was tendered as an exhibit. Although Fred had agreed to meet Mick, the latter never showed up.

When Fred came to work on July 25th he was surprised to find the Dodge Dakota parked by his office door. The Ford Focus had disappeared. The pickup odometer was at 200781 km. So, it had been driven a total of 3535 km. No further developments occurred until a bailiff took possession of the Dakota on March 7th of the following year.

Fred attempted without success to contact Mick to find out what he intended to do. He filed the Claim to recover the \$330 he had paid when



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Middlesex Law
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Farewell and Welcome....



Some changes are happening at Hassan Law. As of September 10, 2021, we will bid a fond farewell to our Associate, Abeer Abosharia. Abeer joined us for Articling in 2015 and became a valuable member of our Family Law Team. She will be joining her father Abdalla Abosharia at his Firm, Bashier Law Office. We wish Abeer all the best and thank her for sharing her talent with us.

Stepping into Abeer’s shoes, we welcome our new Associate, Qasim Kareemi. Qasim was called to the bar in Alberta in 2020 and in Ontario in 2021. He has studied across the country, from the University of Victoria to Acadia, and points in between and has now settled in London. We welcome Qasim warmly to our Hassan Law Team.



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Deadline is September 25, 2021

The Snail welcomes articles from MLA members. in Word format, along with photos, headshot and headline. For clarity and readability, we encourage submissions in the range of 200-500 words, with a maximum limit of 1000 words for news and opinions, and a limit of 2000 words for articles on law and legal issues. At the request of the contributor, any submissions shortened in this way can also be published with a link to the full article to be obtained directly from the author.

Potential topics for submissions include:

News, the promotion of an upcoming event, a review of a past event, recognition of someone in the legal community, opinion and letters to the editor, discussion of a legal issue & case reviews, or practice tips

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