



HCLA NEWS

Newsletter of the Halton County Law Association

Volume 11 Issue 4

Fall 2020



The Halton County Law Association

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Bench & Bar Memo regarding Virtual Hearings

Changes to Contingency Fee Arrangements—See Bencher News

Family Business Planning

PRESIDENT'S REPORT

by Ken Kelertas



*And the band played on.
As the helicopters whirred.
Drunk on the lawn in a Second Wave dawn
My senses finely blurred.*

(with apologies to Moxy Früvous)

After seven months of living in a bubble, I am sure that a lot of you- like me- are suffering from COVID fatigue. Masks, hand sanitizer, an inability to visit friends and extended family, endless Zoom meetings, no vaccine in sight, and now more mould has been found in the Milton Courthouse leading to its closure to the public- it's enough to drive anyone to the edge.

And yet, we persevere and carry on. And yes... it could be worse. I remain grateful that we live in a country and in a province where doing the right thing and ensuring that the health and safety of our citizens comes first is still the norm rather than the exception.

About the Milton mould: I am advised that the mould is centered around the evidence vault in the basement near Courtroom 10. This area has been the site of mould before. Mould has been removed, and walls, ceilings and floors remediated a number of times, including a major clean-up in the summer of 2019 that involved a temporary closure of the HCLA library and lounge. The Ministry is investigating and has hired consultants to conduct an assessment of the entire facility. While we are told that there are no current con-

cerns about air quality, the building has been closed to the public, and no in-person hearings will be conducted at the courthouse until the consultants have reported their findings, any hazards have been removed, and it has been deemed safe to re-open.

In the past, mould and asbestos has been found throughout the courthouse. Clean-ups have been conducted before, only to see new problems arise. As I was quoted in *The Lawyer's Daily* last week, it's been a bit like a game of whack-a-mole.

Clearly, this cannot go on. Halton needs a new courthouse- one that is safe, accessible, and out-fitted to accommodate the ongoing transformation of the justice system on Ontario. Despite assurances from the Attorney General and his staff that an announcement would be made in the fall regarding the future of the Halton Consolidated Courthouse Project, we have not yet heard anything of substance. Perhaps the current crisis in Milton will spur the AG to action.

Regardless, our Board remains committed to advocating for the new courthouse- not just a renovation or expansion of the existing Milton and Burlington facilities, but a new justice hub for Halton. I continue to encourage all of our members to write to the AG, to the Premier, and to our local MPPs to ensure that Halton's urgent need for modern justice infrastructure is not overlooked.

I hope that you had the opportunity to join us for our “Health and Wellness Day” that was held virtually on September 17th. I want to thank Fay Hassan and Kaleigh Dryla for organizing and hosting this event. I would also like to thank the health care professionals and financial advisors who volunteered their time to provide us with valuable insights and strategies to assist us in making our lives as lawyers more manageable and fulfilling, especially in the face of the ongoing pandemic.

Speaking of valuable insights and strategies, on November 27th we will be welcoming back Deirdre Pike to lead a Zoom presentation on the topic of how legal professionals can promote a 2SLGBTQ Positive Space in their practices. This will be a complimentary 90 minute CPD program

that will count towards the Law Society’s mandatory Professionalism and EDI requirements. Registration details will follow shortly.

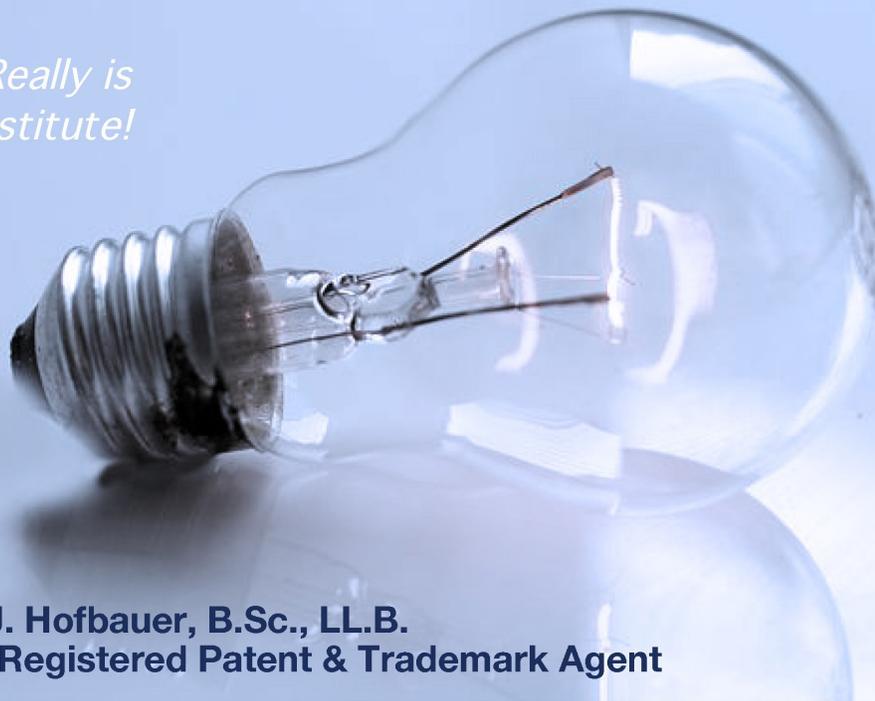
We are also planning a virtual Holiday Party for some time in December. While COVID has made it difficult for us to spend quality time together, it should not stop us from sharing some holiday cheer, and collectively looking forward to the New Year. The Board is still working out the details but we hope to send out an announcement shortly.

In the meantime, I hope that you and your loved ones are keeping well and that you continue to stay safe and healthy.

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BENCH & BAR MEMO

Memo to: Halton County Law Association Members

Re: Virtual Hearings

Date: October 20, 2020

As a result of feedback from the Judiciary during our most recent Bench & Bar Committee Meeting, as well as direct requests from the Judicial Assistants, we are writing to share the following requests of all counsel litigating in the Halton Region:

1. Please ensure all PDF Documents are bookmarked;
2. Avoid repetitive legal arguments in written material: keep in mind that the Judiciary is reading submissions on a computer screen, therefore, it is important to be succinct and not making the same points over and over again;
3. When confirming Hearings, be specific regarding to what it is the Judges need to read for the Hearing. This is so much more important now that everything is being provided to the Judges by PDF;
4. Remember that you still must confirm Hearings, be they by video or telephone, as you would have as you would have if you were appearing in person;
5. Ensure all Notice of Change of Lawyers are filed promptly and that all documents filed with the Court have email addresses for all parties including non-represented parties;
6. This is very important, particularly when communicating with the Judicial Secretaries as they do not have access to the Court File and rely on counsel to provide accurate email addresses; and
7. For video Court appearances, you must wear appropriate business attire. Wearing t-shirts, hoodies and other casual wear is not appropriate for appearing on a video Court Hearing.

As we all work together to litigate in the new virtual environment, having this feedback from the Court is extremely beneficial, however, will only help improve if we as counsel do our part.

Inga B. Andriessen
Chair, Bench & Bar Committee

LIBRARY NEWS

by Karen Cooper



NEW Website

I am very excited to announce the recent launch of the new HCLA website. The new site will allow members to create a login and manage their own information and website listing. We had some difficulties with the export of the information from the former website and were able to bring over the names and email addresses only, so I would encourage you to create a login and update the listing with your full and current address information. We want everyone to be able to find you from our new site!! The new site is easy to navigate and responsive to fit smaller screens and be more mobile friendly!! Another exciting feature of this new platform is that we will soon be able to allow members to renew their membership and pay for CPD programs and social events directly online with your credit card.

Milton Court House Suspends In Person Appearances due to Mould

As announced a couple of weeks ago, the Ontario and Superior Courts have suspended all in-person appearances at the Milton Court House due to mould. At the time of writing of this article, the court filing offices remain open and staffed.

COVID-19 Court House Screening

Please be reminded that the COVID pre-screening remains in place. All persons attending a courthouse will be asked questions re-

garding recent travel, potential exposure to the virus, and whether they are experiencing any COVID-like symptoms. Answering the screening questions is a pre-requisite for all persons seeking to enter the courthouse, including ministry staff and justice sector partners.

The screening can be completed at anytime/anyplace prior to arrival at the courthouse, online. The screening tool is also available for completion in paper-based format or verbally where required, at the courthouse. Once you have your screening result, all visitors are required to present their screening result to designated entrance monitors as they enter the courthouse. Individuals who are deemed inadmissible through the screening process will be redirected to alternative processes. Links to the screening tool are available online at: [Ontario.ca/courtscreening](https://ontario.ca/courtscreening)

FREE Quicklaw

I am pleased to pass along the good news that the remote desktop access to Quicklaw has been reinstated. As some are still having issues with library access for lawyers throughout the province, they've reinstated this program.

Any existing IDs for lawyers should now be reactivated, and new participants can once again self-register using the following code: <https://signin.lexisnexis.com/lnaccess/UserRegistration?regCode=eac39t2>.

BENCHER REPORT

by M. Claire Wilkinson



Changes to Contingency Fee Agreements:

The historical mess of contingency fee agreements is finally being rectified!

At the October 22, 2020 Convocation, Benchers voted to support the changes to Ontario's contingency fee agreements as announced by the provincial government on October 6, 2020. As you are no doubt aware, the current law in the Solicitors Act (O. Reg. 195/04) requires all costs awarded in an action to be returned to the client. This requirement has created significant confusion and inconsistency amongst the profession, as there is next to no guidance on how "costs" are to be calculated absent an order from a judge or an assessment officer. The practical reality is that the vast majority of personal injury claims in Ontario do not proceed to trial, and are instead resolved by way of settlement. And that is where the confusion arises: how much should the lawyer allocate to costs when the costs have not been judicially determined or independently negotiated?

The current costs requirement places lawyers in a conflict of interest with their own clients, as it is in the lawyer's financial best interests to minimize the costs being recovered by the client (and therefore leaving a larger portion of the settlement to be described as "damages"). Since the lawyer's fee is based on a percentage of the damages that are recovered, some lawyers may have been tempted to describe more of the set-

tlement as "damages", which is the only portion of the settlement for which the lawyer could charge a percentage of the settlement for fees. At the same time, it is in the best interest of the client to have a greater portion of the settlement to be described as "costs", as the client was permitted to keep all of the costs as per the requirements of the Solicitors Act.

On October 6, 2020 the Attorney General announced that contingency fee agreements are being reformed, and that as of July 1, 2021, standard contingency fee agreements will be put in place, whereby the lawyer's fee will be calculated on a percentage of the damages plus costs. By way of example, if a case settled for \$100,000 including costs, plus \$10,000 disbursements for a total settlement of \$110,000, the lawyer would charge the client whatever percentage of the \$100,000 settlement agreed upon in the contingency fee agreement, plus HST. If the lawyer paid the disbursements on behalf of the client, the lawyer would also be reimbursed for the \$10,000 disbursements awarded as part of the settlement.

There will be no cap on the amount of contingency that a lawyer or paralegal can charge and the standard form contingency fee agreement template will be required to be used by all legal practitioners in Ontario. In addition practitioners will now have three additional transparency requirements when they enter into a contingency fee

agreement with a client:

The Licensee will be required to disclose their maximum contingency fee percentage that they charge on their website;

Licensee requirement to provide potential clients with the standard form consumer guide entitled “Contingency fees: What you need to know” before they enter into a contingency fee agreement; and

Licensee requirement to provide certain fee-related reporting to clients on completion of the agreement.

This legislative change announced by the provincial government and endorsed by the Benchers represents a significant step forward in the government and Law Society’s efforts to bring con-

sistency and clarity to contingency fee agreements. It goes a long way to removing the chaos and confusion that has surrounded the current costs provisions in the Solicitors Act. More information about the reforms to contingency fee agreements can be found at: <https://lso.ca/about-lso/initiatives/contingency-fee-reform>.

Fee structure for licensees over 65 and life members:

On August 6, 2020, Convocation made the now controversial decision to eliminate fee exemptions for licensees over age 65, and for life members who have been practising law 50 years or longer. The August 6th vote determined that starting in January 2021, non-practising licensees aged 65 or older would be required to pay 25% of a standard licensee fee to remain eligible to vote in benchers elections,

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and to be able to access Law Society services.

Following the vote, many practitioners wrote letters and emails to the Benchers, expressing thoughtful and compelling commentary as to why these changes were problematic. The Professional Regulation Committee reviewed all of the submissions in detail, and after a great deal of consideration and discussion, it proposed a new fee category of 10% of standard licensee fees for all licensees over age 65 who are no longer practising.

In coming to this decision, Convocation acknowledged the tremendous contributions that licensees over age 65 have given to the profession, but also recognized the reality that there are costs associated with providing services for non-paying licensees, and that particularly in this era of COVID 19 efforts to cut costs, licensees are still expected to make a contribution to their ongoing participation in the LSO. The 10% of fee requirement was thought to be a compromise between the competing interests of understanding and respecting the economic reality of retired licensees, but also acknowledging the ongoing costs that are incurred in providing services to licensees who have not historically contributed to these expenses once they turn age 65.

With respect to life members who have been practising over 50 years, the practice of awarding free membership to those individuals will cease on a go forward basis for licensees newly achiev-

ing the status of practising 50 years, but those individuals already receiving the benefit of life member status will be grandparented, and will not be expected to pay annual fees.

Malcolm Mercer appointed new Chair of the Law Society Tribunal:

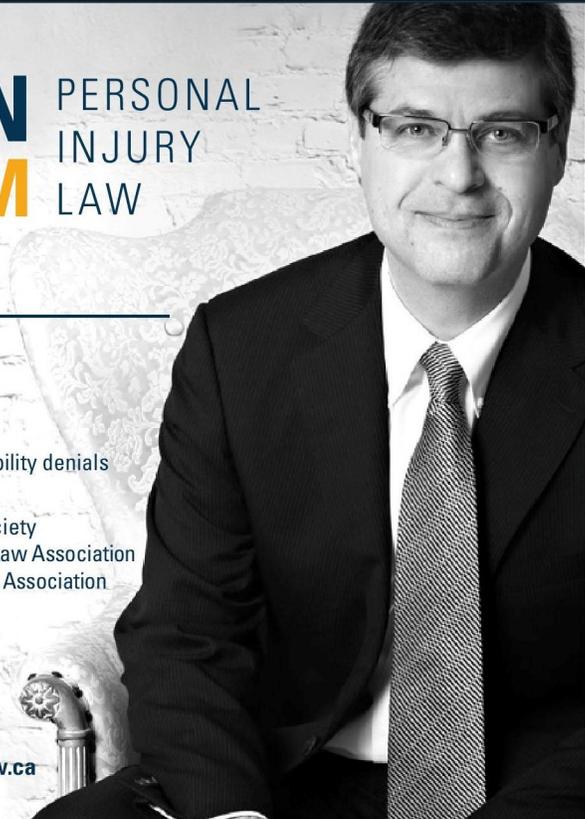
The present chair of the Law Society Tribunal, David Wright, is vacating his position effective November 16, 2020, after many years of excellent leadership and service to the LSO.

Past Treasurer Malcolm Mercer will take over as the new Chair of the Law Society Tribunal. With his experience as an adjudicator and his knowledge of administrative law, the LSO is very pleased to announce Mr. Mercer's appointment.

STEPHEN ABRAHAM

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FAMILY LAW NEWS

by Kathy Batycky



What a difference a few months makes.

A few months ago, family law lawyers had the stressful task of letting their clients know that, although their court dates have been delayed, we were hopeful to have the hearing rescheduled soon, and in the meantime try to resolve anything possible by way of virtual meetings. Urgent matters that got immediate attention were those related to Covid-19 and filings were done by email.

Now, the Milton court is working hard to have the trials adjourned proceed, although the proceeding will most likely be virtual, and other steps in a court action fully proceed and we are all at the cusp of a new “virtual” era of the practice of law.

In accordance with the Notice to the Profession of September 25, 2020, as of October 5, 2020, the Superior court expanded what steps can now proceed, with directions as to how to proceed in the virtual world of litigation, including instituting access to an online filing portal, (no more paper!) with the promise of the Caselines document organization platform so that the judge and counsel will have organized (and bookmarked and hyperlinked) access to all documents that are needed for each court event. Below is a summary:

For Consent Motions, and Rule 14(B) motions, parties must file their complete materials with the court. The motions/matters will be dealt with by a judge as soon as is practicable.

Regular motions of less than one hour will be scheduled and heard virtually subject to the discretion of the presiding judge. For new regular

motions, the moving party must first obtain a date for a regular motion from the Trial Coordinator’s Office.

All parties must comply with all applicable Rules for the service and the electronic filing of the motion materials. Copies of any relevant orders and endorsements must also be included in the electronic materials filed.

The parties must file a Confirmation form in accordance with the Rules, otherwise, the motion may not be scheduled to be heard. The parties must include a list of the individual documents filed and to be relied on at the motion. Counsel and parties will be advised of the details to connect into the virtual hearing. Counsel and parties will be held to the estimated times unless the presiding judge determines otherwise.

Long motions will be scheduled and heard virtually subject to the discretion of the presiding judge. For new long motions, the moving party must first obtain a date for a long motion from the Trial Coordinator’s Office. All parties must comply with all applicable Rules for service and the filing of materials and factums. Copies of all relevant orders and endorsements must also be included in the electronic materials filed.

The parties must file a Confirmation form in accordance with the Regional Practice Direction (as may be amended from time to time), otherwise, the long motion may not be scheduled to be heard. The parties must include a list of the individual documents filed

and to be relied on at the motion. Counsel and parties will be advised of the details to connect into the virtual hearing.

Counsel and parties will be held to the estimated times unless the judge determines otherwise.

Family Law Conferences will be heard virtually subject to the discretion of the presiding judge. To schedule Family Law Conferences, counsel and parties must first obtain a date for a Family Law Conference from the Trial Coordinator's Office. All parties must comply with all applicable *Family Rules* for service and the filing of conference materials.

For conferences, the filed electronic materials by each party is limited to case or settlement conference briefs of four (4) pages plus only those excerpts of documents necessary and relevant to the issues to be decided; proof of service; and draft order(s). Copies of all relevant orders and endorsements must also be included in the electronic materials filed.

The parties must file a Confirmation form, otherwise, the Family Law Conference may not be heard. Counsel and parties will be advised of the details to connect into the virtual hearing.

For Urgent Motions, parties must file their complete motion materials with the court. The court staff will make every effort to put the motion materials before a judge as soon as is practicable. A judge will determine whether the matter is urgent. If not, counsel/party will be so advised. If the matter is urgent, a judge will either deal with the urgent motion or provide directions for it being heard virtually or in person.

Confirmation forms for family motions and conferences must be filed electronically to the following email address:

SCJHaltontrialoffice@ontario.ca

The Practice Direction has also provided procedural directions as follows:

Electronic filings: Family court documents shall be electronically filed and/or issued by using



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Family Submissions Online portal. The portal is authorized to accept the electronic filing of most documents in a family law or child protection case, along with any necessary filing fees. New applications and motions to change can also be filed through this portal, along with requests for fee waivers.

In addition, several family court documents relating to a simple or joint divorce may continue to be filed electronically by using the Ministry's *Family Claims Online Portal*, in accordance with the *Family Law Rules*.

We are no longer filing most documents by email. The Court will **only** accept family filings by **e-mail** for the following:

- For matters that are urgent, including requests for an urgent hearing;
- Documents that must be filed for a court date that is less than 5 business days away; and,
- Documents that must be filed for a deadline

that is less than 5 business days away.

- Where alternate filing requirements are required due to an accessibility request.

In the above circumstance, documents may be filed electronically at the following email address: MiltonSCJCourt@ontario.ca

For specific guidelines, the Notice provides the following guidance:

Each electronic material filed for use in court proceedings must have proper file names. This requires the file name to indicate:

- a. the name of the party filing the material AND whether they are the plaintiff/applicant or defendant/respondent such as Ms. X, Respondent;
- b. a description of material such as, "Affidavit" or "Notice of Motion" or "Factum"; and

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c. the date of the material was created or signed.

For example: "ABC Applicant's Notice of Motion September 14 2020.

Each electronic material must have each page consecutively numbered, including any attachments such as exhibits.

All electronically filed documents must be served on all interested parties in accordance with the applicable Rules and must clearly set out the email addresses of the party filing the materials and all other interested parties.

Now, with the sudden stoppage of all in person matters in the Milton courthouse due to finding mould, our attention to the guidance provided by the courts is more important than ever.

Keep an eye on the HCLA website, as any new Directions will be posted to keep all our members up to date.

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CRIMINAL DOCKET

by *Brendan Neil*



Well here we are October 2020. In the midst of a second wave of COVID-19, a cancelled new courthouse, a Milton courthouse that is essentially closed to any inperson appearances due to ongoing and recurring mould issues.

What a year it has been.

So what is there to report?

This month marks the retirement of Justice Leslie Baldwin. We wish Justice Baldwin the best as she turns to non-judicial activities. Rather than running a competition for the appointment of a new judge to the Halton bench, Justice Freeman will be transferring from Brampton to sit on the Halton bench. This transfer means that Halton will be at its compliment of 6 criminal judges in the OCJ.

So where are these judges sitting? With the ongoing pandemic the court has gone virtual now using zoom for a significant number of matters. While there is a learning curve this mode of hearing has been quite effective and allowed a number of matters to move forward. What would certainly assist is if at least some of the technology improvements, that were suggested when the courthouse was cancelled, would actually be provided.

One of the hotspots or bottlenecks in criminal matters moving forward has been the ability for individuals in custody at Maplehurst to get access to counsel. Due to the pandemic those that are held in Maplehurst begin a 14 day quarantine regardless of whether they are exhibiting symptoms or have any other risk factors. This quarantine negatively effects their ability to reach

counsel as their access to telephones is restricted beyond the normal level. Unfortunately, this is not an easy fix as Maplehurst suffers from technology issues as much as the Milton courthouse.

On the positive side the Ontario Court of Appeal has recently issued judgement indicating that COVID-19 is a relevant factor for all considerations on a bail hearing, primary, secondary and tertiary. [R. v. J.A., 2020 ONCA 660](#)

Stay safe!!

Brendan Neil is certified by the Law Society of Upper Canada as a Specialist in Criminal Law and sits on the Board of the Criminal Lawyers' Association as the Halton Region Director. Comments in the above piece are his alone and should not be considered as the position of the HCLA or it's respective members.

IMMIGRATION LAW NEWS

by Melissa Babel



Canadian and U.S. Immigration Law Updates –

Canada: Applicants for temporary and permanent residence are starting to feel the very real effects of the backlog resulting from COVID-19. Processing times for PR Cards, citizenship applications and Family Class Sponsorships are increasing, and that trend is likely to continue. IRCC has announced that it is looking into technology solutions to help support the processing of Spousal Sponsorship applications. Details are yet to be released about any new processes. IRCC has also announced changes to its biometrics requirements for certain permanent residence applicants in an effort to help address backlogs that are forming in all categories of process.

USA: A federal judge on Tuesday temporarily blocked U.S. Citizenship and Immigration Services (USCIS) from increasing fees for green card and U.S. citizenship applications before the hike in fees was set to take place on October 2, 2020. The October 2020 Visa Bulletin has been released. We discuss this in more depth in our section on US immigration below. President Trump's Proclamation of April 22, which temporarily suspended the issuance of immigrant visas to certain immigrants remains in place until December 31, 2020.

Express Entry September Update

September has been a slower month for Express Entry draws. Over the summer, we had seen four draws monthly. So far in September, there have been three draws. The first was a draw from all categories of permanent residence applicants. This draw occurred on September 2, 2020 and

saw 4200 invitations being issued to candidates with CRS Points of 475 or greater.

According to IRCC, as of September 14, 2020, there are over 23,000 people in the Express Entry pool with points between 451-500, which is where most candidates under the Canadian Experience Class and Federal Skilled Worker Class will sit. With rounds of invitations in the 4000 range, we expect it to take some time for this number to have any meaningful change, and it is likely that the CRS scores needed to be invited under general draws will remain high for the foreseeable future.

In-Canada applicants for Express Entry would be wise to consider all options for extending temporary status while they wait for an invitation to apply. Another tip is to be sure that no points are left 'on the table' - which includes having all education assessed, being sure to count all work experience and considering re-taking or upgrading language skills to secure the highest points possible.

None of us can get younger! So, finding all of the CRS points that are available is critical to success in this highly competitive time in Express Entry.

Ontario Immigrant Nominee Program ("OINP") is considering a move to an Expression of Interest System

The Ontario Provincial Nominee Program ("OINP") has published proposed amendments to the program that would introduce an Express of Interest ("EOI") system, like the Express Entry system and other Provincial Nominee

Programs across the country. The changes are intended to increase the OINP's labour market responsiveness and better respond to regional labour market needs. The proposed changes were announced on September 8 and are open to public consultation until October 23, 2020.

The proposed changes are in response to concerns surrounding the OINP's intake process, which involves heavy competition in a 'first come first served' model with programs, including the very popular Employer Job Offer: International Student and Foreign Worker streams, opening and closing within hours.

The most recent example of a program opening and closing in a matter of hours is the Masters Graduate Stream, which was opened and was accepting applications on September 29, 2020 and closed within a matter of hours where the internal registration living of 1215 was met. According to the OINP updates, intake of applications across all streams are being monitored to determine whether the Master's Graduate, Employer Job Offer streams will reopen

in 2020. Stay tuned!

OINP 2020 Updates (<https://www.ontario.ca/page/2020-ontario-immigrant-nominee-program-updates>)

U.S. Immigration Update

Each month the U.S. Department of Status releases the Visa Bulletin, which summarizes the availability of immigrant numbers. The October Visa Bulletin shows a significant move forward in the availability of Employment Based (EB) immigrant visas.

EB-1: All countries are current, with the exception of India and China, who have 'rapid forward movement'

- EB-2 All countries are current, except China and India which have 'rapid forward movement'
- EB- 3 (Professional and Skilled Workers): All countries are current, except China and India which have 'rapid forward movement'

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- EB-3 (Other Workers): All countries are current, except China (moves for by 4 months) and India (moves forward by 3.5 months)

Employment-based immigrant visa annual limit for FY 2021 is anticipated to be 261,500, which is an all-time high.

For access to the October 2020 Visa Bulletin:
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-october-2020.html>

ESTATES NEWS

by Suzana Popovic-Montag and Nick Esterbauer



FAMILY BUSINESS PLANNING

Asset Protection

Lessening the possibility of family conflict when faced with family business succession planning can start with proper communication. An individual who is able to clearly communicate relevant intentions with respect to a family business to business partners and family members can assist in preventing conflict in this regard. Business owners may also wish to consider a number of strategies to facilitate business succession to limit any disruption in the business that may result from their retirement, incapacity or death.

Insurance is the most common tool in asset protection planning in Canada. Life and/or disability insurance can be used to satisfy the liabilities (including tax liabilities) of a business in the event of the incapacity or death of a business owner in a way that facilitates the succession of a business.

Inattention to asset protection planning as part of the estate planning process may frustrate a succession plan. If the tax liabilities on the deemed disposition of the business interest exceed the liquid assets available to an estate, the succession of the business may not be possible, and its dissolution may be required.

A number of factors – such as whether there is an intention for the owner's interest to be bought out in the event of his or her death, whether insurance is intended to benefit

beneficiaries who are not receiving an interest in the business (and who may wish to otherwise challenge the gift of the company that has the effect of disinheriting them), and whether additional paid help will be required by the business following incapacity or death – should be considered in determining the extent of insurance required.

A number of options exist with respect to the structure of a disability or life insurance policy intended to protect the assets of a business. Any of the surviving family members, the deceased's estate, the company itself, or a surviving shareholder can be the beneficiaries of such a policy. The insurance policy can be owned by the business owner or by the corporation itself.

Succession Planning

At the very minimum, the individual managing a business should create an alternative signing authority on their business accounts in order to prevent barriers restricting the activities of the business in case of emergency. Using the example of a law firm, the managing partner should provide a licensed lawyer or paralegal signing authority for the firm's bank accounts, including its trust

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account, in order to ensure that client and firm resources are not rendered inaccessible by the unexpected absence of the partner. It is important to keep clear records and files in order to make the transition easier in the case of emergency or planned succession.

With smaller businesses, one of the easiest ways to pass the business on is by orchestrating a buy-out between the incoming owner and the original owner. A buy-out that is planned over an extended period of time may have fewer tax consequences than an immediate buy-out. The use of a promissory note payable over a number of years may also assist in limiting the taxable capital gain resulting from the sale of a business in a given year.

If the family business is a partnership, the most common mechanism for succession is in accordance with the terms of a partnership agreement, which specifies how the division of the business will be conducted upon the dissolution of the partnership or the retirement, incapacity or death of one partner. If the business

is operated through a corporation, a shareholders' agreement may accomplish the same objectives. Where no such agreement exists, the terms of the *Canada Business Corporations Act*, RSC 1985, c C-44 (or provincial equivalents) and provincial partnership legislation may apply instead.

An "estate freeze" is another option with respect to the transfer of corporate business interests to family members or the future sale of a business. Estate freezes can assist in transferring future increases in value of a business to family members, who will receive the business interest. While estate freezes can be complex and expensive, they can be utilized to facilitate business succession and avoid the issue of insufficient funds for the next generation to purchase the interest, while spreading tax liability on the disposition of the business over several years.

Inattention to one's business succession plan may result in unintended consequences, such as the failure of the business during a time at

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which no one is authorized to effectively manage it, or the sale of the family business if liquid assets are required.

Transfer of Partial Interest

In terms of valuing interests in companies, the rights associated with different classes of shares and different proportions of shares differ and, accordingly, the value of any given share in a company may not be the same as others in respect of which the shareholder can exert more control. The fair market value of a minority interest in a corporation in Canada, even when considered on a pro-rata basis, is worth less than the same number of shares that are part of a majority interest.

The term "minority discount" is used to refer to the difference between the fair market value of shares and their pro-rata value. The reduced market

value results from the inability of a minority shareholder to unilaterally elect the majority of directors, to direct the payment of dividends, and to make most major decisions affecting the corporation.

Conclusion

The importance of planning for family business succession should not be underestimated. Legal, tax and financial advisors play a key role in ensuring the smooth transition, sale and/or windup of a family business, and should be consulted as part of a global estate plan.



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OJEN NEWS

by Inga B. Andriessen



Fall 2020 OJEN Halton Committee Update

The OJEN Halton Committee had its first meeting on September 29, 2020 to discuss how we can best support Justice education in the Halton community, given the changes to the way school is being carried on this year.

The Honourable Madam Justice Coats has replaced the Honourable Mr. Justice Gibson as the Judge on our Committee and we welcome her and look forward to working with her in the future. We thank the Honourable Mr. Justice Gibson for all of his contributions over the past few years.

Due to the changes to how education is delivered, the way in which lawyers will be supporting education in the classroom will differ this year as well. At this point, all lawyer visits to the classrooms will be virtual. If you are interested in speaking to a law class, please let us know. The current method of delivery of education has law teachers teaching in three-hour blocks and accordingly, a guest speaker is often a welcome break from listening to the teacher.

We are working towards a virtual Mock Trial. When that happens, we will need to have assistants and volunteers and will ask for your help at that time. If you are interested in volunteering, we will need you to be able to work with technology, including the Zoom and Google video platforms. Both of these are easy to

learn and all you need to have is a working webcam and a good internet connection.

While this school year will be different from any other prior to it, our Committee is enthusiastic and looking forward to being able to work with the students in the new environment.

Please reach out to me if you have any interest in helping out this year.

Inga B. Andriessen, Chair – OJEN Halton Committee

iandriessen@andriessen.ca

CLASSIFIED ADS

Looking for a Will

Anyone with information regarding a Will for Tammy Weiss (Cuto), of Oakville, DOB December 30, 1962, who died on September 30, 2020 is asked to contact Laura Oliver, 297 Lakeshore Road East, Suite 1, Oakville L6J 1J3, telephone 905-842-4977 or by email at loliver@lauraoliverllb.com

Looking for a Will

Anyone with knowledge of a will for John Ted Anusiewicz is asked to contact Francis De Sena Law Office, 422 East Street North, Sarnia N7T 6Y4, telephone 519-336-9999 or by email to Catherine@desenalaw.com



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