



HCLA NEWS

Newsletter of the Halton County Law Association

Volume 13 Issue 4

Fall 2022

H C L A Holiday Party



NOV 17 2022 • 5:30 PM

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PRESIDENT'S REPORT

by Melissa Fedsin



"Something told the wild geese, it was time to fly. Summer sun was on their wings, winter in their cry."
- Rachel Field

Nothing like the crisp autumn air to invigorate for the back-to-school and busy work season upon us.

Firstly, a thank you to everyone who offered to fill the existing vacancy with the Board for the balance of the 2022-2023 terms. We are pleased to announce that Jasmine Sweatman will be joining our Board to fill the existing directorship vacancy for the balance of the term.

We are also in the process of working to amend our by-laws to bring them into compliance with recent legislative changes to the *Not-For-Profit Corporations Act*. If anyone has any specific interest and/or knowledge in this area of law and would like to join the responsible committee, please let us know.

In late August, the Association was given the opportunity by the Ministry of the Attorney General to provide feedback on alternate proposals for the renovation/expansion of the existing Milton Courthouse. A committee of past and present Board members came together to express our concerns about the feasibility and adequacy of the proposals, including ongoing concerns regarding courtroom capacity, counsel and public spaces, adequate parking and courthouse operations during the transition. In terms of next steps, we are not in receipt of any further information about the proposed 16 and 30 courtroom model retrofit opportunities for the existing courthouse for which feedback was canvassed. However, we are advised that the already approved Cue-Hub addition is now in the design phase. As further information is received, we will update the membership.

For members who have not yet completed their annu-

al Equality, Diversity and Inclusion (EDI) CPD requirements, worry not - we have you covered! Keep an eye for further details for our upcoming virtual and complimentary for members EDI seminar to be held later on this fall.

Our first annual HCLA Family Day at Bronte Creek Provincial Park was a great success! Looking forward to having even more families and kids out next year as well as the possibility of partnering with other Associations to make this a cross-regional event.

Our mentorship program is also now in full swing. Details to come about future mentorship social events. In the meantime, please spread the word to young lawyers and students in the region!

It was also fantastic to see so many of you out at our last lawyer social. We have more great events lined up for the fall, including our Judge's Night on October 26, 2022 and our annual Holiday Party on November 17, 2022.

Members should also take note of the upcoming 21st Annual Sopinka United Way Legal Luncheon on November 18, 2022 at the Sheraton Hamilton Hotel. Newly appointed Justice Mahmud Jamal of the Supreme Court of Canada will be the keynote speaker at this fabulous fundraiser event that helps provide important support to local charities in the Halton region.

Hope to see you all out this fall!

BENCHER NEWS

by M. Claire Wilkinson



Certified Specialist program will remain intact for now!

Bencher Andrew Spurgeon and I brought a motion to suspend the previous decision of Convocation to end the Certified Specialist program, pending ongoing consultation with the profession. After the May 26, 2022 decision by Convocation to end the program, the Law Society received substantial feedback from the profession opposing the decision to cancel the program. As a result of our motion, consideration of the Certified Specialist program is now being referred back to the Professional Development and Competence Committee, for further debate and discussion. Whether you are in favour of, or in opposition to the program, there is still time to write to the Law Society and make your voice heard. It is not too late!

Mandatory Succession Planning:

The Law Society is looking for feedback from the profession regarding this initiative. In particular, the LSO will be considering criteria, the creation of supports and resources to assist licensees with successful planning, and reporting requirements. The consultation period will be open until November 30, 2022. There will also be a virtual focus group session available on November 15, 22, 24 or 29 from 6 pm to 7:30 pm. You can read more about this issue here, including the forms you can complete to give feedback: <https://lso.ca/about-lso/initiatives/mandatory-succession-planning>.

Nominations for LSO Awards:

Consider nominating someone you know for an LSO award! The nomination period is open until December 16, 2022. For more information see: <https://lso.ca/about-lso/medals,-awards-and-honours/law-society-awards>.

Nominations for Law Society Human Rights award:

The Human Rights Award recognizes outstanding contributions to the advancement of human rights and/or the promotion of the rule of law provincially, nationally, or internationally. The award will be granted for devotion to the advancement of human rights and the rule of law over a long term or for a single outstanding act of service. The deadline for nomination is December 31, 2022. For more information see: <https://lso.ca/about-lso/medals,-awards-and-honours/law-society-awards/human-rights-award>.

LawPro premiums will be increasing \$250 – premium will be \$3,250 in 2023:

LawPro does not seek to make a profit, and attempts to keep premiums as low as possible. However, LawPro has found itself in a position where it has to increase premiums next year for due to rising claims and operational costs, including increasing the hourly rate of the lawyers hired by LawPro to represent licensees.

Bencher election April 2023:

Yes, it's coming up on that time again. Nominations will open mid-October and close on February 24, 2023. New candidates will now be required to complete a 45 minute online *Bencher Candidate Orientation and Education*, which will provide details about the Law Society, the role of Bencher, the type of commitment and responsibilities involved and the relationship with Law Society management. More Information about the Bencher election will be on the Law Society website in October. If you are interested in restoring good governance to the Law Society, please support the Good Governance Coalition in the next

Bencher election, and consider putting your name forward! I am proud to be a member of the 2023 Good Governance Coalition. Please check out our website! <https://www.goodgovernancecoalition.ca/team>

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LIBRARY NEWS

by Karen Cooper and Arielle Vaca



I hope you have been enjoying a lovely fall! The colours have been spectacular!!! It has been a very busy time in the law library, with getting the collection up to date after a lengthy absence and we have now purchased all of the titles from the Core and Essential lists. We invite you to come by the law library and check out the new titles and many new electronic resources!!



I had the pleasure of attending Justice Alan Cooper's swearing-out ceremony at the Burlington Court back in June and will look forward to seeing him, along Justice Gray at the upcoming Judges' Night and extend my warmest wishes to them both on their retirement!!

We have a number of new faces to both the SCJ and OCJ benches and I hope you will join me in welcoming them at the upcoming Judges' Night on October 26th. Please register through the HCLA website!

FOLA has launched another Law Library/Practice Recourse Centre advocacy campaign geared towards Benchers and bencher candidates. The timing of this campaign is to help educate current Benchers as they plan out their upcoming Budget and will also be used as we head into the Bencher

elections. There are two parts to this campaign:

- 1) Letter Writing/emails to Benchers; and
- 2) Bencher visits to local Courthouse Law Libraries.

Letter Writing: To help with their campaign, letters may be sent to Benchers from individual law association members that highlight the importance of their local law library. To better ensure that letters are personal, FOLA will provide talking points to include in these letters rather than send out a template.

Talking Points and Bencher emails can be found on our Courthouse Library Action Centre page. If you do send a letter, please either cc Katie at katie.robinette@fola.ca or send a copy of your letter once it has been sent. Alternatively, FOLA would be happy to send your letter on your behalf.

Bencher Visits: FOLA also encourages you to invite local Benchers to your Law Library. If you don't have an event planned at your law library between now and November 25th (the date of the November Convocation when the Benchers will be voting on their next Budget), simply invite them for a tour. If your Law Association is close to the GTA, we strongly encourage you to extend your invitation to all Toronto area Benchers. If you have any questions about any of the above information, please email Katie at katie.robinette@fola.ca

LIBRARY SERVICES & MANAGEMENT RESPONSIBILITIES POLICY HR POLICY AND GUIDELINES At their September Board meeting, the LiRN Board deferred approval of the revised Library Services & Management Responsibilities Policy HR Policy and Guidelines document to its next meeting (date to be determined, likely in October). This will allow for additional time to associations who would like to comment but were unable to respond within the original timeline. If you have comments or concerns on the revised document, please let FOLA know by emailing Katie at katie.robinette@fola.ca.

... *more* LIBRARY NEWS

by Arielle Vaca



Learn with LiRN 2022

LiRN's 1st Annual Conference (formally known as COLAL) was held in Toronto on October 13 & 14, 2022. It was strongly encouraged for all library staff to attend; therefore, the Conference offered a hybrid experience to accommodate for everyone. Karen Cooper attended virtually by way of Zoom as I attended the conference in-person.

Our E-LiRN suite of vendors: LexisNexis, Westlaw and Vlex started the conference with offering free training sessions for library staff and association members to introduce what's new together with a presentation of researching tips. Gordon Brough from LexisNexis had the opportunity to inform the library staff of the new database Lexis+, a feature-rich premium legal solution that had been officially launched in Canada over the summer and is being used in law schools currently. Although Gordon assured Lexis Advance Quicklaw is similar, LiRN will consider adding Lexis+ to the E-LiRN suite.

Connie Crosby, Library Services Manager from Cassels Brock & Blackwell LLP, and Joan Rataic-Lang from the Toronto Lawyers Association had the pleasure of speaking on the topic of Current Awareness, which provided insight on how to keep lawyers in a library or law firm setting aware of new practice directions, cases, articles, and legislation. The HCLA has recently subscribed to various practice area specific newsletters published by LexisNexis to accomplish current awareness to our members in Corporate, Wills & Estates, Family, and Employment areas of practice.

Keynote speaker Kathy Dempsey, the Accidental

Library Marketer from Jersey, spoke about innovative ways to welcome association members back to the library.

OCLA Members: Jen Walker, County of Carleton Law Association and Megan Strain, Toronto Lawyers Association did a presentation entitled "Social Media & Marketing" on how to build an engaging successful social media presence.

OCLA Members: Janet Marchment, York Region Law Association and Michelle Gerrits, Lambton Law Association demonstrated an Integrated Library Management System called LIBIB for small libraries planning to manage sign-out privileges.

Dawn Behrend, a Licensed Psychological Associate, and a librarian, spoke on "How to Cope or Avoid Vicarious Burnout for Librarians" with tips for both library staff and patrons.

As the Conference came to an end, library staff were offered a tour of the Toronto Lawyers Association with Megan Strain and a tour of the Great Library with Rebecca Radevski.

It was a fantastically thought-out and informative experience!



**HAVE YOU RECENTLY TAKEN
OVER A LAW PRACTICE?**

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for information regarding the
transfer of Wills & POAs.

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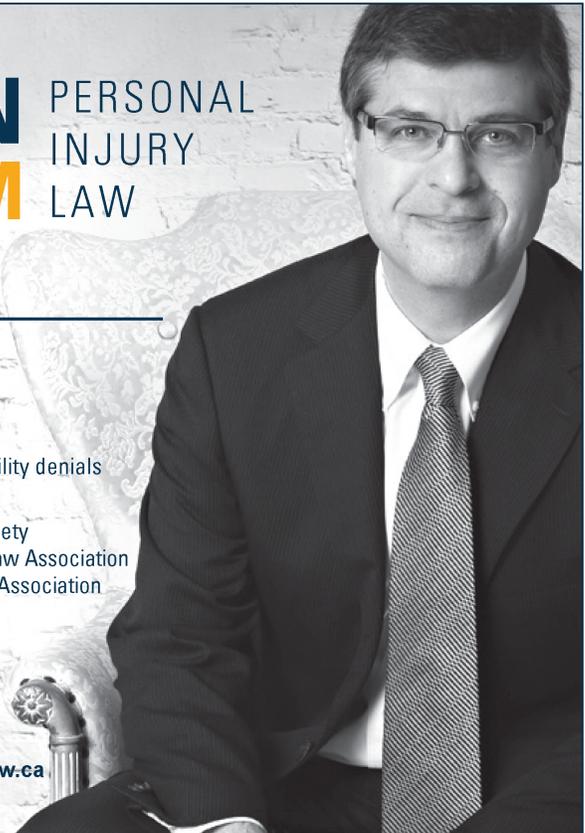
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- ANNA FITZSIMMONS



CIVIL LITIGATION NEWS

by James Page



Court Orders Plaintiff to Pay the Costs of Obtaining Documents to Satisfy Undertakings

In [Endale v. Parker, 2022 ONSC 2008 \(CanLII\)](#) the Plaintiff brought a lawsuit claiming damages arising out of a motor vehicle collision. During the normal course of the lawsuit, the Plaintiff later attended examination for discovery. The Defendant wanted the Plaintiff to produce the clinical notes and records of his treating physician 3 years before the collision to date and to produce an updated file for a walk-in-clinic the Plaintiff had previously attended.

The Plaintiff agreed to produce the records if the Defendant paid for the costs of obtaining the records. The Defendant was only willing to pay for the reasonable costs to have the records photocopied.

Following the discovery, the Defendant brought a motion for undertakings seeking the records at the Plaintiff's expense less reasonable photocopying charges. The issue was who was responsible for paying to obtain the records. Justice Valente was the presiding motion Judge.

The applicable rules were 30.01 and 30.02 of the *Rules of Civil Procedure*. Under [30.02\(1\)](#), every party is required to disclose every relevant document in a party's power, possession, or control. [Rule 30.01\(1\)\(b\)](#) defines when a document is in the "power" of a party. It's in a party's power when the party is entitled to obtain the document or a copy of it and the other party is not so entitled.

Justice Valente found the records were relevant to the action and that the Plaintiff was entitled to a copy of his medical records in question and the Defendant was not so entitled. Those records were therefore in the Plain-

tiff's power. They therefore must be disclosed.

Justice Valente acknowledged that there is Supreme Court of Canada case law which reflects that a physician must act in the best interests of the patient and if a physician reasonably believes that it is not in the patient's best interests to inspect his or her medical records, the physician may consider it necessary to deny access to those records.¹ However, in this case, there was no evidence to suggest that it was not in the Plaintiff's best interests to have the documents in question disclosed or that a physician had made any such determination.

Justice Valente also acknowledged that the case law was unclear on the issue in question. There were decisions which supported both positions advanced during the motion. However, Justice Valente determined that each party must fund its own case and that the obligation to produce a document is not the responsibility of an adverse party. With that said, the Court nevertheless retains discretion in exceptional circumstances to deviate from that general rule – perhaps, for example, if a plaintiff lacks the financial resources to produce the documents requested.

In this case, though, there were no exceptional circumstances to consider. As a result, the Plaintiff was ordered to pay for the costs of obtaining the records. The Defendant was to only pay the reasonable photocopying expenses.

In his decision, Justice Valente referred to a party's obligation to "disclose", "produce" and "deliver" relevant non-privileged records. Unfortunately, the *Rules of Civil Procedure* merely require that a party list those records in his or her Affidavit of Docu-

ments², produce them for inspection at a particular time, place, and location (i.e. the office of the lawyer producing the records or some other convenient location)³, and that the party bring those documents to his or her examination for discovery and to trial.⁴

The extent to which a party must produce relevant non-privileged records was not, from my reading of the case, an issue that arose during the motion.

In any event, the methods of disclosure and production contemplated by the *Rules of Civil Procedure* seem woefully out of date – particularly given how easy it is to distribute and share documents, even large volumes of records, in our modern age⁵, and given how records are typically produced in a lawsuit (above and beyond what the *Rules* require). Respectfully, in this regard at least, the *Rules of Civil Procedure* desperately need modernizing.

-
1. [McInerney v. MacDonald, 1992 CanLII 57 \(SCC\)](#).
 2. [Rules 30.03\(1\)-\(2\) of the Rules of Civil Procedure](#).
 3. [Rules 30.04\(1\)-\(3\) of the Rules of Civil Procedure](#).
 4. [Rule 30.04\(4\) of the Rules of Civil Procedure](#).
 5. It was even easy to distribute and share documents before the ubiquitous nature

ESTATES NEWS

by Suzana Popovic-Montag



Will Drafting With Pour Over Clauses

Pour over clauses have been the subject of much attention in Ontario since Justice Kimmel declared a pour over clause in a will invalid earlier this year.¹ By way of context, pour over clauses provide for the transfer (aka “pouring”) of property from one instrument to another. In the context of wills and estates, a garden-variety pour over clause will pour a probate asset from an estate via a will into an *inter vivos* trust.² However, pour over clauses can also be used in other instruments, and may be used to transfer estate assets into a variety of trusts – not just *inter vivos* trusts.³

These clauses can even be used to pour assets into estates.

While practitioners may be hesitant to use pour over clauses in light of Justice Kimmel’s decision,⁴ not all pour over clauses are destined to fail. This article explores factors affecting the validity of pour over clauses, and steps that might be available when drafting a will in an effort to prevent a pour over clause from being declared invalid.

Pour over clauses and multiple wills

The validity of a pour over clause should not be an is-

Megan Mutcherson

Family Law Lawyer

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sue if the clause is used to pour a bequest into an estate – it is common practice to use these clauses when an estate is distributed using multiple wills.⁵ Pour over clauses can be used to specify whether debts are to be paid using assets distributed through the primary will or the secondary will. In fact, if a pour over clause is not included in either will, an application for directions may be necessary.

Alternatively, a pour over clause may direct that legacies provided for under one will can be paid out of assets distributed under the other will, in the event there is a shortfall.⁶

Pour over clauses and trusts

Practitioners may be more likely to run into trouble if a pour over clause is used to leave a bequest to a trust, as was the case in *Vilenski v. Weinrib-Wolfman*.⁷ The validity of such a pour over clause will depend on the nature of the recipient trust. Under the common law, if the bequest is left to an amendable, revocable *inter vivos* trust, case law from British Columbia⁸ and Ontario⁹ indicates that the clause will be invalid.¹⁰ However, if the bequest is left to either a testamentary trust or an irrevocable, unamendable *inter vivos* trust,

the clause will likely be valid.¹¹

A gift cannot be left to an amendable trust because such a disposition would give the testator the ability to essentially alter the terms of their will in the future without complying with the applicable wills legislation.¹² The law is clear that a will cannot be used to create a power to dispose of property using an instrument that is not duly executed as a will or codicil.¹³

The Ontario court's new will-validation authority cannot likely be used to save a pour over clause.¹⁴ As noted by the British Columbia courts, the power to admit non-compliant testamentary instruments to probate is only intended to "enable the courts to step in where a person has taken real steps to make a will ... [and] does not exist to enable the court to bless structures that circumvent the formalities altogether, which is what a pour over clause to an amendable trust does."¹⁵

A pour over clause leaving a bequest to an amendable, revocable *inter vivos* trust will be invalid, regardless of whether or not the trust was in fact amended after the testator's will was executed.¹⁶

Does your client have a municipal law issue?



M. Virginia MacLean, Q.C., L.S.M.

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The fact that the testator had the ability to amend or revoke the trust is what makes the clause invalid, not whether the power was actually exercised. The British Columbia Court of Appeal has also held that a bequest made to an amendable trust will be invalid due to uncertainty, as “one cannot know with certainty the actual disposition purported to be made by [the testator] – it is governed by terms that are not found in the will itself.”¹⁷

The courts have also confirmed that a bequest left to an amendable, revocable trust cannot be saved using either the doctrine of incorporation by reference, or the doctrine of facts of independent significance.¹⁸ Argument that a pour over clause is valid on the basis that the recipient trust is a “composite testamentary document” has also failed in the past.¹⁹

Legislative reform recommended

Unlike in Canada, it is common practice in the United States to leave estate assets to amendable, revocable *inter vivos* trusts – many states have passed legislation permitting testamentary additions to trusts.²⁰ While the Uniform Law Conference of Canada has recommended

the introduction of similar legislation in Canada in light of “the prevalence of Canada/US cross border [estate] planning [by] US citizens owning property in Canada, and dual US/Canadian citizens living in Canada or the United States,”²¹ to date the Yukon is the only Canadian jurisdiction to enact legislation permitting testators to leave bequests to *inter vivos* trusts.²²

In addition to cross border estate planning considerations, there may be other benefits to permitting the use of pour over clauses in Canada. Like a secret trust, pour over clauses preserve a testator’s privacy, as the instrument referenced in the clause is not admitted to probate and does not become a public record.²³ Another potential advantage to leaving a bequest to an *inter vivos* trust is that the bequest can be received by the beneficiary’s estate, even if the beneficiary of the trust predeceases the testator.²⁴ In comparison, if a bequest were left to a beneficiary personally, it could fail altogether if the beneficiary predeceased the testator and no alternate beneficiary is named.²⁵ The result of such a failed gift may be inconsistent with the wishes of the testa-

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tor.

Drafting a will to include a pour over clause

In closing, pour over clauses can still be a useful tool when drafting a will. Such clauses can be used when a client's estate plan involves multiple wills, and can even be used – with caution – to transfer estate assets to a trust. In the latter scenario, however, three rules must be followed for transfers to *inter vivos* trusts: 1) the recipient trust must already exist when the will is executed; 2) the trust must be irrevocable; and 3) the trust must be unamendable when the will is executed. If any of these criteria are not met, the pour over clause will likely be invalid, at least in Ontario. However, even if all of these criteria are satisfied, it would still be prudent to warn the client that there is limited case law in Canada confirming that pour over clauses can be used to transfer estate assets to an *inter vivos* trust.²⁶ In comparison, the validity of a pour over clause should not be an issue if the clause is used to leave a bequest to a testamentary trust. In any event, pending legislative reform in Ontario, estate planning lawyers should exercise caution whenever assisting in the preparation of estate plans contemplating the use of pour over clauses.

in *MacCallum Estate*, 2022 NSSC 34 (CanLII) [*MacCallum*].

11. See *Re Playfair*, [1951] Ch. 4; also see Polasky, *supra* note 2 at 432.
12. *Vilenski*, *supra* note 1 at paras. 14, 22; *Quinn* (CA), *supra* note 8 at para. 16.
13. *Waslenchuk*, *supra* note 8 at paras. 63, 82, *Quinn* (CA), *ibid* at paras. 24.
14. *Succession Law Reform Act*, R.S.O. 1990, c. S.26, s. 21.1 [SLRA].
15. *Quinn* (SC), *supra* note 8 at paras 55, 65; *Quinn* (CA) *supra* note 8 at paras. 33-37. Also see *Waslenchuk*, *supra* note 8 at para. 115.
16. See *Waslenchuk*, *ibid.* at para. 83.
17. *Quinn* (CA) *supra* note 8 at para. 17.
18. *Ibid.*; *Waslenchuk*, *supra* note 9.
19. *Waslenchuk*, *ibid.*, paras. 86-99.
20. Polasky, *supra* note 2 at 414. Also see Timothy Matthews QC et. al., "A Revised Uniform Testamentary Additions to Trusts Act", Uniform Law Conference of Canada (Aug 2019) at para. 2, online: ULCC <https://www.ulcc-uhc.ca/ULCC/media/EN-Annual-Meetings/Revised-Uniform-Testamentary-Additions-To-Trust-Acts_1.pdf>.
21. Matthews, *ibid* at paras. 13, 14.
22. *Wills Act*, R.S.Y. 2002, c. 230, ss. 27-29.
23. Polasky, *supra* note 2 at 413.
24. See Albert H. Oosterhoff et. al., *Oosterhoff on Wills*, 9th ed. (Toronto: Thomson Reuters, 2021), Chapter 4 at 4.5.
25. The gift would likely be distributed under either section 23 or section 31 of the *SLRA*, *supra* note 14.
26. See *MacCallum*, *supra* note 10.

1. *Vilenski v. Weinrib-Wolfman*, 2022 ONSC 2116 (CanLII) [*Vilenski*].

2. See Alan N. Polasky, "Pour-Over Wills: Use with Inter Vivos Transfers", 17:3 (1963) Sw L.J. 410 at 410, online: <<https://scholar.smu.edu/smulr/vol17/iss3/5>> [Polasky].

3. *Ibid.* at 410-411.

4. *Supra* note 1.

5. See Lindsay Ann Histrop, *Estate Planning Precedents: A Solicitor's Manual* (Scarborough: Carswell, 1989) (loose-leaf updated 2022, release 5), Appendix B at § B:7. Multiple Wills: Their Use and Drafting Issues, online: WL Can.

6. *Ibid.*; also see *Kaptyn Estate, Re*, 2010 ONSC 4293 (CanLII) at para 99.

7. *Supra* note 1.

8. See, for example, *Quinn Estate v. Rydland*, 2019 BCCA 91, affirming 2018 BCSC 365 (CanLII) [*Quinn*]; *Kellogg Estate v Kellog*, 2015 BCCA 203 (CanLII); *Waslenchuk Estate*, 2020 BCSC 1929 (CanLII) [*Waslenchuk*].

9. *Vilenski*, *supra* note 1; *Re Currie*, 1978 CanLII 1343 (Ont. SCJ).

10. Other provinces may not follow these authorities. In Nova Scotia, for example, a pour over clause which left a bequest to an amendable, revocable trust was valid

THE DEFINITIVE RESOURCES FOR ESTATE LITIGATION IN CANADA

Information on wills and estates? We wrote the book(s)

- *Macdonell, Sheard and Hull on Probate Practice, Fifth Edition:* Ian M. Hull, Suzana Popovic-Montag
- *Challenging the Validity of Wills, Second Edition:* Ian M. Hull, Suzana Popovic-Montag
- *Feeney's Canadian Law of Wills, Fourth Edition:* Ian M. Hull, James MacKenzie, Suzana Popovic-Montag
- *Advising Families on Succession Planning: The High Price of Not Talking:* Ian M. Hull
- *Power of Attorney Litigation:* Ian M. Hull



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THE HCLA IS PROUD TO ANNOUNCE OUR MEMBERS ONLY MENTORSHIP PROGRAM. THE BENEFITS AND GOALS OF THE PROGRAM ARE AS FOLLOWS:

- CONTINUE TO CREATE A STRONG, INFORMED AND COLLEGIAL HALTON LEGAL COMMUNITY
- ENCOURAGE HALTON LAWYERS TO CONTACT FELLOW MEMBERS IN THEIR SPECIFIC PRACTICE AREA FOR INFORMATION, ADVICE AND GUIDANCE
- CONNECT WITH SKILLED AND EXPERIENCED LAWYERS IN OUR COMMUNITY
- BUILD A NETWORK OF CONTACTS TO STRENGTHEN PERSONAL AND BUSINESS RELATIONSHIPS
- MENTORS CAN CLAIM UP TO 9 SUBSTANTIVE HOURS FOR CPD CREDITS

THE BASIC DETAILS OF THE PROGRAM ARE AS FOLLOWS:

- MENTORS WILL HAVE THEIR NAMES, CONTACT INFORMATION AND AREA OF PRACTICE ON THE HCLA WEBSITE THAT CAN BE ACCESSED BY FELLOW MEMBERS ONLY
- MEMBERS MAY ALSO BE PLACED ON OR TAKEN OFF THE MENTOR LIST AT ANY TIME BY EDITING THEIR PROFILE ON THE HCLA WEBSITE
- MEMBERS MAY CONTACT MENTORS BY MAKING A PHONE CALL OR SENDING AN EMAIL TO THE MENTOR
- DISCUSSIONS CAN BE BY PHONE OR EMAIL OR OTHERWISE (E.G. OVER LUNCH)
- DISCUSSIONS CAN BE AS BRIEF OR LENGTHY AS NEEDED OR AS SCHEDULING PERMITS
- MENTORS CAN BE AS INVOLVED AS THEY CHOOSE TO BE

IF YOU ARE INTERESTED IN LEARNING MORE ABOUT THE PROGRAM PLEASE EMAIL JILL EDWARDS AT JILL@EDWARDS POLLARD.CA OR JAMES PAGE AT JAMES.PAGE@MHALAW.CA.

GO TO THE HCLA HOME PAGE. LOG IN. CLICK ON "MEMBERS" – "MY PROFILE" – "EDIT PROFILE" AND THEN SELECT "YES" TO BEING ADDED TO THE MENTOR LIST.

FAMILY LAW NEWS

by Kathy Batycky



Welcome to Justice Kim to the Ontario Court, Family bench

We have a new judge sitting in OCJ, Family! We welcome Justice Caroline Kim. Her swearing in ceremony is scheduled for Thursday, October 20 2022.

Justice Kim was called to the Ontario bar in 2008. She began her career representing clients in family law matters before the -Ontario Court of Justice in Kitchener and Cambridge. She then worked as a staff lawyer at the Barbra Schlifer Commemorative Clinic, providing legal advice and representation to survivors of intimate partner violence. She was a partner at Miller Thomson LLP in Waterloo, working in family law, and recently opened a sole practice. In addition, until her appointment she was on the Personal Rights Legal Panel for the Office of the Children's Lawyer, advocating for the rights of children, was a dispute resolution officer at the Unified Family Court in Kitchener, an instructor on the topics of mental health and international human rights law at the Centre for Mental Health Law and Policy in Pune, India and an executive board member of the Sexual Assault Support Centre of Waterloo Region.

The HCLA welcomes Justice Kim to our Milton court.

News From Legal Aid

All family law counsel out there: If anyone is interested in being a per diem duty counsel or being on the LAO panel, contact Samantha Keser asap at kesers@lao.on.ca.

And... for those on the panel already that require assistance note that Samantha can be readily contacted by email and, in addition, she has an open door at the courthouse Wednesdays for in person assistance.

Finally, remember that FLIC office is now on the 3rd floor of the courthouse in the OCJ wing and is open on Tuesdays via appointment for qualified parties.

All other appointments will remain virtual.

Clients can call the Legal Aid service line at 1-800-668-8285, or the main Duty Counsel line at 905-693-6539.

In other news....

Don't forget that our court does continue to have available On-Site **Mediation** in the Milton courthouse is on a hybrid working schedule. In person, a mediator is available Monday, Wednesday, Thursday, and available remotely Tuesdays.

Halton Children's Aid Society welcomes Emily Gaetz to their legal team.

Parties in a court file need to attend their MIP. Lawyers, please make sure you encourage the parties to attend their Mandatory Information presentation.



Adam Rumball
Consultant



IMMIGRATION LAW NEWS

by Melissa Babel



Canada drops COVID-19 era travel restrictions

The Government of Canada has announced the removal of all COVID-19 entry restrictions, as well as testing, quarantine and isolation requirements for anyone entering Canada, effective October 1, 2022. Specifically, starting on the first of October, all travelers, regardless of citizenship will no longer have to:

- submit public health information through the ArriveCAN app or website
- provide proof of vaccination
- undergo pre- or on-arrival testing
- carry out COVID-19 related quarantine or isolation monitor and report if they develop signs or symptoms of COVID-19 upon arriving to Canada

Additionally, masks are no longer required to be worn on planes and trains in Canada. Individuals are reminded that they should not travel if they have symptoms of COVID-19.

To Read more: <https://www.canada.ca/en/public-health/news/2022/09/government-of-canada-to-remove-covid-19-border-and-travel-measures-effective-october-1.html>

Ready, or not...We're going online!

The Minister of Immigration, Refugees and Citizenship Canada has announced a plan to make online filing for certain permanent immigration programs mandatory. The roll out of mandatory online filing started on September 23, 2022 with an initial group of applications type including:

- Provincial Nominee program (non-Express Entry)
- Quebec-selected skilled workers
- Rural and northern Immigration Pilot
- Sponsoring a spouse, partner, dependent child or other family
- Sponsoring a parent or grandparent

Adopting a child through the immigration process. There are many benefits to filing applications online both from the applicant and IRCC perspective. However, the lack of clarity on filing processes and where to seek out technical support in case of a technical issue have created some concern for applicants and counsel. We are hopeful that the technical issues will be resolved, as online processing has many benefits including a paperless filing process, and the ability to move files to various processing centers across the IRCC network, which in turn can help to address our ever-increasing backlog of applications pending approval.

To Read more: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/how-to-apply-online.html>

Post-Graduate Work Permit Extensions - Finally we have a Policy!

In April 2022, the Minister of Immigration, Refugees and Citizenship announced that Canada was going to extend post-graduation work permits for recent international graduates and for those whose permits already have or will expire this year, and that the extension would provide for an additional open work permit for 18 months. At that time, the Minister indicated that details were going to be made available 'in the weeks ahead.' While it is much delayed, we now have a temporary public policy in place to address the impact on International Students and Post-Graduate Work Permit ("PGWP") holders from the COVID-19 pandemic and resulting lack of Invitations To Apply ("ITA") for permanent residence under the Express Entry system.

Key among the temporary public policy items is the ability for PGWP policy announcements is eligibility to apply for a new open work permit that would be valid for up to 18 months. This public policy will be in effect until December 31,

2022.

There are a number of requirements for eligibility and restrictions that applicants need to be aware of, however this measure is seen as very positive for foreign students and PGWP holders whose work permits are expiring or have already expired and whose ability to transition to permanent residents has been hampered by the lack of invitations under Express Entry.

To read more: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/coronavirus/temporary-residence/study-permit/pgwpp.html#sec6.2>

US Immigration Update**Diversity Visa 2024 Registration opens October 5, 2022**

The U.S. Department of State (DOS) will open registration for the Diversity Visa (DV) 2024 lottery on Wednesday, October 5, 2022. Up to 55,000 diversity immigrant visas will be available to nationals of countries with historically low immigration to the U.S. To be considered for the lottery, applicants must register online by submitting the DV form that will be available on the DOS website for this program here: <https://dvprogram.state.gov>. There is no cost to register for the DV program.

Applicants are selected through a randomized computer drawing and will be given a confirmation number to check if they have been selected, starting on May 6, 2023.

To read more: <https://travel.state.gov/content/dam/visas/Diversity-Visa/DV-Instructions-Translations/DV-2024-Instructions-Translations/DV-2024-Instructions.pdf>

USCIS Extends Green Card Validity Extension to 24 Months for Green Card Renewals

USCIS announced on September 28, 2022 it will automatically extend the validity of Permanent Resident Cards (also known as Green Cards) to 24 months for lawful permanent residents who file Form I-90, Application to Replace Permanent Resident Card. Prior to this announcement, extensions were granted for 12 months.

To read more: <https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-extension-to-24-months-for-green-card-renewals>

Express Entry Update September 2022 - Return to Normal?

In July 2022, the Minister of Immigration, Refugees and Citizenship resumed draws from the Express Entry pool of candidates. Since then we have seen semi-regular draws from the pool for all categories - including Federal Skilled Workers, Canadian Expe-

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rience Class, Provincial Nominees and Federal Skilled Trades. However, with the CRS Points remaining high, it is unlikely that many applicants in the Federal Skilled Worker and Federal Skilled Trades groups have been invited unless they are also in Canada with job offers from Canadian employers.

On **September 28, 2022**, **3750** invitations to apply were issued to candidates in the Express Entry pool with the minimum **CRS** score of **504** or higher in all categories (no program specified). On **September 14, 2022**, **3250** invitations to apply were issued to candidates in the Express Entry pool with the minimum **CRS** score of **510** or higher in all categories (no program specified).

The numbers of invitations that are being issued in each draw is steadily climbing, with a correlated drop in the number of CRS points required to qualify. The points are still high, but we are getting closer to a range where many qualified candidates with Canadian experience could expect to be invited.

Candidates who are waiting for invitations to apply, or relying on a future Open Bridging Work Permit (filed after a PR application is submitted) are encouraged to maintain their temporary status while waiting to be invited to apply.

To read more: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/ministerial-instructions/express-entry-rounds.html>

OJEN NEWS

by Inga B. Andriessen



Back to school time has been fantastic this year for the OJEN-Halton Committee as school is back to its pre-Covid schedule and we're even back to in person Court visits by the schools.

Our Committee has expanded this year to include more lawyers, and I'm thrilled to welcome Rachael Pulis, Qaisarah Mulk and Brittany Maione to our Committee. These three lawyers join Jill Edwards, Laura Oliver & I on the Committee.

We've also added additional teachers to the Committee – all of which is necessary as we're planning to hold at least four in person Mock Trial Competitions in the Spring.

Soon you'll be seeing the emails asking for help to Coach Mock Trial teams and serve as Judges. If you've never done it before but are interested feel free to reach out to any Committee member and we'll give you the info you need so you can volunteer with confidence.

If you Coached a team last year and would like to do so again, please reach out to your teacher and confirm they are fielding a team again this year. This will help take the stress of asking you out of the teacher's hands – believe it or not, many teachers think we're too busy to help them, which may be true, but somehow we seem to make the time anyway.

Looking forward to another great school year!

Inga B. Andriessen, Chair, OJEN-Halton Committee

WHITTEN & FAMULA MEDIATIONS



Honourable Alan C. R. Whitten, BA, LLB, LLM
Retired Superior Court Justice of Ontario,
Deputy Judge to Yukon and Nunavut Courts.
Jurist for over 22 years.

Paul F. Famula, BA, LLB, LLM
Insurance law counsel for over
26 years and administrative tribunal member
experience.

Areas of expertise: Family Law including custody, support & division of property, Estates, Personal Injury Claims, Contractual & Business Disputes, Negligence Claims, Wrongful Arrest & Imprisonment, Wrongful Dismissal.

Areas of expertise: Personal injury including automobile and slip and falls, Insurance Disputes, CGL claims, Subrogation Claims, Coverage Disputes, E&O Claims, Property Claims

☎ 905-536-7747
✉ alan.c.whitten@icloud.com

☎ 905-616-0216
✉ paulfamula@gmail.com

Please contact the above for rates and scheduling of virtual and in-person* hearings.
*COVID protocols permitting.

whittenfamulamediations.com



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 [Halton County Law Association](https://www.linkedin.com/company/halton-county-law-association)
<https://www.linkedin.com/company/halton-county-law-association>

CLASSIFIED ADS

Estate of Amanda Vernon

We are assisting the common-law spouse of the deceased to try to locate an original Last Will for Amanda Vernon, born January 27, 1976 who resided in Burlington with her common-law spouse, Dr. Suneel Updahye until her passing on September 25, 2022. Please contact Jody Boom at 925-681-2476, ext 244 or email jboom@bhhlaw.net.

Searching for a Will for Mary (a.k.a. Mirjana) Kolacevic

I am searching for a Will for Mary (a.k.a. Mirjana) Kolacevic, and any notice(s) to the profession advising of my search and requesting copies/information would be appreciated.

D.O.B.: November 2, 1963

Date of Death: September 17, 2022 (estimated)

City of Residence: Mississauga, ON

Please contact Matthew Soble at 905-844-7585, ext 201.

Looking for the Will of Bernard P. Cooke

We are looking for a Will for the estate of Bernard Percy Cooke. Date of birth April 26, 1934, date of death April 3, 2021. He was a resident of Martin Dale Gardens for a few years and a resident of Milton, Ontario for many years.

Please contact Hala Tabi at htabl@ontario-probate.ca or by phone at 1-866-297-1179, ext. 229.



HCLA NEWS

Newsletter of the Halton County Law Association

Advertising Rates

Size	Dimensions	Per Issue Rate	Annual Rate
Business card:	2”h x 3.5”w	\$90.00	\$310.00—save \$50.00
Half page:	4.5”h x 7”w	\$150.00	\$500.00—save \$100.00
Full page:	9”h x 7”w	\$300.00	\$1,000.00—save \$200.00

Classified ads: \$5.00 per line

- The HCLA E-Newsletter is published four times per year and is distributed electronically to members of the Halton County Law Association by email.
- Estimated circulation: 300
- Advertising rates do not include the cost of preparing artwork.
- Artwork costs are the responsibility of the advertiser. Artwork is accepted in PNG or JPEG formats.
- Artwork may be in colour or black and white.
- HST Extra
- Annual rate applied when the same ad runs for four consecutive issues and is invoiced in full at time of initial placement of the advertisement.

Contact: Karen Cooper
telephone: 905-878-1272 • email: info@haltoncountylaw.ca
Halton County Law Association
491 Steeles Avenue East
Milton, ON L9Y 1Y7

CALENDAR OF EVENTS

Wednesday, October 26
Judges' Night and Reception
HCLA Lawyers' Lounge & Library
5:00-7:00 pm
Register [here!](#)

Thursday, October 27
4:30-6:30 pm
The Last Day of Trial in a Child Protection Trial
Register [here!](#)

October 24 to 28
ACCESS TO JUSTICE WEEK
The seventh annual Access to Justice Week features a diverse series of virtual programming on the theme Access to Justice Counts: Using data to address the legal needs of Canadians.

Friday, November 11
Remembrance Day
Court House closed

Thursday, November 17
Holiday Party
Paletta Mansion
5:30 pm
Register [here!](#)

Friday, November 18
The United Way Halton Hamilton
21st Annual Sopinka Luncheon
Guest speaker: The Honourable Justice Mahmud Jamal, SCC

Thursday, January 26
Family & Child Protection Law: The Year in Review
On Zoom
Speakers: Justice Coats, Justice Kurz, Adam Pever and Logan Rathbone

Watch for further details!!