



HCLA NEWS

Newsletter of the Halton County Law Association

Volume 15 Issue 1

Winter 2024



YOU ARE INVITED TO
THE HALTON COUNTY LAW ASSOCIATION
**ANNUAL GENERAL MEETING
& JUDGES' NIGHT**

**THURSDAY
MARCH 7TH, 2024**

AGM: 5:00 PM
Cocktails: 6:00 PM
Dinner: 7:00 PM

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PRESIDENT'S REPORT

by Kathy Batycky



While 2024 may have started without cold days that we usually expect for January and February, the Halton County Law Association has been busy planning events and CPDs for our members that will hopefully keep you warm, entertained and educated and help get through the dreary days of winter.

The Halton County Law Association is very much looking forward to our Annual General Meeting & Judges' Night. It will be held on Thursday, March 7, 2024 at the Burlington Golf and County Club. The annual meeting is especially important this year as we present the amendments to our ByLaws that are needed in order to be in compliance with the new requirements of the Ontario Not For Profit Incorporations Act. We will be sending a summary of the changes to help our members better understand the changes that are being made. The Annual General Meeting begins at 5:00 pm. Then, at 6:00 pm an illusionist will entertain our guests during the cocktail reception. The dinner will start at 7:00 pm and the award ceremony will follow.

The HCLA is proud to announce The Honourable Madam Justice Kendra D. Coats as this year's recipient of the Justice Victoria Starr Award for Excellence in Advocacy for Families and Children. We also celebrate the 20th anniversary of Justice Coats' appointment to the Bench of the Superior Court of Justice. Lawyer practicing in Halton have been fortunate to have Justice Coats be a mainstay of the Milton Superior Court bench for the 20 years and continuing. We hope you will all attend our Annual Dinner to congratulate and celebrate Justice Coats' award and 20th anniversary of sitting on the Milton bench.

Our membership committee has been busy arranging different benefits for our members. One such benefit

that has recently been announced is 50 free photocopies each year that a member continues or joins the Association. We also have arranged with the Law Society of Ontario to provide a group rate discount for our members to attend the annual LSO Family Law Summit. We encourage any member who plans to attend the LSO summit this year to take advantage of this group rate by letting Arielle know you wish to join the group. Sufficient numbers will help us arrange for up to 50% off the actual cost of the summit. Visit the HCLA website to register, or contact Arielle for more details.

Looking forward to the spring, the HCLA Annual Estates Seminar held at the Oakville Golf Club is booked for Friday May 10th. This annual seminar never disappoints. We are fortunate that Ian Hull and Suzana Popovic-Montag are so very generous with their time to arrange and run this annual seminar, with an excellent line-up of speakers and topics. Visit the HCLA website to register and to see a full list of the speakers and topics this year. We encourage all lawyers who want to learn about estate law practice to attend this seminar in the beautiful surroundings of the golf club.

We also want to remind family law lawyers that, if in court, you can move the case closer to resolution by booking a DRO Conference rather than wait months for a case conference. There are DROs available each Friday to assist and if you book a DRO conference on an Application that conference will take the place of the usual Case Conference and can move to the Settlement conference much quicker and efficiently. We encourage all family law lawyers to learn more about the benefit of having a DRO assist with issues in a case.

If you are in the Milton courthouse, please make sure you stop by the library to see the new office space

built for Arielle, and the new spacious set up of the library. Don't forget that we do have coffee pods or tea available free to HCLA members so if you need a morning or mid-day caffeine, stop by and say hello to Arielle.

Drawing on The Honourable R. John Harper's over 50 years of combined experience as a family law specialist and superior court judge he has launched his latest venture Harper's Family Law Chambers.

Harper's Family Law Chambers offers specialized assistance in the following areas:

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LIBRARY NEWS

by Arielle Vaca



Happy New Year! I hope you and your loved ones enjoyed the holidays and feel refreshed for 2024.

2023 proved to be a very challenge year, with the closure of the library, lounge, and robing rooms from September to October due to asbestos and mould found in the area.

We were very fortunate to be able work with the Milton Court House and property management services so as to quickly resolve the issues. The HCLA then decided to take advantage of the library closure due to the remediation project to get started on a long-discussed renovation for the library.

The librarian's office is now moved closer to the windows and the computer desks have been upgraded and moved closer to the stacks, which spares enough space for two additional upgrades to the library in the future!

The next project on the list is to install a drop-down projector and automated drop-down projector screen in order to be able to more effectively host in-house CPDs. This feature is in the works and hoped to be completed before February.

Below are a few pics of the renovation, but on your next visit to the Milton Court House, be sure to stop by the law library to check out the new look and say hello!

I will give a small treat to each new guest!

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Law Summit 2023, LSO. 26th Estates and Trusts Summit (Day One) 2023, LSO. 26th Estates and Trusts Summit (Day Two) 2023, LSO. The Eight-Minute Commercial Leasing Lawyer 2023, LSO. The Eight-Minute Employment Lawyer 2023, LSO. The Eight-Minute Labour Lawyer 2023, LSO. Family Law Refresher 2023, LSO. Intensive Child Protection Training Primer 2023, LSO. Practice Gems: Administration of Estates 2023, LSO. Practice Gems: Probate Essentials 2023, LSO. Safeguarding Real Estate Transactions 2023, LSO. Six-Minute Administrative Law and Practice 2023, LSO. The Six-Minute Criminal Lawyer 2023, LSO. The Six-Minute Estates Lawyer 2023, LSO. The Six-Minute Municipal Lawyer 2023, LSO. The Six-Minute Real Estate Lawyer 2023, LSO. Wills and Estates Refresher 2023, LSO.



Westlaw Training for eLiRN Resources for Lawyers

LiRN is pleased to offer training on our most popular Westlaw databases that are available to you free of charge at the Milton Court House law library. Please click [here](#) to view the eLiRN training schedule from January to March 2024. These programs contain 0.5 hour(s) of Professionalism content - The Thomson Reuters Customer Learning Team has been approved as an Accredited Provider of Professionalism Content by The Law Society of Ontario.

New LSO CPDs Available!

6th Motor Vehicle Litigation Summit 2023, LSO. 17th Family Law Summit 2023, LSO. 20th Real Estate Law Summit 2023, LSO. 24th Employment

HCLA Pajama Drive!

From November through December 2023, the Halton County Law Association was proud to support The Women's Centre of Halton for the holiday season with a pajama drive! We collected pajamas of all sizes for adults and children of all ages in the law library from Wednesday, November 15 to Friday, December 8. We would like to give a HUGE thank you to our HCLA members for giving adults and children new pajamas to cozy up in for the holidays. We could not have given a successful donation without you!



THE HAMILTON LAWYERS' SHOW 2024



THE STING

by David Rogers

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CIVIL LITIGATION NEWS

by James Page



COURT OF APPEAL UPHOLDS \$1.5 MILLION DOLLAR PUNITIVE DAMAGES AWARD AND FULL INDEMNITY COSTS AGAINST INSURER FOR BAD FAITH DENIAL OF LTD CLAIM

In [*Baker v. Blue Cross Life Insurance Company of Canada*](#), the Ontario Court of Appeal upheld a \$1.5 million-dollar punitive damages jury verdict and a \$1,083,953.50 full indemnity costs award against Blue Cross for its bad faith denial of the plaintiff's long-term disability ("LTD") claim.

The Facts & Trial Decision

The plaintiff Sara Baker suffered a stroke. She had long term disability benefits with Blue Cross and applied for coverage.

Blue Cross was required to pay Ms. Baker LTD benefits if she met the definition of "**total disability**".

For the first two years, the definition of total disability was the continuous inability of the covered employee to perform the regular duties of her **own occupation** because of an illness or injury. At the two-year mark, the definition of total disability changed. It became a continuous incapacity, resulting from illness or injury, which wholly prevents the covered employee from performing the regular duties of **any occupation** for which she is, or may become, reasonably qualified.

Blue Cross paid Ms. Baker for the first two years under the **own occupation** test. It stopped paying her benefits at the two-year mark claiming that she did not meet the **any occupation** test.

Ms. Baker sued Blue Cross for wrongful termination of her LTD benefits. The matter was tried before a jury. The jury found her to be totally disabled and awarded her (a) retroactive LTD payments in the amount of \$220,604, (b) \$40,000 in aggravated damages for mental distress, and (c) \$1.5 million dollars in punitive damages.

Following the jury verdict, the trial Judge ordered Blue Cross to pay \$1,083,953.50 in full indemnity costs. The basis for the award was as follows: it would be grossly unfair for any plaintiff to have their LTD benefits eroded by unrecoverable legal expenses where those benefits were wrongfully denied to them. In awarding full indemnity costs, the trial Judge relied upon the jurisprudence in "duty to defend" cases.

Blue Cross appealed the punitive damages and costs award.

Punitive Damages

Blue Cross argued that while it erred by denying Ms. Baker LTD benefits, it nevertheless acted in good faith – so punitive damages are not warranted.

It also argued the punitive damages award was too high.

The ONCA held that punitive damages awards are meant to denounce and punish wrongful conduct and deter future misconduct. An appellate court can interfere with a jury's punitive damage award where (a) there is no evidentiary basis to rationally lead to a punitive damages award or (b) if the quantum is not rationally connected to the evidence or the purpose of punitive damage awards.

In this case, there was ample evidence to ground an award of punitive damages. For example, Blue Cross selectively relied upon evidence to ground its failure to pay LTD benefits and ignored relevant information that supported Ms. Baker's entitlement to those benefits. It also knowingly relied upon an ill-informed medical opinion and misinterpreted two other expert reports to support its denial. It continued to mischaracterize those reports even after plaintiff's counsel advised Blue Cross of the errors. In short, every time Blue Cross erred in the handling of Ms. Baker's file, it was to Ms. Baker's detriment and to Blue Cross's benefit. It was open to a jury to find that was deliberate.

Then during the trial, Blue Cross opted to call as a witness only one of its several adjusters who were assigned to Ms. Baker's file. This one adjuster's involvement was limited to reviewing the final decision to deny Ms. Baker her LTD benefits and was unable to explain many of the actions of the adjusters before her. It was open to a jury to find that this decision was a deliberate litigation strategy to shield Blue Cross employees from appearing at trial to explain themselves.

As for the quantum, the ONCA took judicial notice of the fact that Blue Cross was a large insurance company. The Court stated:

"While a punitive damage award of \$1.5 million might be devastating to a personal defendant or small business, it is little more than a rounding error to Blue Cross.

Indeed, it is difficult to envision how an award of anything less than \$1.5 million would even garner the attention of senior executives, let alone deter future misconduct."

Full Indemnity Costs

On the issue of costs, Blue Cross argued that the trial judge erred in creating a new special category of cases where full indemnity costs automatically follow.

The ONCA agreed that full indemnity costs should not automatically follow where LTD benefits have been wrongly denied.

However, the ONCA nevertheless upheld the full costs award on a different basis. It upheld the award because (a) Blue Cross wrongfully denied LTD benefits to Ms. Baker, (b) acted in bad faith in adjusting her file, and (c) engaged in a litigation strategy designed to shield its employees from scrutiny. To provide a further basis for the award, Blue Cross turned down a generous offer to settle from the plaintiff that would have avoided the trial and saved Blue Cross money in the end.

While the plaintiff's offer did not technically comply with Rule 49, the ONCA made clear that the court is still entitled to consider any offer to settle when assessing costs.

CRIMINAL NEWS

by Russell W. Browne



Cannabis Update 2024

With the recent legalization of cannabis possession for personal use and the appearance of government sanctioned cannabis stores, the issue of cannabis use has been brought to the forefront in the areas of forensic (criminal) and civil mental health.

Let's start the discussion with a look at the psychiatric profession's dictionary of psychiatric terminology known as the DSM.

The Diagnostic and Statistical Manual of Mental Disorders (DSM) is the handbook compiled by a panel of psychiatrists in the United States and is used in Canada. There is no Canadian version of this dictionary of terms.

Cannabis use disorder (CUD) is defined by the DSM-5 as: A problematic pattern of cannabis use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period: Cannabis is often taken in larger amounts or over a longer period than was intended.

CUD should not be the automatic diagnosis when dealing with a person who has engaged in a binge or in circumstances of involuntary intoxication. This is especially the case with new or inexperienced users.

If misdiagnosed with CUD, a person could be subject to unnecessary doses of powerful anti-psychotic medication to deal with what more realistically involves drug induced psychosis. Drug induced psychosis differs dramatically from a psychosis triggered by a combination of cannabis consumption and an underlying mental disease such as schizophrenia.

Should you have a client who has been detained in hospital and/or found incapable of making their own

decisions regarding treatment, or has been accused of impaired driving caused by a drug, then please give me a call and I would be happy to discuss this issue in further detail.

ESTATES NEWS

by Suzana Popovic-Montag and Nick Esterbauer



Estate Planning With *Inter Vivos* Gifts

Clients are often interested in minimizing the amount of estate administration tax (also known as probate fees) payable when an application for a certificate of appointment of estate trustee is submitted.¹ A variety of estate planning strategies can be used to ensure that assets pass outside of probate and are not subject to probate fees, including beneficiary designations, secondary wills, and *inter vivos* transfers.² This article focuses specifically on the last strategy – *inter vivos* gifts – and potential pitfalls that clients

ought to be aware of before utilizing them.

What is an *inter vivos* gift?

Unlike testamentary dispositions, which beneficiaries do not receive until the testator has died, *inter vivos* gifts take effect while the donor is still alive. Any type of property can be the subject of such a gift, including land, money, personal property, a right of survivorship, and even the forgiveness of a debt.³ Typically three requirements are associated with *inter vivos* gifts:⁴

1. The donor must intend to make a gift and not

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expect consideration or compensation in return.⁵

2. The gift must be delivered to the recipient.⁶
3. The recipient must accept the gift.

Inter vivos gifts are irrevocable

After an *inter vivos* transfer is complete, it is not unusual for the transferor to change his or her mind and want to reverse the transfer.⁷ With this in mind, it is important to caution clients before making an *inter vivos* gift that such a gift will be irrevocable unless the donor preserves an express power of revocation.⁸ In cases where a power of revocation is not reserved, it may only be possible to reverse an *inter vivos* transfer if there is a legal basis to set it aside, such as:

- the donor lacked the requisite mental capacity to validly make the gift;⁹
- the gift was procured by undue influence¹⁰; or
- the donor was subject to unconscionable procurement.¹¹
- there is insufficient evidence of the transferor's intent to displace the presumption;¹⁵
- the evidence proffered is unpersuasive;¹⁶ or

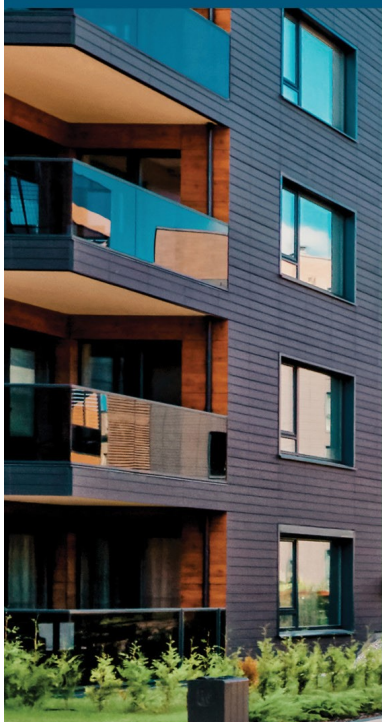
Inter vivos transfers may be subject to the presumption of resulting trust

Before gifting property, clients also ought to be aware that an *inter vivos* transfer could be subject to the presumption of resulting trust. In *Pecore v. Pecore*,¹² the Supreme Court of Canada confirmed that the law presumes that the recipient of a gratuitous property transfer holds that property on resulting trust for the donor.¹³ To rebut the presumption, the onus is placed on the recipient to prove a gift on the balance of probabilities.¹⁴

While the presumption of resulting trust could be handy if a client later changes their mind about the gift and/or wants to argue that an *inter vivos* transfer was not, in fact, intended to be an absolute gift, the presumption will only apply under certain circumstances, such as where:



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- there is evidence indicating that the transfer or did not intend a gift.¹⁷

Whether or not the presumption of resulting trust can be overcome in any given case will ultimately depend on the evidence available to the court.

If a client wishes to ensure that an *inter vivos* transfer is not subject to the presumption of resulting trust, for example to reduce the risk of future litigation, a document like a solemn declaration or deed of gift can be executed at or after the time the transfer is completed, to expressly state that a resulting trust is not created. With such a statement of the donor's intentions, the presumption should no longer apply¹⁸ or, if it does, will most likely be found to have been successfully rebutted.

***Inter vivos* gifts could negate testamentary dispositions**

Before making an *inter vivos* gift, a client also ought to be warned that it could "cancel" a bequest made under the client's will, if that instrument contains a similar gift. This concept is referred to as ademption by advance-

ment, or the presumption against double portions, and is intended to ensure that a beneficiary does not receive the same gift twice. If there is evidence that the testator gave a gift to a beneficiary after the testator made his or her will and that an advance was intended, the court may require the recipient to rebut the presumption. Like the presumption of resulting trust, however, ademption by advancement will not apply if there is evidence establishing that the will-maker intended the beneficiary to receive both benefits, or if the testator otherwise made it clear, for example, through a document, that the presumption of ademption by advancement is not applicable.¹⁹

Failed *inter vivos* gifts cannot be saved posthumously

Another factor that a client may want to bear in mind before making an *inter vivos* gift is that imperfect gifts generally cannot be perfected after the client has passed away. In this respect, imperfect *inter vivos* gifts are distinct from imperfect testamentary dispositions, which can often be saved by the



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The Halton County Law Association presents...



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Program Co-Chairs: *Ian Hull and Suzana Popovic-Montag*

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Speakers and Topics:

Will Drafting Tips and Traps - Including Technology AI

Jordan M. Atin **Tax and Estate Planning - Update** *Michael C.*

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Family Law Rights Over a Will and the Role of Trusts in

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Fareen Jamal and Ian Hull

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courts. As noted by the Ontario Court of Appeal, “[f]or a gift to be valid and enforceable it must be perfected. In other words, the donor must have done everything necessary and in his power to effect the transfer of the property. An incomplete gift is nothing more than an intention to gift.”²⁰ The court will not compel a donor to follow through and give a promised gift.²¹

To be valid, an *inter vivos* gift also may not be conditional on the death of the donor, even if the gift is a right of survivorship – the donor must be immediately and unconditionally bound by the *inter vivos* gift.²² For example, if a donor intends to gift a piece of property but fails to register the actual transfer of ownership prior to the donor’s death, the gift will fail.²³ In cases where the registration of an alleged *inter vivos* transfer is delayed until after the death of the transferor, there is no proof confirming that the transferor intended to relinquish control over the property during his or her lifetime.²⁴

An imperfect *inter vivos* gift also cannot be saved or treated like a testamentary disposition if the deceased references the gift in his or her will, even if

it is clear that the deceased intended to gift the property.²⁵ As noted in *Feeney’s Canadian Law of Wills*, “unless there has been compliance with the appropriate legal requirements to perfect [a] gift, the transaction will be invalidated, no matter how clear the wishes of the would-be donor might be otherwise.”²⁶

Conclusion

While *inter vivos* gifts are a valuable estate planning tool, particularly because they are not subject to probate fees, there are also perils associated with these gifts that clients ought to be aware of. Once made, an *inter vivos* gift cannot be taken back. An *inter vivos* gift may also fail if there is insufficient evidence to confirm that a gift was intended or that the transfer was not intended to be an advance on the recipient’s inheritance. Such a gift will also fail if it is not perfected during the donor’s lifetime. In light of the rules of law applicable to *inter vivos* gifts, clients ought to be cautious before choosing to make such gifts; depending on the circumstances, a testamentary bequest may make more sense, regardless of the consequences of additional estate administration tax liability.

1. See the *Estate Administration Tax Act*, 1998, S.O. 1998, c. 34, Sch. and the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rr. 74.13, 74.14, 74.1.04.

2. See Paul Dancause, “The New Regime in Enforcement and Administration of Estate Administration Tax: The Estate Information Return”, 21st *East Region Solicitors Conference*, 2015 CanLII Docs 5143, online: <<https://canlii.ca/t/ss47>> at 6-8.

3. See, for example, *Falsetto v. Falsetto*, 2023 ONCA 469 [*Falsetto*] (land and money); *Jackson v. Rosenberg*, 2023 ONSC 4403 [*Jackson*] (right of survivorship); *Singh Estate v. Shandil*, 2007 BCCA 303 [*Singh*] (forgiveness of a debt).

4. *Doherty v. Doherty*, 2023 ONSC 1536 at para. 32; *Teixeira v. Markgraf Estate*, 2017 ONCA 819 at para. 38. The property also must actually be owned by the donor: see *Murji v. The Queen*, 2018 TCC 7 at paras. 43-44.

5. Case law also indicates that the requisite donative intent must specifically exist at the time that the gift is made – see *Franco v. Franco Estate*, 2023 BCSC 1015 at para. 50.

6. Manual delivery may not be required; for example, delivery may be inferred from the execution of a deed transferring title: see *Tubbs*

- v. Tubbs*, 2006 CanLII 36965 (Ont. S.C.J.) [*Tubbs*] at para. 93. In *Falsetto*, *supra* note 3, the Court of Appeal also confirmed that transfers of title and the cashing of cheques or bank drafts serve as tangible proof of delivery.
7. See, for example, *Sandwell v. Sayers*, 2023 BCCA 147 [*Sandwell*]; *Falsetto*, *ibid.*; *Singh*, *supra* note 3; *Jackson*, *supra* note 3.
8. A power of revocation cannot be implied: see *Singh Estate v. Shandil*, 2005 BCSC 1448 at para. 19, *aff'd* 2007 BCCA 303.
9. See, for example, *James v. Belanger*, 2023 ABKB 34 at paras. 10-12.
10. See *Sandu v. Sandu*, 2023 BCSC 323.
11. See *Gefen v. Gaerther*, 2019 ONSC 6015. But also see *Sandwell*, *supra* note 7.
12. 2007 SCC 17 [*Pecore*].
13. Under certain circumstances, specifically when a transfer is made to the donor's spouse or minor children, the presumption of advancement will instead apply and a gift will be assumed.
14. *Pecore*, *supra* note 12 at paras. 23-25 and 35-36; *Sawdon Estate v. Sawdon*, 2014 ONCA 101 at paras. 56-58; *Falsetto*, *supra* note 3 at para. 27.
15. *Newhouse v. Garland*, 2022 BCCA 276 at paras. 54-56.
16. See *Estate of Celeste Dos Santos (Re)*, 2022 ONSC 3824 at para. 23.
17. For example, in *Steeves Estate v. Beers*, 2019 NBQB 48, the court found that the presumption of resulting trust applied to a variety of transfers made by the testatrix to her son prior to her death. On one of the cheques, the testatrix had written "loan" and there was also evidence that when the testatrix discussed the transfers with her friends that she had described them as an advance on her son's inheritance.
18. See, for example, *Sandwell*, *supra* note 7 at para 57.
19. See *Johnston (Estate of) v. Gemmill*, 2007 ABQB 235 at paras. 43-47. In this case, a specific provision in the testatrix's will prevented the application of ademption by advancement.
20. *Kavanagh v. Lajoie*, 2014 ONCA 187 at para. 13.
21. *McKendry v. McKendry*, 2017 BCCA 48 at para. 32.
22. *Tubbs*, *supra* note 6. The Ontario Court of Appeal has also held that *inter vivos* transfers contingent on death are ineffective as testamentary dispositions due to lack of compliance with wills legislation: see *Carson v. Wilson*, 1960 CanLII 104 (Ont. C.A.).
23. See *Chan v. Chan*, 2022 ABQB 256.
24. *Tubbs*, *supra* note 6 at paras.93-95.
25. *Troop v. Troop Estate*, 2023 NSCA 83.
- Ian M. Hull & Suzana Popovic-Montag, *Feeney's Canadian Law of Wills*, 4th ed. (Toronto: LexisNexis, 2000) at § 1.2.

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
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- 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 *Kassandra Kelertas*



It's a new year and there are numerous changes to a variety of Acts. Changes to three relevant Acts are noted below.

As some of you already know, there have been and will be changes made to the [Family Law Rules](#) which come into affect on November 27, 2023 and January 15, 2024, including as it relates to electronic filing and issuance of documents (rule 1.1), expert opinion evidence (rule 20.2 and 20.3), and the witness summons process (rule 23). Given these changes, ensure you are using the proper forms as there have been updates to Forms 14C, 17A, 17C, 17D, 17E, 17F, 23, and 23A as of January 15, 2024. A copy of the updated forms can be found on the Ontario Court Forms website [here](#).

Similarly, the [Child Care and Early Years Act, 2014](#) has been amended to require all licensed child care operators to implement a Safe Arrival and Dismissal Policy by January 1, 2024 to carefully monitor when a child does not arrive at the licensed child care program or is not picked up as expected. Each child care program will incorporate further protections so that third parties cannot pick up a child without the consent of the child's parent, and each program will set out their own policy if the child does not arrive on time or is not picked up as expected. This will not only reduce the risk of the child being picked up by the wrong parent or third party, but will create a producible record of the pick up/drop off times of the child.

This may reduce conflicting statements of parties as to the timing and consistency of pick ups and drop offs of the child at daycare or school as the records can be obtained from the child care provider(s), school(s) and/or daycare(s). Similarly, it is important to share this with family law clients in family matters so that they are aware of the act, and the producible nature of the records (with the consent of one of the parents).

To all you animal lovers, as of January 15, 2024, the British Columbia [Family Law Act](#) will be amending their legislation as it relates to pet custody disputes. Under section 92 of the Act, a provincial or Supreme Court can now uphold an agreement dealing with jointly owning a companion animal, or sharing possession of a companion animal, or provisions that give exclusive ownership or possession to one of the spouses. Albeit, the Supreme Court cannot make an order for joint custody or possession of an animal unless the party's consent. Under section 97 of the Act, the provincial or Supreme Court may now determine ownership or right of possession of a companion animal. When doing so, a court must consider the best interest of the animal at issue, including the following factors:

- a) the circumstances under which a companion animal was acquired;
- b) the extent to which each spouse cared for the companion animal;
- c) any history of family violence, any risk of family violence, a spouse's cruelty, or threat of cruelty, toward an animal;
- d) the willingness and ability of each spouse to care for the basic needs of the companion animal; and
- e) any other circumstance the court considers relevant.

It will be interesting to follow the caselaw with this new amendment to see whether it is successfully applied in British Columbia. It is hoped that this legislation will have an impact on Ontario family law in the future and that a similar act is passed in Ontario mirroring this act. One can always hope!

IMMIGRATION LAW NEWS

by Melissa Babel



Revised Criteria for International Student Stream

Starting on January 1, 2024, new applications for study permits will be required to meet updated requirements. Notably, students will need to show that they have at least \$20,635 CAD (up from \$10,000 CAD) available to them to support themselves while they study in Canada.

The Canadian government is also updating requirements for Canadian post-secondary institutions authorized to support study permits, (Designated Learning Institutions). The changes are intended to help ensure a high standard of learning, as well as services and support, in particular housing, for incoming international students. There is discussion of limiting the number of study permits issued for the Fall 2024 session to ensure sufficient support for international students.

The current waiver on the 20 hour per week limit on numbers of hours worked while class is in session will be extended to April 30, 2024, with a continued exemption for students who applied for study permits before December 7, 2023. The COVID-era allowance to count online studies towards eligibility for a post-graduate work permit will be in place for students starting a study program before September 1, 2024 and will no longer be available after that date. There will be no more extensions of post-graduate work permits after December 31, 2023.

<https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/12/revised-requirements-to-better-protect-international-students.html>

Canada Opens Immigration Processing center in Romania

Canada has opened a new global operations centre in Romania, marking the second centre outside Canada after the one opened in the Philippines in March. Situated within the Embassy of Canada in Bucharest, the centre will be staffed by 20 new employees, comprising both Canada-based and locally engaged staff. These global operations centres work in tandem with Canada's processing network, extending operational hours across multiple time zones to enhance IRCC's overall processing capacity, ultimately benefitting applicants.







<https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/12/canada-opens-global-immigration-processing-centre-in-romania.html>

International Experience Canada- The 2024 Season now open to welcome international Youth.

On December 11, 2023, The Minister of Immigration, Refugees and Citizenship, Marc Miller, opened the 2024 season of the International Experience Canada (IEC) Program. This initiative allows nearly 90,000 individuals, aged 18-35 from IEC partner countries and territories to come to Canada for work and travel opportunities. In 2023, new agreements were established with Finland, Iceland, and Ukraine, while existing partnerships with South Korea and the United Kingdom were enhanced.

<https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/12/international-experience-canada-opens-the-2024-season-to-welcome-international-youth.html>

Express Entry

#  	Date  	Round type  
274	December 8, 2023	STEM occupations (2023-1)
273	December 7, 2023	French language proficiency (2023-1)
272	December 6, 2023	General

Category-Specific draws and Additional 'Open' (All Category Draws)

On December 6, 2023, IRCC issued **4,750** invitations in a General draw to candidates with a minimum CRS score of **561** or higher. On December 7, 2023, IRCC issued **1,000** invitations in a French Language Proficiency Draw to candidates with a minimum CRS score of **470** or higher. Lastly, On December 8, 2023, IRCC issued **5,900** invitations in a STEM Occupations Draw to candidates with a **minimum CRS** score of **481** or higher.

US IMMIGRATION NEWS**January 2024 Visa Bulletin Update**

Visa Bulletin for January 2024 has been released. Next month, USCIS will process employment-based adjustment of status applications for foreign nationals

with a priority date earlier than the listed Dates for Filing in the State Department's January 2024 Visa Bulletin.

The USCIS process for filing adjustment of status applications involves determining visa availability based on immigrant visas and known applicants. If there are more visas available than applicants, the Dates for Filing chart can be used; otherwise, the Final Action Dates chart is required. Exceptions apply if a specific immigrant visa category is "current" on the Final Action Dates chart or has a later cutoff date than the Dates for Filing chart, allowing applicants in that category to file using the Final Action Dates chart for that month.

<https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>

USCIS Reaches Fiscal Year 2024 H-1B CAP

USCIS has reached the congressionally mandated caps for H-1B visas for fiscal year 2024, both the regular cap of 65,000 and the master's cap of

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20,000 for U.S. advanced degree exemptions. Non-selection notices will be sent to registrants through their online accounts, indicating they are not eligible to file an H-1B cap petition for FY 2024.

However, petitions exempt from the cap, such as those for current H-1B workers extending their stay, changing employment terms, changing employers, or working concurrently in additional positions, will continue to be accepted and processed. The H-1B program is used by U.S. businesses to employ foreign workers in specialty occupations, and H-1B petitioners are encouraged to subscribe to cap season email updates for further information.

<https://www.uscis.gov/newsroom/alerts/uscis-reaches-fiscal-year-2024-h-1b-cap>

USCIS Update on Family-Based Conditional Permanent Residence

The U.S. Citizenship and Immigration Services is updating its Policy Manual regarding family-based conditional permanent residence, specifically focusing on Form I-751, Petition to Remove Conditions on Residence.

The update provides clarification on eligibility, filing, and adjudication processes. It addresses changes to the basis of filing in cases involving waivers based on battery or extreme cruelty. Additionally, the update emphasizes that noncitizens may still be eligible to adjust their permanent resident status on a new basis if their conditional permanent resident status is terminated due to a failure to timely file Form I-751, even if a notice of termination is issued before filing Form I-485.

The context involves the Immigration Marriage Fraud Amendments of 1986, where noncitizens gain conditional permanent resident status for two years based on marriage, and they must file Form I-751 within 90 days before the two-year anniversary to remove conditions on their permanent resident status.

<https://www.uscis.gov/newsroom/alerts/uscis-updates-guidance-and-clarifies-policy-on-family-based-conditional-permanent-residence>

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MEMBERSHIP COMMITTEE NEWS

by Nazifa Islam



As we stride into the new year, it is my honour to shine a spotlight on the HCLA's Membership Committee. Committed to facilitating growth and championing the diverse voices within our legal community, our team is excited to share with you a snippet of what is to come in 2024!

Fostering connections

The HCLA is made up of members of the Bar, each with their unique expertise and experiences. The Membership Committee's goal is to connect our members, help cultivate relationships and bridge gaps that unfortunately widened during the COVID-19 pandemic. Owing to the pandemic, we lost out on valuable opportunities to connect face to face and build relationships with one another. Thus, the focus in 2024 is to ensure that every member finds their place within our vibrant community.

To start, we are reaching out to law schools in Ontario to spread the word about our law student membership. We are excited to attract the province's emerging legal minds to the HCLA.

We have also recently started the HCLA Instagram account where information about upcoming events, important reminders (and sometimes fun Reels!) can be found. Our Instagram page is also where you will soon find the Spotlight Series- an initiative to introduce you to your HCLA Executive and put faces to our names!

Listening to our members

In our efforts to ensure our members are getting the most from their membership, in 2024, we are working with the wider HCLA Board to implement what members requested most in the 2023 Member Survey. At a glance, the results of the survey show that members are keen to have more CPDs, more opportunities to connect with the bench, and more social events.

To kick off, there is the Real Estate Seminar coming up, moderated by Fay Hassan. We expect a vibrant discussion on the intersection of real estate and other areas of law- be sure to mark your calendars!

Moreover, with the success of social events such as our Annual Golf Tournament and Holiday Party at the Paletta Mansion in 2023, we are also looking into innovative ways to engage our members such as Drag Brunch and Arcade/Games Nights, to name a few.

Looking ahead

As we embark into a new year, the Membership Committee remains steadfast in its dedication to growing the association, and we look forward to exciting initiatives to bring together the Halton legal community.

If there are events you would like to see organized or ideas that you would like to discuss with me in further detail, please do not hesitate to reach out! You can contact me by email at nislam@sda-law.ca.

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
25 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.

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

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

☎ 905-616-0216
✉ paulfamula@gmail.com

Please contact the above for rates and scheduling of virtual and in-person* hearings.
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HCLA NEWS

Newsletter of the Halton County Law Association

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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
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