



HCLA News

Newsletter of the Halton County Law Association

Volume 4 Issue 3

Fall 2013



Halton Judges' Night & Annual General Meeting

date tba

Harbour Banquet & Conference Centre

Come and mingle with the local judiciary!

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November 22, 2013
Burlington Golf and Country Club

422 North Shore Blvd E

Tickets

\$95 for Dinner and Dance-6pm

\$35 for Dance Only-9pm

Deadline for Next Issue:
January 1, 2014



President's Report by Laura Oliver

replaced by Fiona Kelly.
Fiona can be reached at,

Direct Tel: 905 878 2813
Direct Fax: 905 693 4206
fiona.kelly@ontario.ca

On the Ontario Court side the Milton Judicial Secretary is Pam Jazvac and her contact information is,

905) 693-3091 phone
(905) 693-3033 fax
Pam.Jazvac@ontario.ca

Tammy Mariner has moved to Burlington where she is now the OCJ Judicial Secretary to the Burlington Judges.

Court Operations:

Debbie Dunn has also left us and has been replaced by Helena Cassano the new Manager of Court Operations. In Milton and Burlington the Supervisors of Court Operations are Victoria (Vickie) Waldie and Gina Chiarelli.

In the Trial Office Debbie

Gibbins is the Trial Coordinator and can be reached by her direct line at 905-693-3082. Varsha Kumar is the Assistant Trial Coordinator and her direct line is 905-693-3080. Any questions regarding Dispute Resolution Conferences can be direct to Rebecca Ianni at Tel: (905) 878-7281 Ext. 3340.

Assessments:

We learned earlier this year that John Canning was retiring from doing assessments but that a replacement had not been named. He was to have retired August/September. Apparently, as of October he is still sitting. When/if the Board learns more we will let you know.

Annual Dinner & Dance:

I hope you are able to join us for this year's Annual Dinner & Dance, being held on Friday, November 22 at the Burlington Golf & Country Club. We are very excited to have John Cox and his band, Mona's Boys, for the entertainment this year. It is sure to be a fabulous night!!

AGM:

This is the first occasion that we are having a Halton Judges' Night in combination with our AGM and Spring Social. This year's AGM will see the Award of Excellence given to another member of our community. Nomination forms will be sent to members shortly. In addition, this year will see the inauguration of the Eric Swan Award of Civility. Again, nomination forms will be delivered shortly. Other plans are in the works to make the AGM an event that members will not want to miss. Please stay tuned for updates.

By this time everyone is back from summer holidays and back into the swing of things.

Firstly, let me extend congratulations on behalf of the Association to Justice Hourigan on his appointment to the Ontario Court of Appeal. What a wonderful and well earned accomplishment. We will miss him greatly.

As we have had some changes since the last newsletter I thought I would take this opportunity to give you all some practical information.

Judges Office:

Dale Willis retired earlier this year and she has been



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Criminal Docket by Brendan Neil



of the accused. Failure to pay the victim fine surcharge will carry numerous potential consequences including delaying the ability to apply for a record suspension (the new pardon). Unlike restitution orders, judges will no longer be permitted to assess whether an accused has the ability to pay the surcharge.

As promised the government has rolled out the latest legislation connected to *the Truth in Sentencing Act*. This time the change is to victim fine surcharges, which as of October 24, 2013 have doubled and become mandatory. In other words the judiciary no longer have the discretion to waive the surcharge regardless of the financial situation

On the local front Justice Hourigan has been appointed to the Ontario Court of Appeal adding to the significant judicial appointments connected to Halton region.

Changes have occurred in bail court with the addition of a printer releases are now conducted in court. Theoretically this is a time

saving as paperwork does not have to make it's way to the registry and then back to the Justice of the Peace. Unfortunately, there are some growing pains with the process which can result in a loss of court time as the forms are drafted printed and reviewed eating up valuable time that could be used for the hearing of bail matters. Hopefully the system will be able to be refined to maximize efficiency and allow for more hearing to be conducted.

As well the set date court process has undergone a change. The court list is now being called by crown, rather than the clerk. Clerks will no longer be handing out reminder slips to accused. It will be interesting what effect this has on the number of Fail to Appear cases as well as the success or lack thereof of prosecuting them.

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 and the Halton County Law Association. Comments in the above piece are his alone and should not be considered as the position of the HCLA or it's respective members.

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Library News by Karen Kennett

Resources in 2014. These modifications will assist LibraryCo as it continues to fulfill its mandate to the legal profession in Ontario.

LexisNexis Quicklaw will remain the fee-based service of choice in the Toolkit and LibraryCo has licensed additional content in the libraries. All 48 county and district law association libraries will have access to three LexisNexis practice area resources: *CriminalPractice*,

FamilyPractice, and *LitigationPractice*. Each practice area resource contains texts and current awareness tools to support lawyers' practices. For example, *CriminalPractice* includes criminal case law, seven online treatises, sentencing quantums, precedents and current awareness Netletters from Alan Gold and others. The treatises are Gold, *The Practitioner's Criminal Code*, Fontana and Keeshan, *The Law of Search and Seizure in Canada*, Ruby, et. al., *Sentencing*, Kenkel, *Impaired Driving in Canada*, *Annotated Youth Criminal Justice Act*, Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* and Botting, *Canadian Extradition Law*. More details about these new resources may be found at <http://www.lexisnexis.ca/en-ca/products/criminalpractice.page>.

In light of this increase in criminal content, LibraryCo has decided to discontinue its separate subscription to Canada Law Book Criminal Spectrum, which includes the

Continued on page 5

LibraryCo Toolkit

After full discussions with LexisNexis Canada and Westlaw Canada, the Board of Directors of LibraryCo Inc. is planning modifications to the Toolkit of Legal

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Criminal Law Quarterly, Salhany's Canadian Criminal Procedure, Ewaschuk's Criminal Pleadings & Practice in Canada, MacFarlane's Drug Offences in Canada, McWilliams's Canadian Criminal Evidence, Clewley's Sentencing and Bloomfield/Harris's Youth Criminal Justice Act Manual.

Further information is available at <http://www.lexisnexis.ca/en-ca/products/quicklaw-full-service.page>.

COLAL Conference

The Conference for Ontario Law Associations' Libraries (COLAL) was held in Toronto on October 17 & 18, 2013. The theme for this year's conference was Future Ready II: Creating the Information Future.

Keynote speaker Juanita Richardson, a well-known library consultant based in Toronto, kicked off the conference with her presentation "Adapting to the new normal: changing to remain relevant". Juanita's message was "shift happens" whether we like it or not, and that everyone in the information industry must find ways to adapt.

Law Society's Senior Financial Analyst, Gary Cheong made a presentation on Cost Recovery.

David Whelan, Manager, Legal Information, Law Society of Upper Canada spoke on Envisioning the

Future of Technology in Law Libraries, which provided insight into cloud storage and open source software as well as a look at tablets and e-readers and their roles in law libraries in the future.

Success Stories of Solos was a panel of four librarians from different settings and their stories of dealing with the challenges of working in a one-person library.

The LibraryCo Board of Directors participated in a Q & A session. Alan Silverstein, LibraryCo Chair reported that the Law Society Treasurer has established the Legal Information and Support Services Working Group to examine issues

related to the Law Society's role in the provision of legal information to the profession..

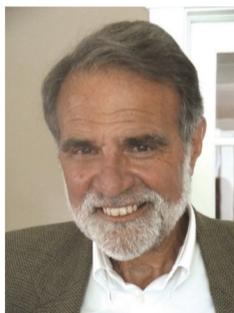
A session entitled "Bring it Home" was a panel of Law Association library staff and their experiences at the Special Libraries Association conference and the American Association of Law Libraries conference.

Ready Set Grow .. Part 2 was a continuation of a session at last year's conference where Strategic HR Leader Steve Lowden walked us through an interactive exercise to identify your talents and how to embrace them!

The LibraryCo Board Reception and Dinner at the Law Society was an excellent opportunity to meet and chat with the LibraryCo Board of Directors.

Thanks to Martha Foote, LibraryCo Board Manager, for organizing this excellent conference.

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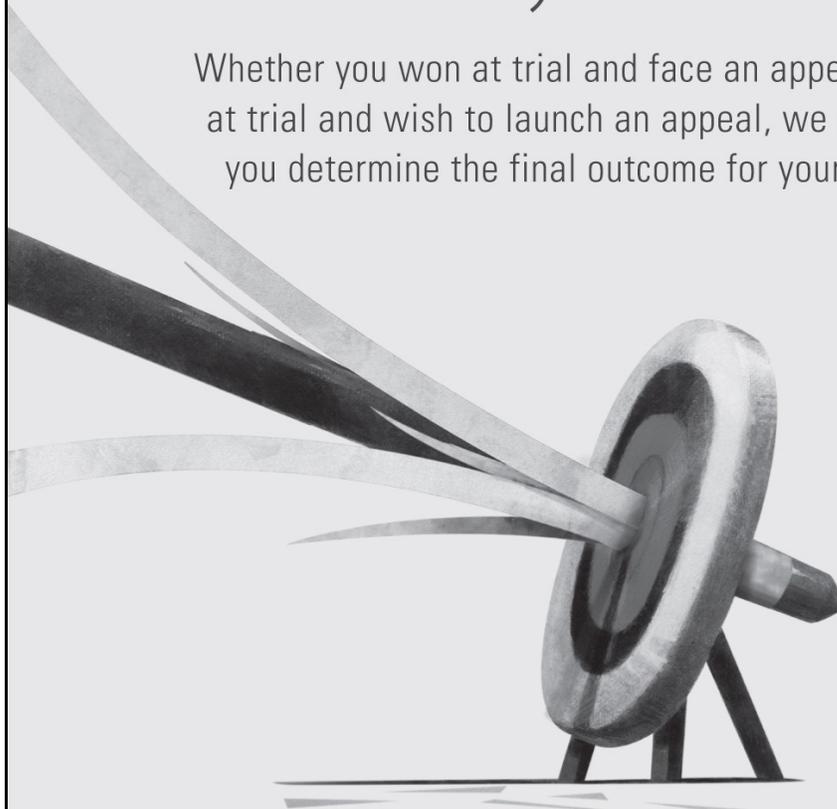
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The Five Faces of Real Estate Fraud by Kathleen Waters

NOTE: This article originally appeared in the Real Property Focus section of the August 23, 2013, issue of The Lawyers Weekly published by LexisNexis Canada Inc.

Fraud attempts come in many different forms. Some (often the more transparent ones) rely on a “volume” approach: target as many lawyers as possible in the hope that a few are naïve or vulnerable enough to fall for the trap. But other fraudsters work patiently to create — or exploit — conditions that lower the guard of an otherwise careful lawyer target.

These kinds of frauds can occur in the context of real estate “repeat business,” and in other areas where lawyers and clients have ongoing relationships.

Some fraudsters invest significant effort in building a relationship of (unwarranted) trust with the target lawyer or, after a history of legitimate dealings, act opportunistically — for example, in response to a personal financial crisis. While lawyers who find themselves the victims of these attacks often feel blindsided, a look back at the circumstances often reveals dangerous patterns in the lawyer-client relationship.

Here are five examples of higher-risk client “types” that lawyers should look out for:

(1) The ‘invisible’ client:

This is a client you may have acted for over a long period of time, but most of your contact (if not all of it in recent years) is with an intermediary such as a mortgage broker, business broker or investment advisor. (In fact, as a slight variation, the intermediary could even be within your office, where you think you know what the client wants so well you don’t bother paying attention to what work is flowing through your office. The client just contacts your law clerk directly.)

The client has money, and with the assistance of the intermediary undertakes various transactions. The problem arises when the intermediary or family members get into trouble, and all of a sudden the instructions coming from the intermediary don’t involve arm’s-length transactions, but ones in favour of the intermediary’s family. You just assume this is okay with the client and paper the deal (assuming you delve deeply enough to know who the true beneficiaries of the transaction are). When it all falls apart, the client won’t be happy, because, invariably, the intermediary will have lied to the client about those deals.

Where your staff member is the communication intermediary with the client, the risk is that you are not regularly turning your mind to what the client needs to know — how deals were done 10 years ago may not be appropriate for how deals should be done in 2013, with the plethora of legal risks facing all real estate, business and investment opportunities.

(2) The ‘can’t meet with you’ client: This may be a client with a genuine scheduling problem, but it may also be a set-up for a fraud. For example, a spouse who claims the other spouse is too ill to attend at your office to sign documents should be a red flag for potential fraud, in addition to possible capacity issues. Either you have to wait until the other spouse is well again, or make arrangements to attend at the house. What you cannot do is let the documents leave your office and then sign the independent legal advice (ILA) certificate (and perhaps falsely commission a few affidavits for good measure) when you never saw the person signing, and certainly did not give ILA. Photocopies of identification documents aren’t much good when you never see the original to make the comparison to the photo.

(3) The ‘repeat’ client: Just because you have acted for a client previously does not mean that everything the client will do with you in the relationship will be legitimate. Apart from the risk of a client developing problems that may lead him or her down an unethical road or being open to pressure from others, fraudsters often give one or more legitimate pieces of work to build the relationship. Then once your guard is down, the big one slips by.

(4) The ‘I already paid that’ client: Assume you are acting for a lender and a borrower, and, in accordance with the loan terms, you are instructed to ensure that a certain indebtedness must be paid off using the loan proceeds. Since when did real estate lawyers start taking the word of a borrower client that “everything is okay” or “I will pay that myself,” and release the entire loan amount to the borrower with no evidence to prove the payment was made? In some cases, lawyers hesitate to question the word of the client out of fear of being disrespectful, given the position of the particular client in the lawyer’s life or community. Isn’t the answer that if you can’t hold the client and yourself to the same rules as you do all your other clients and files, you shouldn’t be acting? Effectively, you are in a form of emotional conflict beyond the technical issue of acting on both sides of the deal, even if it is not a conflict necessarily prohibited by the *Rules of Professional Conduct*.

Continued on page 8

(5) The 'friend/relative of the law clerk' client:

Nothing is more valuable for a fraudster than an inside accomplice, whether a clerk, junior lawyer, mortgage officer, loan underwriter, etc. Even a long-term, highly regarded employee can develop problems in life that leave him or her open to pressure from unethical individuals. Always keep your guard up and remember that just because a referral

comes to you from a staff member doesn't mean that you handle that retainer differently from any other file.

The great majority of clients are honest. But maintaining an awareness of circumstances that open the door to fraud is essential to protect your reputation, your business, and the interests of the honest parties with whom you do business.

Kathleen Waters is president and CEO at LawPRO.

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Looking for a Will

Anyone with information on a Last Will and Testament for the late Craig Frederick Horton, resident of Burlington, born May 12, 1966 and died July 28, 2013, please contact Karmel Sakran at 905-639-1222 or karmel@ggslaw.ca

Positions Available

Sharon Davis and Rick Day (Richard Day & Associates) are looking for:

(a) an experienced lawyer in the real estate and general business fields. We would like to find someone who wants to have her/his own business but share expenses with us as associates with lots of referral work; and

(b) an experienced legal assistant/law clerk To join their growing practice in downtown Oakville. Please contact Rick at rick@daylaw.ca

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Looking for a Mentor

Looking for some guidance in the practice of Family Law. I am a newly called lawyer to the Bar in the area and have some experience in Real Estate Law.

I am actively looking for a lawyer who could be my mentor in Family Law.

Name: Asiya Khan

Year of Call: 2013

Contact: 416-886-0701

E-mail: anzacon@live.com

Effective November 4, Manmeet Parhar, has joined Green Germann Sakran as an Associate lawyer. His contact info is as follows:
411 Guelph Line, P.O.Box 400, Burlington, ON L7R 3Y3, T: 905-639-1222, F: 905-632-6977,
E: mparhar@ggslaw.ca,
W: www.ggslaw.ca



*You are cordially invited to attend
The Halton County Law Association*

Annual Dinner & Dance

Friday, November 22, 2013

*Burlington Golf & Country Club
422 North Shore Boulevard East
Burlington, Ontario*

Cocktails 6:00 p.m. Dinner 7:00 p.m. Band & Dancing 8:30 p.m.

*\$95.00 per person
(hst included)*

Entertainment: Mona's Boys

Tickets to Dance only: \$35.00

RSVP :

*Karen Kennett
Halton County Law Association
491 Steeles Avenue East
Milton, Ontario L9T 1Y7
Telephone 905-878-1272 Fax 905-878-8298
Email: hcla@bellnet.ca*



12th ANNUAL SOPINKA UNITED WAY LUNCHEON

Wednesday, November 20, 2013
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Tickets: \$45

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DID YOU KNOW?

- More than a third of low-income families in Hamilton are paying more than half their income on rent, which puts these families at risk of homelessness.
- In Burlington, over a third of female seniors live in poverty and many of them live alone.