

THE  
MIDDLESEX LAW  
ASSOCIATION

# Snail



## May Issue

Thank you to all the contributors and advertisers for supporting this month's edition of the Snail.

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to the next issue?

The deadline is  
May 25, 2019

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## President's Report

*Contributed by:*  
**James Zegers, President**

### April has been a busy month.

First, Gail retired. **Gail Brown** has been a librarian with the Middlesex Law Association for 33 years. Friends, colleagues and family gathered at the London Club to wish her well and to celebrate her career and contributions to the Middlesex Law Association.

When Gail started here as a librarian 33 years ago, the Library was called...the Library. Today it is the **Practice Resource Centre**, although many still call it the Library, and there are still lots of books there.

Whatever you call it, the Library/Practice Resource Centre is the spiritual and intellectual centre of our legal community, and keeping it running is the most

important responsibility of **Middlesex Law Association Board of Trustees**.

On March 8, 2019, **Kelly C. Tranquilli** was appointed a judge of the **Superior Court of Justice of Ontario**. She replaces Justice **J.N. Morissette (London)**, who resigned effective July 3, 2018. Justice Tranquilli practiced civil litigation at **Lerners LLP** in London, where she was a partner from 2008 until her appointment.

On April 25, 2019, friends, colleagues and family members again gathered for Justice Tranquilli's swearing in ceremony. There were a number of excellent speakers on hand to celebrate Justice Tranquilli's appointment. **Michael Lerner and Shauna Powell**, both former colleagues of Justice Tranquilli's at Lerners LLP, gave particularly heart

felt tributes. Shauna reflected on their competitive/cooperative friendship at Lerners, first as articling students, then as young associates, and finally as partners. "You win," Shauna graciously conceded.

Finally, on April 26, 2019, approximately 250 friends, colleagues and family gathered at **Rum Runners** for the 16th edition of **Court House Rocks**. A full Court House Rocks report will have to wait for the next edition of The Snail. While the final numbers are not in, sponsorship alone brought in **\$18,350**, up approximately \$6,000 from last year. This year we had a record number of acts, and **Elvis** was in the building.

James Zegers  
President

## Want to contribute to the next issue? The deadline is May 25, 2019

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

### Potential topics for submissions include:

- News, the promotion of an upcoming event, a review of a past event
- Opinion and letters to the editor
- Recognition of someone in the legal community
- Discussion of a legal issue & case reviews
- Practice tips

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[khulan@beckettinjurylawyers.com](mailto:khulan@beckettinjurylawyers.com)



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In 1994 was certified as a Specialist in Civil Litigation by the Law Society of Upper Canada.

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# Library News



Contributed by:

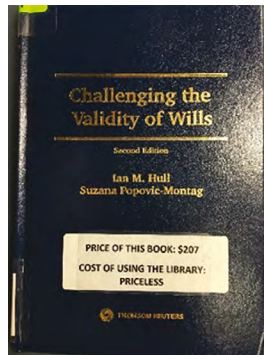
Cynthia Simpson and Shabira Tamachi  
library@middlaw.on.ca

## Summer Students

It's that time of year again when the summer students start at the various law firms in town. These students, like articling students, enjoy full library privileges and most association privileges during their summer work term. As such, it is important for you to send them to the MLA PRC to get registered, receive a tour of our space, and find out what services and resources are available to them here. There is no charge to register with the MLA and it guarantees they will receive all our communications while they are working for our members this summer. Please encourage them to drop in and we generally do not need advance notice of their arrival.

## Library Funding

Everything is going up in price and books, loose-leafs and online subscriptions are especially costly to purchase and maintain. All lawyers support the county and district law association library system through their annual LSO fees. Of the over \$2200 you pay annually, only \$194 of that is currently earmarked for the library system (down from \$230 in the early 2000's). **In fact, while every subcategory of your LSO fees has gone up over the years, the library levy portion has either stayed the same or decreased.** The MLA cannot run the library on the current annual funding it receives through the central LSO fees, so over \$90,000 of your local MLA dues goes to supplement our LSO funding to maintain the collection and services that our members have come to expect and to support our role as a Regional Library in the system.



## Missing Book

As you can see from the funding discussion above, our budget lines are tight, so it is especially frustrating when a popular title upon which our members rely goes missing from the collection. We spend a lot of money to purchase new titles and cannot afford to replace them when they are permanently "borrowed" by a user. Our most recent missing title is **Challenging the Validity of Wills 2nd ed.**, by Ian Hull. This text was purchased last October at a cost of \$207 plus shipping and tax. That's right: the portion of your LSO fees tied to library system funding doesn't even cover the cost of a single book.

We recently had to borrow this much-needed title from the Oxford Law Association where Shabira used to work. Please note the label she had affixed to that library's copy of the book: "Price of this book: \$207. Cost of Using the Library: Priceless." Perhaps you thought you signed our copy out and are just now realizing the book card is still in the front pocket of the book. If so, please return it immediately. We have several wills and estates books on our Missing Book list, and we cannot afford to replace them. Don't do that to your colleagues.

## CALL Conference

Another annual feature of May is the **Canadian Association of Law Libraries conference**. Both of us will be jetting off to Edmonton for this year's four-day conference where we will meet with our library colleagues from within our Ontario system and across the country to discuss common issues and attend educational sessions. This year's conference is covering a wide range of law-related topics: Artificial Intelligence & Implicit Bias, Data Analytics in Law, Archiving a Trial, and Pseudolaw, to name a few, along with library-related topics: Statistics, Stories of Failure, Role of Libraries in Access to Justice, Crown Copyright, Feeling Like an Imposter, and Graphic Design. Oh, and Cynthia and Shabira are taking advantage of the conference's economical headshot session so we'll have snazzy new photos for the Summer issue of The Snail.

## New Books

Allen, William. **Estate planning handbook --5th ed.**, Thomson Reuters

Firestone, Stephen. **Ontario motor vehicle insurance law and commentary, 2018 ed.**, LexisNexis

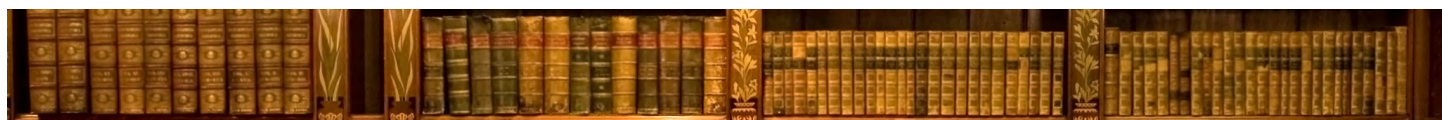
Glaholt, Duncan. **Conduct of a lien, trust and adjudication proceedings, 2019**, Thomson Reuters

Haynes, Paulette. **Human resources guide to non-standard employment --2nd ed.**, Thomson Reuters

Hughes, Hon. Roger. **Trade-marks Act & commentary --2019 ed.**, LexisNexis

LSO. **Six-minute commercial leasing lawyer 2019.**

LSO. **13th annual family law summit.**



n/a. **Canadian master tax guide --74th ed., 2019**, Wolters Kluwer

Rachlin, Alan. **Consolidated Ontario insurance statutes and regulations 2018**, Thomson Reuters

van Kessel, Robert. **Dispositions without trial --3rd ed.**, LexisNexis

Vereshack, Adam. **Practical guide to outsourcing agreements - 3rd ed.**, LexisNexis

Wolf, Judith. **Ontario residential real estate for practitioners**, Emond

## Missing Books

Allen, John. **Estate planning handbook -4th ed.**

Bolton, Michael. **Defending drug cases -4th ed.** (2016)

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

Goodis, David. **2012 annotated Ontario Freedom of Information & Protection Act**

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

Lavender, Stephen. **2015 annotated Ontario Human Rights Code**

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

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

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

OBA. **Business agreements: practice and precedents.**

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

n/a. **The Annotated 2015 Tremear's Criminal Code.**

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

Shearer, Gillian. **Law and practice of workplace investigations.**



## Thanks from Gail

Looking at the stack of congratulations cards and photos from my retirement party, I'm awed by the thoughtful kindness of my MLA friends. I can't thank you all enough for the many phone calls, emails, visits and cards to wish me well on my retirement. And the gifts! Everything from coffee to books to gift cards, and of course wine, cookies and candy. As always, you know the way to this librarian's heart.

Thank you to the Trustees for the send-off party at the London Club. I was picturing a last day drop-in event at the Library with coffee and maybe a cake, but the MLA trustees had other ideas. It was great to see my family, friends and colleagues mingling with MLA members, and I hope everyone enjoyed it as much as I did. Thank you all for attending, and particular thanks to Erin, Cynthia and my husband Bruce for organizing such a special event, and to Jim for his kind words and gift presentation.

I will treasure the guest books filled with your messages and bits of advice for the future. In particular this one: "Gail, you are married to the coolest guy ever. Take care of him. And I will pay that library fine eventually." Typical lawyer wit, which I was fortunate to enjoy for so many years. (And no, Bruce did not write this himself.)

And of course, thanks to my good friend Cynthia Simpson for being the best person I could have worked with for 29 of my 33 years with the MLA. Her support, good humour and friendship have been invaluable.

I've heard so many people say they hate their job and can't wait to retire, and I can honestly say that was never me. Even on a bad day I could always count on one of you to come by with a story or a joke to share, or a problem I could help to solve. While I am looking forward to new adventures as I retire, I will always look back with fondness on my time with the MLA.

Gail

# Why I Joined the OBA Young Lawyers



Contributed by:  
Madelaine Hofford / Beckett Personal Injury Lawyers

## I am a member of the OBA's Young Lawyers Division Southwest committee.

What I enjoy about the **Young Lawyers Division** is that it brings together young lawyers in London and surrounding areas for social events. It builds a sense of community in the London bar. Having not grown up in London, I didn't know many other lawyers and it is sometimes difficult to meet my peers; the Young Lawyers Division has allowed me to get in touch with friends and colleagues in various practice areas. It is reassuring to have a familiar face in court or at the discovery table.

It is also comforting to be able to meet people who are developing their practice and are at a similar stage of their career as I am. Perhaps it is someone in the same area of law who understands my struggles or it may be someone in another area of law who can become a trusted referral for clients. Meeting lawyers from a variety of practice areas and firms provides a perspective on the London legal community I might not otherwise have had.

Having specific **CPD programs** for young lawyers is also helpful to develop the basic skills, including soft skills, to grow as a lawyer. For example, the recent CPD roundtable, "How to Market Yourself

as a Young Lawyer," provided a range of opinions on how to develop and market yourself as you grow in your practice.

Why not get a head start now? These types of CPD programs are directly related to the challenges facing young lawyers such as me.

If you are interested in any upcoming events, feel free to contact me. I would be happy to meet more of my peers.

For more information about the **OBA's Young Lawyers Division**, please visit <http://www.oba.org/Sections/Young-Lawyers-Division>.



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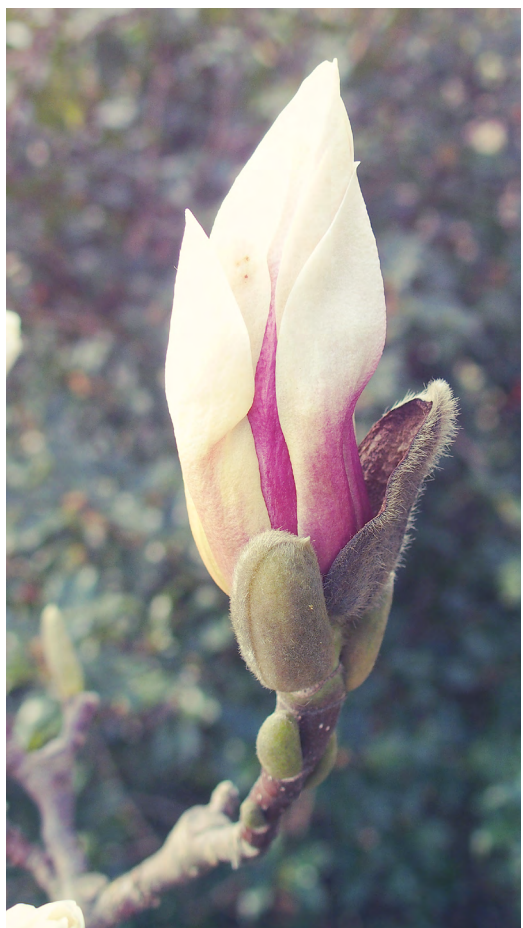
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# SWRWLA is looking for you!



Contributed by:  
Joyce Thomas / Thomas Litigation

## The South West Region Women's Law Association (SWRWLA) is currently seeking new members.

You may not have heard of our group, but that is just the way we roll. Founded over 25 years ago, our members became some of the first women benchers for the then Law Society of Upper Canada. If you can believe it, one of the first achievements by one of our members elected to Convocation was to secure a women's robing room at her local court house. If you have been following the bencher election of 2019, you will know adequate

court facilities for counsel continues to be a problem.

Not unlike any year before 2019, there are issues and circumstances that uniquely effect women. This year on a sunny weekend in April, members of SWRWLA met in Bayfield for its Spring Conference to discuss some of those circumstances. Our conference model is simple: we meet on a Friday evening, have a lovely dinner (this year at the Little Inn – tenderloin was top notch), and have breakfast on Saturday followed by a member discussion. The conference also hosts a guest speaker. Topics from the past have included: developing

and managing your career, mentorship, parenting, colonization and reconciliation, diversity training, and branding. Over the years, there have also been some strictly-for-fun activities including developing the perfect martini, doing anything at the spa, yoga, eating your way through the St. Jacob's Market, and wine tasting. Each conference is unique, the town location changes, and the company is always a surprise. The Fall Conference is currently being planned for a location in London. Details to be determined.

If you are curious about checking out our eclectic group email me, Joyce Thomas, Co-President, at [swrwla@gmail.com](mailto:swrwla@gmail.com).

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## Questions & Comments

If you have any issues or concerns regarding the Middlesex court facilities, operations, judiciary, etc., let them be known!

Send all concerns MLA Bench & Bar representative:

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[beckettinjurylawyers.com](http://beckettinjurylawyers.com)

# Pensions for Lawyers



Contributed by:  
Casey Hayward / Dyer Brown LLP

On April 16th, the MLA was pleased to welcome Dawn Marchand, VP CBIA/Lawyers Financial, and Randy Bauslaugh, National Practice Lead, Pensions & Employment Benefits at McCarthy Tétrault, who spoke to our membership regarding the development of a pension plan for law firms.

This **Target Benefit** pension plan would be available to all law firm staff, lawyers and partners who are employees of their own professional corporations.

Mirroring some of the most successful pension plans in the province, such as **CAAT, HOOPP and OMERS**, the plan would be professionally managed, and provide predictable retirement income at a low risk and cost to the employer. **Ms. Marchand and Mr. Bauslaugh** also pointed out that participation in the pension plan would be a strong talent attraction and retention tool, particularly for small and medium sized regional firms.

Information sessions will be held throughout the spring and summer. To be kept informed of these events and other periodic updates, visit [www.lawyersfinancial.ca/pensionforlawyers](http://www.lawyersfinancial.ca/pensionforlawyers) and sign up with your name and email address.

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# FOLA



*Contributed by:*

**William Woodward / Dyer Brown LLP**

## The Middlesex Law Association is one of the largest law associations in the province.

As a local law association, we are a member of a provincial law association which I suspect many of you, like me prior to my involvement in the MLA, were not aware of. This organization grew out of a need for more direct dialogue between member associations and the Law Society, the provincial and federal governments, as well as a number of other organizations which impact the day to day lives of practising lawyers.

The organization was known previously as the County and District Law Presidents Association (CDLPA) but the name was recently changed to the Federation of Ontario Law Associations (FOLA) as it was felt that this better described the organization and more importantly, who it represents. FOLA is the umbrella organization representing the 46 county law associations in Ontario, who in turn, represent about 8,700 lawyers in private practice. In addition, there is an affiliate agreement with the Toronto Lawyers' Association that adds another 3,000 lawyers. In effect FOLA speaks for about 12,000 lawyers on the issues that impact the practicing bar.

After completing my term as MLA President, I became the Southwest regional Representative for FOLA and I am presently the Vice-Chair. FOLA is a volunteer board consisting of a Chair, Vice-Chair, 1st Vice-chair, a representative for each juridical region,

committee chairs (currently Family and Real Estate) and a representative from the Toronto Lawyers Association. In addition, we have an Executive Director and an Executive Assistant. We have province-wide representation and regular consultation takes place between the regional representatives and local presidents to address issues of concern.

FOLA has been involved and continues to be involved in a number of issues and submissions. In the interests of keeping this article manageable, I will not address each of these in detail, but this is a partial list of just some of the files we have and continue to be engaged with:

- The re-organization of Libraryco and the development of LIRN and a skills-based board for more information see [www.fola.ca/practice-resource-centres-county-law-libraries.html](http://www.fola.ca/practice-resource-centres-county-law-libraries.html).
- Contingency fee regulation, particularly in the personal injury space.
- The future of law licensing, and in particular around the future of articling, ongoing competency.=
- Questions around the number of lawyers that Ontario licenses and, related to that, issues such as the proposed Ryerson University Law School.
- Addressing the institutional, racial and gender issues impacting the practising bar and the administration of justice.
- On the real estate law front, working to ease the regulatory burden being imposed on real estate lawyers by the

Ontario Ministry of Finance

- Promoting standardized real estate closing documents across Ontario
- Working with the Law Society and other stakeholders to eventually see electronic funds transfer for real estate transactions.
- And, of course, the ongoing discussions about the appropriate role of title insurance companies is always top-of-mind to the real estate bar.
- New proposed regulations on anti money-laundering provisions
- In the area of family law, working on the very difficult issue of paralegal scope of practice and, in particular, responding to the Bonkalo report, which called for paralegals to be licensed to practice family law.
- Also, on family law, we are working with others to promote unified family courts and to find ways to streamline and make more efficient the family law system.
- Legal aid funding and administration is a perpetual issue for us, though we've seen some successes in this area in the past few years with substantial new investments in legal aid, the current budget changes will cause a significant impact upon the system as a whole.
- Advertising and referral fee regulation
- Alternative business structures and entity-based regulatory changes being pushed by some at the Law Society.



- Proposed changes to reform Law Society governance.
- At the provincial government level, we're always pushing for adequate funding of the justice system; encouraging investments in technologies for our courts that will make our lives more efficient and, wherever necessary, we work with local associations to lobby for new courthouse infrastructure.

To see a complete list of the submissions we have prepared visit our web-site at [www.fola.ca](http://www.fola.ca). There are many challenges facing the practising bar in Ontario and more which continue to rise to the surface. Local associations like ours are so important and FOLA's role, as a coordinator and advocate for the interests of the practising bar is critical to the success of lawyers in Ontario.

FOLA has a Plenary twice year at which representatives of all provincial associations attend to discuss the variety of concerns and new issues faced by the practising bar. To that end, I would like to encourage you to raise any issues of concern to the members of the MLA and/or to any of the members of FOLA.



## FOLA TRAVEL DEALS!

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As an added bonus, for each person who signs up from your jurisdiction, FOLA will donate \$50 to the corresponding Law Association! Members & non-Members included! So spread the word!

Learn more at: [FOLA Travel](#)



Bailey, Lucy, and Dallas  
with their humans,  
Louise, Jeff, and Tammi

## Love Me, Love My Dog



Contributed by:  
James Zegers / Zegers Law Professional Corporation

Recently I had the pleasure of going for a walk with Bailey, Dallas and Lucy, and their humans, Louise Poole, Jeff Rozema and Tammi Robertson.

### The Humans

Louise, Jeff and Tammi are part of Davis Martindale's Valuations and Corporate Finances teams. Through DM University, they provide a seminar series focused on accounting issues for family, corporate and commercial lawyers. They, and their dogs, have a great working relationship.

### The Dogs

Bailey, a standard poodle, loves playing with other dogs and her younger human

siblings. She also likes sunning on the back deck. Well, who doesn't! She, like her human Louise, has a wonderful temperament.

Dallas is 1.5 year old golden retriever. Known for their gentleness, obedience and love of water, golden retrievers make great family dogs. A playful pup, Dallas loves to roll in snow (and mud). Her parents were champion hunting dogs and because of that she loves to swim after ducks. While not interested in hunting, she enjoys off leash hikes with Jeff and exploring the trails of London.

Lucy is a Corgi. Playful, independent and intelligent, Lucy is very tolerant of children, which is good for Tammi. Lucy puts up with a lot from Tammi's children, including being regularly dressed

up in princess costumes. Lucy's best friend is "Catman" (a cat obviously, not Catwoman's boyfriend). Lucy likes to keep Catman in line. Whenever Catman is on the table or kitchen counter, Lucy will bark until Catman gets down.

Do you have a dog you would like to see profiled? Please contact James Zegers c/o The Snail.

Have I said I was going to feature your dog and forgot? Please remind me.

*Do you have a dog (or cat) that you would like to introduce to the London legal community? Contact James Zegers, Snail photographer, at [james@zegers.ca](mailto:james@zegers.ca).*

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# Court Exercises Tort



Contributed by:  
David Spence / Harrison Pensa

## Tech sector employers take notice: harassment is not a tort. At least, for now.

Torts are wrongful acts that attract liability in civil courts. Torts, such as defamation and wrongful termination, are familiar in the employment context but a new tort of harassment would have created a hazard for employers and a new opportunity for relief for employees.

On March 15, 2019, the Ontario Court of Appeal released its judgment in the case of **Merrifield v. Canada (Attorney General)**.

The Court of Appeal's rejection of harassment as a tort is good news for employers, like those in the tech industry with non-traditional employer/employee relations, who may be at risk of their managerial discretion being construed as managerial harassment.

## Background

Beginning in 2005, RCMP officer Peter Merrifield experienced several work unit transfers and faced scrutiny over unauthorized media appearances. In 2006, he was audited and investigated for his corporate credit card use and found to have violated the RCMP's credit card use policy.

As a result of this, Mr. Merrifield launched a civil action against the Crown alleging, among other things, that the conduct was managerial bullying and harassment.

After a 40-day trial held over a period of 17 months the lower court judge found that the tort of harassment existed, was proven, and awarded Mr. Merrifield \$100,000 in general damages, \$41,000 in special

damages and \$825,000 in legal costs.

The Court of Appeal overturned that award and found no reason to recognize the tort of harassment.

## The Reasons

The Court of Appeal found that employees experiencing managerial harassment have other avenues of recovery where their employer's conduct is so egregious as to cause harm. In the alternative, the tort of 'Intentional Infliction of Mental Distress' (IIMD) may be claimed by anyone – including harassed employees.

The Court found that Mr. Merrifield did not meet the burden of proof in a claim for IIMD.

## The Implication

While harassment can still attract liability under the Criminal Code, the Ontario Human Rights Code, and the Occupational Health and Safety Act, the Court of Appeal is saying it does not belong in civil claims. This is good news for employers. While they are still exposed to claims for the IIMD, the Court of Appeal affirmed that this demands a high threshold of proof and any successful claim of IIMD must show that the conduct was:

1. flagrant and outrageous,
2. calculated to produce harm, and which
3. results in visible and provable illness.

Courts are cautious to recognize new torts unless the underlying facts of the case cry out for a new legal remedy.

That said, the Court of Appeal did not completely shut the door on the tort of harassment and specifically stated that they, "do not foreclose the development of a properly conceived tort of harassment that might apply in appropriate contexts."

Until that day, employers in the tech industry and beyond can rest easy knowing that the tort of harassment will not be a consideration in assessing the reasonableness of their managerial decisions.

There is no word yet on whether this decision will be appealed to the Supreme Court of Canada.

This article was originally posted on the **HP Privacy and Tech Law Blog** ([www.hptechlaw.com/blog](http://www.hptechlaw.com/blog)).

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# Plaidoyer Local



Contributed by:

Ian Dantzer / Review Counsel, Western Law

The word *plaidoyer* is an ancient noun meaning "*a pleading, a plea, and more specifically an advocates speech*". I hope to present local cases of importance to highlight the high quality of the bench and bar in Middlesex County.

## What duty was undertaken?

### Introduction:

In 2008 **Maple Leaf Foods (MLF)** (two companies) was notified by the **Canadian Food Inspection Agency (CFIA)** that some of their ready to eat meats (RTE) they produced for human consumption were contaminated with listeria in sufficient concentrations to be dangerous. In fact, several people fell seriously ill and some died as a result of consuming this contaminated meat. As a result, MLF immediately recalled their products and shortly afterwards closed the plant where they were produced.

MLF supplied two of their contaminated meat types (roast beef and corned beef) under an exclusive supply contract to **Mr. Sub**. Mr. Sub, in turn, supplied these products to its franchisees through distributors. The franchisees were required to purchase these specified products by contract. There was no evidence that any of the customers of the franchisees had consumed the supplied meats. The franchisees did incur costs in the cleanup and the return of the faulty RTE meats.

The franchisees and Mr. Sub were

identified as the sole submarine sandwich business to have received the faulty meats. They believed this public notice had hurt their reputations and provided their competitors with a significant advantage. The franchisees also could not purchase replacement meats for six to eight weeks after the plant closure causing them a further disadvantage in having to explain to customers why certain meats were unavailable. Their losses had been mainly "purely economic losses" arising from this reputational harm resulting in the loss of past and future sales and of capital value and goodwill.

### Class Proceeding Commenced:

As a result, a representative plaintiff represented by **Scott Smith of Nicholson Smith & Partners LLP along with Kevin Ross of Lerner LLP** brought a class action on behalf of the franchisees against MLF which was subsequently certified as a class proceeding. The action sought damages on the basis that MLF foods had:

1. Negligently manufactured and supplied potentially contaminated meat; and,
2. Negligently represented that the supplied meats were fit for human consumption.

MLF responded with a motion for summary judgment seeking the dismissal of the major claims for economic loss on the grounds that it did not owe a duty of care to the franchisees in the circumstances. The plaintiff, in turn, sought summary judgment in favour of the class.

### There is a Duty of Care:

The summary judgment motion was also heard by **Madame Justice Leitch** who had also certified the class proceeding. Justice Leitch concluded that MLF did have a duty of care to the franchisees "in relation to the production, processing, sale and distribution of the contaminated meats. She further found that MLF had a duty of care to the franchisees with respect to any representations made that the meats were fit for human consumption and posed no risk of harm. These findings were based on both her reasons on the certification motion and those from the summary judgement motion.

Justice Leitch also found that the relationship between the parties fell within a recognized duty of a manufacturer to supply a product fit for human consumption.

This was based on three decisions being:

1. [Plas-Tex Ltd. V. Dow Chemical of Canada Ltd;](#)



2. [376599 Alberta Inc. v. Tanshaw Products Inc.](#); and,
3. [Country Style Food Services Inc. v. 1304271 Ontario Ltd.](#)

Justice Leitch further referred to the Anns/Cooper framework ([Anns v. Merton London Borough Council](#) & [Cooper v. Hobart](#)) and found that the facts disclosed a relationship of proximity in which a failure to take care might foreseeably cause loss or harm to the plaintiff. Finally, she concluded that there were no policy reasons why the prima facie duty she found should not be recognized.

### There is no Duty of Care:

The decision was appealed by MLF to the [Ontario Court of Appeal](#) (ONCA). The plaintiff was represented by **Peter Kryworuk, Rebecca Case and Jacob Damstra of Lerner LLP**.

The court referenced the established approach to be taken in making its decision as follows:

At the first stage of the Anns/Cooper framework, the question is whether the facts disclose a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the plaintiff. If this is established, a prima facie duty of care arises and the analysis proceeds to the second stage, which asks whether there are policy reasons why this prima facie duty of care should not be recognized; [R. v. Imperial Tobacco Canada Ltd.](#), citing [Hill v. Hamilton-Wentworth Regional Police Services Board](#).

However, a full Anns/Cooper analysis is not required in every case. If a relationship falls within a previously established category or is analogous to one, then the requisite close and direct relationship is shown. So long, then, as a risk of reasonably foreseeable injury can also be shown, or has already

been shown through an analogous precedent, the first stage of the analysis will be complete and a duty of care exists.

A complicating factor was the release by the Supreme Court of Canada (SCC) of its decision in [Deloitte & Touche v. Livent Inc.](#) after the hearing of the appeal. Although the parties were given the opportunity to provide further written submissions, it should be noted that Justice Leitch would not have had the case available to her when rendering her decisions.

### No Recognized and Established Duty of Care:

The ONCA concluded that the relationship between the parties did not fall within a recognized duty of care. The court relied on Livent and the caution expressed there that courts should be cautious in finding proximity based upon a previously established category. A court must be attentive to the factors which grounded the recognized category and ensure that the case at issue is truly analogous. Equally a court must avoid identifying established categories in an overly broad manner. A failure to do so creates the risk that no overriding policy considerations to negate the duty will be considered.

The ONCA concluded that the cases relied on below were not supportive of the result as there had been no differentiation between the duty of care owed to the end user of a product not to cause physical harm and a duty owed to an intermediary, as here, for purely economic harm.

### No Duty based on an Anns/Cooper Analysis:

The ONCA similarly disagreed with the result below by reason of the failure to consider the scope of the proximate

relationship or the scope of any duty arising from it. The duty to supply meat which is fit for human consumption does not extend to the franchisees for pure economic loss. The first duty is aimed at protecting public health and was owed to the consumers and not the franchisees. The duty alleged here is a much different one being to protect the reputation of the franchisees and to pay for any consequential damages for pure economic loss. This would be an unwarranted expansion of the duty owed to one group to another.

### No Duty in Negligent Misrepresentation:

The ONCA also reversed the finding below of a special relationship between the parties. The ONCA concluded that this finding failed to consider the scope of the proximate relationship, which in turn affected the foreseeability analysis. The undertaking made by MLF was to Mr. Sub to not supply a product which would cause its ultimate consumers to become ill or die. They did not undertake as well to protect the reputational interest of any intermediaries.

### There May Yet Be a Duty of Care:

The matter is not over. The plaintiff represented by **Kevin Ross, Peter Kryworuk and Earl Cherniak of Lerner LLP and Scott Smith of Nicholson Smith & Partners LLP**, has successfully obtained leave from the **Supreme Court of Canada** who will hear their appeal sometime in the future.

# Will Notices

## Stephen Joseph Coleman

Anyone having knowledge of a Will of the late Stephen Joseph Coleman, also known as Stephen Coleman, of the City of London, in the Province of Ontario, who died on December 31, 2017, is requested to contact Chelsea Hishon at Beckett Personal Injury Lawyers, 630 Richmond Street, London, ON N6A 3G6, Tel: 519-673-4994, Fax: 519-432-1660, Email: chishon@beckettinjurylawyers.com

## Aida Do Nascimento Vieira

Anyone with knowledge of a Last Will and Testament of the late Aida Do Nascimento Vieira dated after January 11, 1999 is requested to please contact Vera Dokter at Brown Beattie O'Donovan LLP, 380 Wellington Street, 16th floor, London, Ontario N6A 5B5 Tel: 519-679-0400 Fax: 519-679-6350 Email: vdokter@bbo.on.ca.

## Nicholson (Nick) Leo Miller

Anyone having information with regard to a Last Will and Testament and/or Power of Attorney of Nicholson (Nick) Leo Miller, kindly contact Debbie Mauritz, Estate

Clerk, Boddy Ryerson LLP, 172 Dalhousie St., Suite 101, Brantford, ON N3T 5T3, ph: 519-753-8417 ext 30, fax: 519-753-7421, email: DMauritz@boddy-ryerson.com

## John Rae McGuire

Anyone having information concerning the last will and testament of John Rae McGuire, who died on March 19, 2019, please contact William Chizmar, counsel to the firm Carlyle Peterson Lawyers LLP, 7-717 Richmond Street, London, ON N6A 1S2, ph: 519-463-0632 x232, fax: 519-432-0634, email: wchizmar@cplaw.com.

## Ingelore "Ina" Macrae

Anyone having information concerning the last will and testament of Ingelore Macrae (née Nowicki) who died April 3, 2019, please contact Susan Carlyle, 7-717 Richmond St., London ON N6A 1S2, ph: 519-432-0632, fax: 519-432-0634, email: scarlyle@cplaw.com.

## Monica Louise Kimble

Anyone having information concerning the last will and testament of Monica Louise Kimble, who died July 25, 2016,

please contact Caroline Nevill, Gunn & Associates, 108 Centre Street, St. Thomas, ON N5R 2Z7, ph: 519-631-0700 x244, fax: 519-631-1468, email: carolinenevill@gunn.on.ca.

## Albert George Fulford

Anyone having knowledge of a Will of the late Albert George Fulford, also known as Albert Fulford, of the City of London, in the Province of Ontario, who died on June 27, 2018, is requested to contact Justin Newman at Harrison Pensa LLP, 450 Talbot Street, P.O. Box 3237, London, ON N6A 4K3, Tel: 519-661-6710, Fax: 519-667-3362, Email: jnewman@harrisonpensa.com

## James Henry Brown

Anyone having information concerning the last will and testament of James Henry Brown late of London, Ontario, who died February 1, 2019, please contact Michael J. Lamb J.D., Barrister, Solicitor & Notary Public, 3 - 575 Wharncliffe Road South, London, Ontario N6J 2N6, ph: 519-645-1104, fax: 519-645-1107, email: lamblaw@on.aibn.com.



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**Gloria Abolaji** – has opened Adeglory Law, 472 Ridout St. N, London N6A 2P7, ph: 548-388-3385, email: [adeglorylaw@gmail.com](mailto:adeglorylaw@gmail.com)

**Jamie Froats** – new member at Jim Dean Law and his email is [jamie@jimdeanlaw.com](mailto:jamie@jimdeanlaw.com)

**Lauren Haberer** – her last name has changed to Sigouin and her email is now [lsigouin@harrisonpensa.com](mailto:lsigouin@harrisonpensa.com)

**Ledroit Law** – is now Ledroit Sabo

**Darren Avery** – new member practicing at Filion Wakely Thorup Angeletti LLP and his email is [davery@filion.on.ca](mailto:davery@filion.on.ca)

**Karen McKay** – has opened up Karen L. McKay Law, 590 Windermere Rd., London N5X 2T2, ph: 519-675-4104, email: [kmckay@karenmckaylaw.com](mailto:kmckay@karenmckaylaw.com)

**Debbie A. Boswell** – new member practicing at Lerner's LLP and her email is [dboswell@lerner.ca](mailto:dboswell@lerner.ca)

**Jonathan McKinnon** – there was a typo in his update last month. His address is 314-111 Waterloo St., London N6B 2M4

**N. Marie Teeple** – is now working for Legal Aid Ontario – St. Thomas, 4 Wellington St., St. Thomas N5R 2P2, ph: 519-631-4810, email: [teeple@lao.on.ca](mailto:teeple@lao.on.ca)

**Peter Downing** – has moved to 402-148 Fullarton St. London N6A 5P3, all else the same.

**Brian Chambers** - has moved to 402-148 Fullarton St. London N6A 5P3, all else the same.

**Pamela Munn** - has moved to 402-148 Fullarton St. London N6A 5P3, all else the same.

**Nicole Keating** – is now with the Criminal Court Duty Counsel's office but all else is the same.

**Brandon Szarabura** – has opened his own practice at 341 Talbot St., London N6A 2R5, ph: 519-488-4835, fax: 877-748-0989, email: [brandon@szaraburalaw.com](mailto:brandon@szaraburalaw.com)

**Christian Specht** – has moved to 513 St. James St., London, N5Y 3P4, all else the same.



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