



PEEL BRIEFS

THE MAGAZINE OF THE PEEL LAW ASSOCIATION



SPRING 2023 | Issue 02

PEEL BRIEFS

Peel Law Association

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for *Peel Briefs*?**

Email us at ee@plalawyers.ca

We look forward to hearing from you!

Cover Photo:

Photo of Anne Kennedy (recipient of the PLA's 2023
Lifetime Achievement Award) and John Russo.
Photo taken by André Van Vugt, Giant Vision.

**Deadline for submissions
to next issue is:
August 25, 2023**

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PRESIDENT'S REPORT

by Joanne Lagoudis, PLA President

Thank you for giving me the opportunity to serve as the new President of the Peel Law Association. It is my pleasure to update you on the recent events and developments of the PLA. The PLA is emerging this year as a dynamic, rapidly evolving law association. Our CPDs, events and membership services are gaining the attention of other associations and new members, putting us to near record-level membership numbers!

We saw a glimpse of our new membership numbers at this year's Annual Members' Meeting on March 30th, 2023. This was the PLA's highest attended member's meeting. This reflects our member's commitment to the association and our local legal community.

Following the Annual Members' Meeting, the PLA hosted its Annual Members' Dinner. This was another well attended event highlighted by the attendance by Regional Senior Justice Ricchetti, Justice McGee, Justice Trimble, Justice Chang as well as our Law Society Treasurer, Jacqueline Horvat. The Annual Members' Dinner is also our opportunity to honour our Association's recipient of the Lifetime Achievement Award. The 2023 Lifetime Achievement Award was presented to Anne Kennedy, Partner, Risk and Practice Management at Pallett Valo LLP. Ms. Kennedy was only the 2nd woman to receive the award, but most certainly will not be the last.

I am also happy to announce the 2023 PLA Board of Directors. This year's Board welcomes three new directors: Shauna Pemberton,

Harminder Dhillon, and Lata Menon. Our Board reflects the diversity of our Peel community and we look forward to working with everyone. I also take this opportunity to thank our outgoing Treasurer, Scott Price. Scott was a long serving Treasurer and Director with deep knowledge and a steady hand, and the PLA thanks him for his service.

In an effort to reach out to more members, the PLA amended its membership categories to now invite National Committee of Accreditation candidates. The PLA is excited to have the opportunity to network with lawyers who have been foreignly trained as the PLA can offer a much needed bridge to practice in Ontario.

This year was a Bencher Election year. Lawyers across Ontario were tasked with voting in 40 new benchers to represent them at Convocation. This year's bencher candidates participated in active campaigns. The PLA congratulates the new benchers, and we look forward to working with them. A special congratulations goes to longtime PLA member, Jennifer Gold, who is the Central West Bencher.

In late May, 2023, a team from the PLA participated in the Spring Plenary of the Federation of Ontario Law Associations (FOLA). FOLA is a great opportunity for associations across Ontario to interact and share their experiences, and to learn about significant trends and threats impacting Ontario lawyers.

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PRESIDENT'S REPORT

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One of the most important projects on the PLA's agenda this year is to start the renovations in the library. Through our fundraising efforts and savings, in June 2023, the PLA will be starting the first phase of its renovations. The first phase involves the creation of the "Behind the Stacks" boardroom. The rear of the library will be converted into a boardroom space where we can host events, CPDs, and have board meetings. We would like to thank our members and sponsors who have made this possible.

In an effort to minimize confusion over outdated Practice Directions, on May 30, 2023 Chief Justice Morawetz announced that the Superior Court of Justice will be releasing updated Consolidated Practice Directions for

Civil, Family, Criminal, Divisional Courts as well as the Toronto Commercial List. The new Practice Directions will be released on June 15, 2023. It will no longer be necessary to cross-reference between the provincial and local practice directions.

On a final note, I take this opportunity to thank our outgoing President, Vanassa Richards-Thompson. Vanassa took over the PLA during one of its most difficult times. She had to steer the association through the pandemic and the search for a new librarian and executive officer. Despite all the hurdles, Vanassa has left the PLA in great shape and with a sense that it is turning a corner and becoming bigger and better than ever. Thank you Vanassa.

In case you missed it...

As mentioned above in the President's Report, all consolidated Provincial practice directions are being updated and will come into effect **June 15, 2023**. This information was shared with the PLA membership by email on May 31, 2023 and posted on the PLA website.

If you did not see the email notice, please read [Chief Justice Morawetz's Memorandum](#) dated May 30, 2023 for more information regarding the upcoming changes.

In order to familiarize yourself with the updated practice directions, please see the links below. All of the updated provincial practice directions will come into effect on June 15, 2023. However, please note that filing through the JSO Portal and other filing directions as set out in the Consolidated Divisional Court Practice Direction is effective immediately

[ANNEX 1: Consolidated Provincial Practice Direction for Criminal Proceedings](#)

[ANNEX 2: Consolidated Provincial Practice Direction for Family Proceedings](#)

[ANNEX 3: Consolidated Civil Provincial Practice Direction](#)

[ANNEX 4: Consolidated Practice Direction for Divisional Court Proceedings](#)

[ANNEX 5: Consolidated Practice Direction Concerning the Commercial List](#)



LIBRARIAN'S REPORT

by Jo-Ann McQuillan, Law Library Director

I am happy to report that I have completed my first year anniversary at the PLA! What a wonderful year it has been: I have met so many incredible lawyers, judges and community partners, and everyone has been so generous in spirit and open to talking to me. If you've met me, you know I like to talk about how the PLA can serve you better and I take all feedback under consideration. Many of the changes you have seen in the last year have been a result of these conversations. If we haven't met yet, please stop by for a visit next time you are in the courthouse. My door is (almost) always open and I will always have candy for you.

A new year also brings a new Board of Directors - I have been privileged to work with an amazing group of people over the last year who gave so much of themselves to ensure that the PLA is growing and thriving. I am excited about our new Board, voted in at the March 30 Annual Members' Meeting. We have a new Executive (see page 49) and some incredible new Directors with whom I am thrilled to collaborate with over the next year - you can read more about our new Directors on page 10.

Looking forward, we have some big plans in the library this year - we are creating a space called "Behind the Stacks" which will be a room for meetings, training and will be available for members to reserve for team gatherings. This transformation will take place over the next 3-4 months, so you will see the library in different states of chaos, which we will try to keep to a minimum.

Once the chaos subsides, we will also officially launch our library **Slow Zone**, a place where you can sit quietly, to rest, gather your thoughts, steel your nerves, whatever you need to do to find your inner calm. To facilitate this, we have four gorgeous and comfortable new chairs (inspired by Arne Jacobsen's famous egg chair) which will help you relax and chill out. We know you have stressful lives and we wanted to create a space to help you take a breather.

We are happy to be hosting another Library Technician co-op student from Mohawk College, Kathleen Prinsen. You can read a bit more about her on page 8. Kathleen arrived at the library just when we needed her most! She also wrote an article for *Peel Briefs* - see page 36.

We have some incredible new books in our collection - see pages 27-28 to review the titles in your areas of legal practice. We are always purchasing new releases from our favourite publishers on a regular basis. **We do take your feedback seriously**, so if there is something you would like to see in our collection, please let me know. Sometimes lawyers will point out a great book that I have inadvertently overlooked, such as *Islamic Wills, Trusts and Estate Drafting in Canada*, an excellent book recently recommended by a member.

Remember: the PLA Library is YOUR library!

Back in March, we had our Annual Members' Meeting and one piece of business pertained to

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LIBRARIAN'S REPORT

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the **expansion of our student membership category**: we are now permitting lawyers going through the National Committee on Accreditation (NCA) process to be part of the PLA family! We are pleased to be more inclusive and encourage you to advise any internationally trained lawyers going through the requalification process to join, as we are certain that membership in the PLA will help them transition into Canadian legal practice with confidence and valuable connections.

Recently, I attended the FOLA Spring Plenary with our new President, Joanne Lagoudis, and our Past President, Vanassa Richards-Thompson. We were excited to hear about LiRN's new grant funding from the Law Foundation of Ontario, which will allow for innovations in libraries and permit courthouse libraries in smaller jurisdictions to build the core collections that lawyers rely on when they travel around the province.

We also got a close look at the ground-breaking new group of **recently appointed Benchers**; for the first time in LSO's history, a significant majority of Benchers are female and the entire group represents the diversity of lawyers practicing in Ontario (race, languages, practice areas, etc.) - you can get a closer look [here in a compelling slideshow from LSO's Diana Miles](#).

We also learned more about the **mandatory succession planning** program that will come into effect in 2024. Did you know that of the 11,500 law firms in Ontario, 8,800 are sole practices? Sole practitioners are least likely to have succession plans in place and LSO wants

to build for the future. Click [here](#) for more information.

When I first started last year, there was much discussion about **mental health** in the legal profession in light of Justice Strathy's now famous [article](#). The issue has not diminished but I perceive an increased willingness to talk about mental health. At the FOLA Spring Plenary, we heard from a panel of lawyers who were candid about sharing their mental health challenges; they are the lawyers behind Voices for Mental Health. I encourage you to check out their [mental health and addictions](#) resources, and also remind yourself about the excellent [resources offered by the LSO](#). Life can be really tough sometimes. Let's keep sharing and healing.

Finally, please be sure to take a look at our amazing [upcoming CPDs](#) - there is something for sole and small firms (**Navigating the Marketing Minefield**, now available in replay), something for family lawyers (**Tackling the Separation Date Stalemate**), and something for civil litigators (**Civil Law Section Meeting**). We have an autumn/winter roster of CPD offerings that will appeal to practitioners from differing areas of law - stay tuned for details.

We also have some great events planned for the next month or so:

1. **Breakout with the Bar** - this June 22nd event is for newly called lawyers (2018+) and will provide a unique opportunity to meet peers, seasoned professionals and to mingle with Central West judges. So far, eight judges have agreed to be part of this important event.

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LIBRARIAN'S REPORT

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2. **Women's Law Task Force** - on Wednesday, June 28th, we plan to have an offsite High Tea for women in our membership community to enjoy each other's company and have some special time carved out of their overly busy lives. Tickets are limited, so please get yours today.

3. Finally, on July 13, we are having a lunch open house at the PLA to say goodbye to Justice Durno as he retires. If you plan to attend, an RSVP would be appreciated.

We are encouraging everyone to mark this date on your calendar: September 21st, 2023. We will be bringing back **Judges' Night** and we have some special surprises in store for you.

I hope you all have a safe and happy summer.

Are you following us?



WELCOME KATHLEEN PRINSEN

This spring, Kathleen Prinsen has joined the Peel Law Association as a field placement student from Mohawk College's Library and Information Technician programme.

Originally from Pictou, Nova Scotia, Kathleen relocated to Toronto in 2016 and most recently worked programming repertory film screenings at the Royal Cinema in the heart of Toronto's Little Italy neighbourhood. With a background in film and television, Kathleen previously worked alongside iconic Canadians, *The Trailer Park Boys* as the studio manager at the colourfully named Swearnet Studios. Look closely at past *TPB* or *Swearnet* episodes and you may spot her having a drink at Julian's bar, ignoring J-Roc at the jail reception desk, or lending a less than sympathetic ear to Ricky at his parole hearings.

She is looking forward to her future career as a library technician and has found her first field placement to be an entirely new and enriching experience.

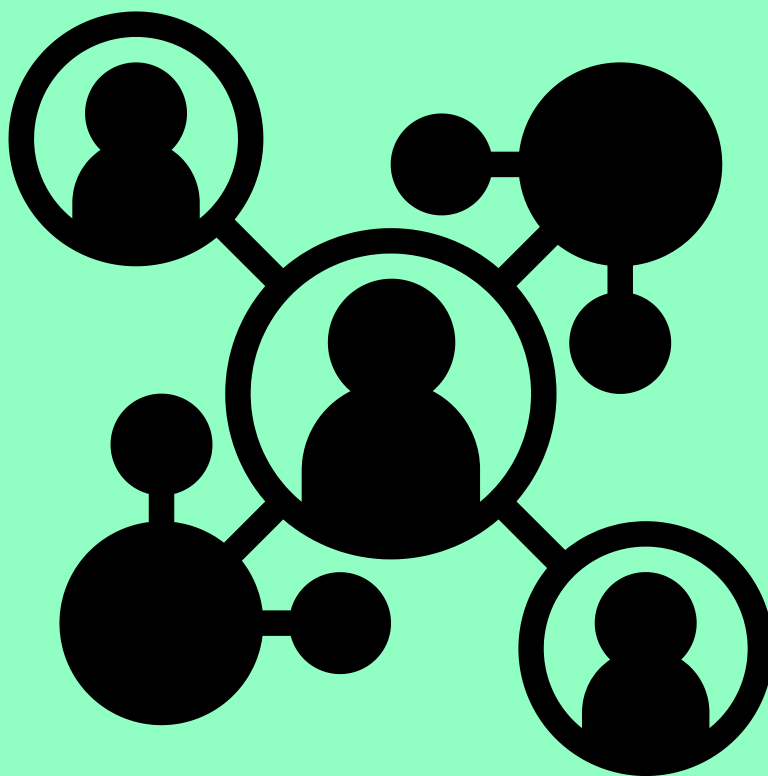


PLA'S NEW LAWYER TASK FORCE PRESENTS

BREAKOUT WITH THE BENCH

CHATS, JUDGES, AND NEW CALLS

A professional networking event



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IN PERSON FROM 4:00 - 6:00 PM



**New Calls
(2018-2023)**

ACTIVITIES WITH JUDGES

FINGER FOODS & REFRESHMENTS

PLA LIBRARY & LOUNGE

RSVP: Library@plalawyers.ca

Sponsored by:



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Click. Watch. Credit.

Meet the New Board Members

Please see below for a brief biography from each of the newly elected Directors.



Harminder Dhillon

Harminder lives and practices Family Law in Peel with emphasis on Mediation. Prior to graduating from Osgoode Hall Law School, he was an engineer with an M.A.Sc. from U. of Waterloo. From 2008-2019, he served on the Ontario Review Board. Harminder is passionate about social change and has been deeply engaged with local community. He devotes considerable time to social advocacy on the issues of Sustainability and Democracy. He founded a local democracy group Engage Peel. Recently, he was appointed to the City of Mississauga Governance Committee. He founded and runs Drishti Panjab, a charity that gives out educational bursaries in Punjab. He regularly appears on ethnic radio/TV shows in the GTA, Calgary and Vancouver. His first book of Punjabi poetry will be published later this year.

Shauna Pemberton

Shauna is a criminal defence lawyer who has managed her own practice in Brampton for over 20 years. She also works as a professor in the paralegal program at Centennial and Humber College and has also worked as a professor at Sheridan College in the School of Applied Health & Community Studies. Shauna has used her experience as a lawyer to advocate for young persons within the criminal justice system while also training the next generation of legal professionals in her work as a professor. Shauna continually displays her commitment to investing in her community through her volunteer work and hopes to support young Black women through upcoming initiatives.



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Meet the New Board Members

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Lata Menon

An accomplished Barrister and Solicitor and active community member, Lata Menon has become a recognized name in the legal community in Ontario, as well as the Indian states of Maharashtra, Karnataka, and Kerala, where she practiced as a lawyer before immigrating to Canada. In addition to her professional activities as a lawyer, Lata devotes her time to the community at large and has become an active supporter and champion of women's equality and rights.

She is actively engaged in several social and community programs in her capacity as a Founder, Board Member, Secretary, Legal Advisor, and many other positions. Some of Lata's community involvement include being a Founder and Board Member of the Indo-Canadian Women's Foundation, which represents professional women of different backgrounds, a Founder and Board Member of the Canada Peace Foundation, which focuses on philanthropic and catastrophic work in Canada and abroad, and a member and supporter of Dancing Damsels, which encourages and supports cultural activities for women. As well, Lata has been the recipient of many awards and recognition from 2015 to 2023, both here and abroad, for her success and achievement within the community as a well-respected lawyer, entrepreneur and advocate of women's rights and equality.

Lata and her team of lawyers and paralegals provide services in the fields of civil litigation, real estate, wills and estate matters, and family law. As a professional, Lata has touched the lives of several women who came to her in distress, when faced with family discord, domestic violence, abuse and family disputes and she has influenced many women to pull their lives together and persevere in the face of adversity. Lata's achievements and success makes her a true leader, mentor and formidable force to influence and inspire women all around.

PLA'S 2023 LIFETIME ACHIEVEMENT AWARD

After taking a few years to deal with the pandemic, the Peel Law Association opened a call for nominations for the 2023 Lifetime Achievement Award. This is an award that is granted to someone who meets - and exceeds - these criteria:

- The recipient has made
 - substantial contributions made to the practice of law,
 - substantial contributions made to the local community;
- and, has been a PLA member for a minimum of 10 years

This year we received incredible nominations, but one stood above the rest: Anne Kennedy, Partner, Risk and Practice Management at Pallett Valo LLP. This marks the second time in the PLA's history that the award was granted to a woman (Beverley Martel, former PLA President, won in 2012).

Anne received compelling nomination letters from both her peers and those who came up after her. Anne was a trailblazer in the 1980s as a highly regarded civil litigator, who later became a managing partner. Anne is known for her expertise in commercial litigations alternative dispute resolution (arbitration and mediation), estate litigation and risk management. She is respected for her sharp legal mind, her work ethic and the fact that she is gracious, dignified, and above all, kind. She is a good listener, is non-judgemental and gives reliable and sound advice.

Anne has published lots of informative articles, has been a member of many associations and has been actively involved in helping lawyers balance their complex personal and professional lives. In her time with Pallett Valo, she has spearheaded many initiatives to improve the lives of working women and has become the go-to person for all matters - a sounding board, a calm voice, a shoulder to cry on. As Craig Ross, one of her colleagues, reported,

"If you need someone to talk you off what often feels like the edge of a cliff, you see Anne. If you are doubting a decision, need to talk strategy, or feel like you might have made a mistake, you go to Anne. If you are uncertain about a conflicts issue, uncomfortable with instructions you are receiving, or having other difficulties with a client, you see Anne. If you are struggling with your practice because of something at work, or at home, you go to Anne."

On March 30th, at our Annual Members' Dinner, we were pleased to present Anne Kennedy with the Lifetime Achievement Award. Craig Ross and John Russo both gave heartfelt speeches on her behalf and a large group of her colleagues and family members showed up to celebrate her.



Photos by André Van Vugt, Giant Vision

Missed out on a PLA CPD?**Did you know that the PLA offers replays on selected past CPDs?**

You can purchase a number of past PLA CPDs and gain access to the recording and any materials provided for that program. Listed below are a sample of the available replays.

- Putting on the Red Sash
- Business Valuations & Income Analyses: Navigating Valuations Post-Pandemic
- What's New and Noteworthy in Criminal Law
- I'm a Lawyer, not a Therapist! Understanding the Emotional Needs of Clients During Divorce
- Navigating the Marketing Minefield

[Click here for a full list.](#)



Tackling the Separation Date Stalemate

This education session will provide you with information on how to obtain a preliminary assessment of the separation date issue and how to better understand the foundational elements of a couple's relationship.

Topics will include: Relationship, Communication and Intimacy, Household and Family, Financial Affairs, Activities with the Public, Separate Residences, and more...

Speakers

- David Frenkel, Frenkel Tobin LLP
- Yunjae Kim, Birenbaum Steinberg Landau Savin & Colrairie LLP

Moderators

- Kavita V. Bhagat, Family Law Solutions, PLA Director
- Vanessa Richards-Thompson, Barrister & Solicitor, PLA Past President



**TUESDAY
JUNE 6, 2023**



4:00 PM - 5:00 PM



ONLINE WITH ZOOM

REGISTRATION FEE

(prices include HST)

PLA MEMBER - \$50.00

NON-MEMBER - \$75.00

REGISTER HERE

*Registration will close at
12:00 PM on June 6, 2023.*

THE PERSONAL LIABILITY OF DIRECTORS WHEN STRIPPING CORPORATE ASSETS TO THWART CREDITORS

by **Mujir A. Muneeruddin, Partner at Pallett Valo LLP**

Can a director be personally liable to creditors for stripping assets out of a company after breaking off a contract?

A recent judgment of the Ontario Court of Appeal in *FNF Enterprises Inc. v. Wag and Train Inc. (Wag and Train)*, confirms “yes,” while clarifying the distinction between piercing the corporate veil to reach shareholders and simply holding directors individually accountable through the oppression remedy. In *Wag and Train*, the court allowed a landlord (i.e. creditor) to pursue an oppression claim against a corporate director for stripping assets out of a company (in which she was also the sole shareholder) after breaching the applicable lease agreement for non-payment. However, at the same time, the court reaffirmed the principle of “corporate separateness” by not, on the facts at hand, allowing the creditor to pierce the corporate veil to reach the individual in their capacity as a shareholder.

Small Corporation Defaults on Commercial Lease

The defendant in *Wag and Train* was a small corporation (the “Corporation”) with a single director, officer, and shareholder. After leasing a commercial property for a number of years, the defendant corporation abandoned the property and quit paying rent with about one year remaining in the lease term. According to the landlord, the director/shareholder then stripped all the assets from the company and moved them to a new business enterprise at a

new location outside of the Corporation.

With little hope of recovering damages from the now-gutted Corporation, the landlord filed a claim against the director/shareholder trying to hold her personally liable for the default. The trial court refused to allow the landlord to pierce the corporate veil or to seek relief under the oppression remedy provisions of Section 248 of the *Business Corporations Act*. However, the Court of Appeal overturned part of the decision and allowed the oppression claim to succeed.

Why The Oppression Remedy Claim Was Successful

The Court noted that while the Corporation may have entered into the lease for valid business reasons, the director’s actions in divesting corporate assets to avoid paying for the lease was not a legitimate business decision. Creditors, explained the court, should be able to reasonably expect directors to fulfill their duty not to divert corporate assets out of their reach. “The oppression remedy is available to address corporate conduct that defeats the reasonable expectations of corporate creditors as a class of corporate stakeholders eligible to use the oppression remedy,” the Court concluded. In summary, personal liability may be an appropriate remedy when a director takes “oppressive steps” that benefit them personally while harming a corporation’s stakeholders, which includes its creditors.

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PERSONAL LIABILITY OF DIRECTORS

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Observations

The Court of Appeal agreed with the lower court that the landlord did not have a remedy against an individual shareholder. To pierce the corporate veil, the court noted, required that the liability stem from fraudulent or improper conduct. In this case, the source of the liability was simple breach of a valid commercial lease entered into for legitimate business purposes.

In *Wag and Train*, the Court affirmed both that shareholders are not likely to be liable for

corporate obligations, but also that directors can be personally liable when they strip a corporation of its assets for what the court finds to be oppressive reasons: defeating the claims of corporate creditors, legitimate stakeholders of the corporation.

The Court of Appeal's decision may raise many questions about the potential for personal liability for corporate directors and even shareholders.

CIVIL LAW SECTION MEETING

Topics to be Discussed:

- Filing materials
- Scheduling Motions
- Urgent Motions
- Case Management
- Trial Dates
- Discussion of one or more of the 12 points mentioned in the case [Lepp v. The Regional Municipality of York, 2022 ONSC 6978](#)
- And more!

Speakers:

- Justice Leonard Ricchetti, SCJ, Regional Senior Justice, Central West
- Justice Michael G. Emery, SCJ
- John Russo, Managing Partner, Pallett Valo LLP

Moderator

- Mahzulfah Uppal, Kania Buttigieg Professional Corporation, PLA Director

Wednesday, June 7, 2023

4:30 PM - 6:30 PM

Online with Zoom

FREE for 2023 PLA Members
\$50 for Non-Members

REGISTER HERE

*Registration will close at
12:00 PM on June 7, 2023.*

THE BAND OF SISTERS

by Shauna Pemberton

On May 8, 2023 a Band of Sisters took over Alioli Ristorante in Mississauga to celebrate our beloved colleague and friend Vanassa Richards-Thompson. Her success and appointment as a Deputy Judge in Brampton inspired and birthed the desire for Lashell and I to organize the event. It was an evening filled with laughter, warm hugs and delicious food.

These hard-working amazing women of the Peel Bar came together from various walks of life, differing career paths, and personal journeys. It was a sight to behold my Band of Sisters from various areas of legal practice, taking time out of their busy schedules to bond, share war stories and exhale.

Our legal armour was set aside and we decompressed and fed our minds, bodies and souls.

It made me wonder, why don't we do this more often? Why are we as women practising in the legal profession not more intentional about taking time out for self-care?



When many of us hear the term self-care we often think that self-care is optional and complete everything else on our long lists, except taking care of ourselves. It is time for us to reframe the discussion about self-care and be intentional about prioritizing it. Self-care does not mean that we have to be indulgent all the time but that we move towards creating a better mind, body and soul.

Getting together to break bread with one another, is a form of self-care. Taking time to engage and converse with women who we haven't seen in many years due to the pandemic, is a form of self-care. Connecting with others who understand our professional highs and lows, is a form of self-care. Scheduling time to be embraced by the beautiful energy of colleagues and mentors is a form of self-care.

What I loved the most about this wonderful evening was that these female champions of the Peel Bar enthusiastically came together to celebrate a formidable lady. It warmed my heart to see the strong sisterhood of the Peel Bar. I am a relatively new member of the Peel Law



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THE BAND OF SISTERS

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Association and I have had the pleasure of exchanging smiles and pleasantries with many of these fabulous women throughout my 21-year career but I never had the opportunity to spend quality time with them. I would happily do it again.

The takeaways from the lovely evening together were that female lawyers support each other and are prepared to lift another sister up to celebrate her accomplishments. My takeaway was that I found a group of colleagues with whom I look forward to networking, shopping, lunching, golfing and growing professionally.

I challenge the Lovely Ladies of the Peel Bar to keep up the momentum that was built and continue to celebrate with one another. I challenge my newfound female crew to check in on each other and strengthen the networks that were created. I challenge us to mentor and be an example to younger female lawyers. I challenge all of us to give ourselves permission to relax and unwind with our colleagues and enjoy time together.

My hope is that the Band of Sisters that was birthed on May 8, 2023 will take up this challenge and enthusiastically accept.

The photographic evidence is proof enough that we are now bonded.

"The success of every woman should be an inspiration to another. We're strongest when we cheer each other on." – Serena Williams





JOIN THE PLA'S WOMEN'S LAW SECTION COMMITTEE FOR

HIGH TEA

Wednesday, June 28, 2023 - 3:00 PM - 5:00 PM

at **Sweet Chandelier**

(870 N Parkway Drive, Brampton, ON L6S 4N5)

PLA MEMBERS: \$45.00

NON MEMBERS: \$50.00

Prices include HST

There is a limited number of seats available, so get your tickets ASAP!

[REGISTER HERE](#)



SUBSEQUENT CREDITORS

by Jonathan Speigel, Speigel Nichols Fox LLP*

Under the *Fraudulent Conveyances Act* ("Act"), creditors are given the ability to obtain a court order setting aside a conveyance of property if that conveyance was made with the intent to defraud creditors or others of their lawful debts. The question that often arises is "Which creditors?" Sometimes that question is very easy to answer. A claimant who was a creditor at the time of the transfer is certainly an included creditor. How about a claimant who became a creditor many years after the transfer? This question was answered in *Ontario Securities Commission v. Camerlengo*, 2023 ONCA 93.

Claim

The statement of claim set out the following allegations:

Husband carried on an electrical contracting business with a business partner, using various corporations.

- In February 1996, husband and his partner incorporated another corporation. Four months later, using the same lawyer and on the same day, husband and his business partner each conveyed their interest in their respective matrimonial homes to their spouses for no consideration.
- Husband and his wife continued to live in the matrimonial home, which wife intermittently mortgaged to fund husband's business activities.

- At the time of the transfer, husband and wife were concerned about husband's potential exposure to personal liability from husband's rapidly expanding electrical contracting business that started bidding, and working on, million-dollar, high-risk projects.
- In 2011, husband was facing financial difficulties and arranged for a \$200,000 loan to husband's corporation from a third party lender. Husband's corporation never repaid that loan. The plaintiff later obtained a judgment against the lender and then a judgment against husband's corporation after the plaintiff garnished the lender and husband's corporation did not honour the garnishment.
- The plaintiff then brought its action against husband's corporation, husband, and wife claiming oppression and a constructive and resulting trust; it also sought to set aside, as fraudulent, the 1996 transfer of the matrimonial home.

Husband and wife brought a motion to strike the statement of claim. The motion judge dismissed the motion regarding the trust claims, but allowed the motion regarding the fraudulent conveyance claim. The judge concluded that the lender, and therefore the plaintiff, did not come within the class of persons contemplated by section 2 of the Act - holding that they were not "creditors or others" at the time of the 1996 matrimonial home

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SUBSEQUENT CREDITORS

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transfer. She held that the statement of claim did not set out sufficient particulars of the allegations, such as the names of creditors, actual debts, or precarious financial position of husband at the time of the 1996 transfer.

The plaintiff appealed to the Ontario Court of Appeal.

The Act

Section 2 of the Act states the following:

Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or **defraud creditors or others** of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

The court held that the motion judge erred in both her interpretation and application of section 2 of the Act. Case law is clear that a subsequent creditor (i.e., a claimant who is not a creditor at the time of the transfer) can attack a transfer if the transfer was made with the intention to "defraud creditors generally, whether present or future." Further, a plaintiff at the pleadings stage will not know who the settlor's creditors were at the time of transfer. It is sufficient, therefore, to plead facts that support the allegation that "at the time of the conveyance the settlor perceived a risk of claims from a general class of future creditors and conveyed the property with the intention of defeating such creditors should they arise."

In recognition of the difficulty of establishing by way of direct evidence what was in a debtor's mind when making a transfer, the courts have defined a number of "badges of fraud," that give rise to an inference of a subjective intent to defraud, including:

- the settlor continued in possession and continued to use the property as his or her own;
- the transaction was a secret;
- the transfer was made in the face of threatened legal proceedings;
- the transfer documents contained false statements as to consideration;
- the consideration was grossly inadequate;
- there was unusual haste in making the transfer;
- the settlor was embarking on a risky or hazardous venture;
- the settlor retained some benefit under the settlement; and
- a close relationship existed between parties to the conveyance (which is one of the more significant badges of fraud).

Proof of one or more badges of fraud will not compel a finding for a plaintiff, but it may raise a prima facie evidentiary case that the defendants would be prudent to rebut. To support a claim that a transfer was made with the general intent to defeat future creditors, a subsequent creditor need only plead sufficient badges of fraud to raise a suspicion that needs to be answered. This answer would be made by way of a defence, discoveries, and a trial.

Ruling

The motion judge had relied on an order in

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SUBSEQUENT CREDITORS

...continued from page 20

Wilfert v. McCallum 2017 ONCA 895 in concluding that the plaintiff had not set out sufficient particulars of the fraud. The court noted that the decision emanated from an appeal judge in chambers on a motion to stay a lower court's decision pending appeal and merely restated a well-established rule that sufficient particulars had to be pleaded in a fraudulent conveyance action. The court held that, to the extent that the motion judge relied on this decision to hold that the plaintiff had not alleged sufficient particulars, the motion judge had erred.

The court referred to the allegations stated in the statement of claim and noted that they identify, with sufficient particularity, the facts that could support the inference of an intention to defraud future creditors. It noted that a pleadings motion is not a motion for summary judgment and whether badges of fraud are sufficient to establish the fraudulent intent is a matter to be established on the evidence led at trial. It was undoubtedly not plain and obvious that the claim was certain to fail and without that finding on a pleadings motion, the motion itself is certain to fail. The court allowed the appeal and dismissed the motion.

Consequence

There may be reasons to transfer an interest in land from, say, one spouse to another. For example, it may be made to settle a family dispute. However, if the reason for the transfer is to ensure that, down the road, the land is shielded from the settlor's future creditors, that transfer can be attacked and, depending upon

the facts involved and the badges of fraud proven, attacked successfully.

We expect that this consequence will be a surprise to many people, not just the lawyers who are attempting to collect on judgment debts, but also to lawyers and other professionals who, out of an abundance of caution, transferred their interests in their matrimonial homes to their spouses. And if you think that a transferor is home free if the land was initially taken in the name of the spouse, disabuse yourself of that notion. If one spouse puts up all the money to buy the matrimonial home and pays most, if not all, of the matrimonial home carrying costs, that has been held to be the equivalent of a fraudulent transfer.

**reproduced from the Speigel Nichols Fox LLP April 2023 newsletter. If you wish to receive this bi-monthly newsletter, please contact jonathan@ontlaw.com.*



RETIREMENT *Celebration*



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JULY 13, 2023
12:00 PM - 2:00 PM

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Food and refreshments will be served.

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A CLOSER LOOK AT LAW STAMPS

In the 19th century, law stamps were purchased in advance from authorized vendors by individuals involved in civil proceedings. These law stamps were affixed by the officials to various documents in payment of fees owed to the Crown. Denominations were usually set at 5 cents, 10 cents, 20 cents, 50 cents, 80 cents, \$1.00 and \$2.00.

The initials “F.F.” (fee fund) on the Canada Law Stamps were used in the lower courts, organized at the county level, including County Courts, Division Courts and Surrogate Courts. The fees represented by the F.F. stamps were used to defray the salaries of judges.



C.F. law stamp (cancelled by hand stamp)

The initials “L.S.” (Law Society) on the Canada Law Stamp reflected payment of debt owed to the Law Society of Upper Canada. Certain court tasks and documents required payment of L.S. fees. Examples include documents required for admission to the bar, and, in Ontario, tasks related to the Heir and Devisee Commission (1777-1854) which made rulings on claims regarding titles of land in Upper Canada.



F.F. law stamps (left: cancelled by hand stamp, right: hand-written cancellation)

The initials “C.F.” (consolidated fund) on the Canada Law Stamp were used in the higher courts, such as the Courts of Queen’s Bench, the Court of Common Pleas and the Court of Chancery.



L.S. law stamps (left: cancelled by hand stamp, right: punch-cancellation)

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A CLOSER LOOK AT LAW STAMPS

...continued from page 23

A statute passed in 1864 required that stamps be cancelled either in writing or by a hand stamp with the name of the court official and the date of the stamping. Punch-cancellation was also used but was discontinued in 1881. Examples of all three techniques can be seen in the images shown previously.

As an interesting note, prior to Confederation, in Upper Canada, the Crown Attorney for each County, with the exception of the United Counties of York and Peel, served as local distributors.

The Federal Courts and Supreme Court of Canada discontinued the use of law stamps in 1967.

How long were law stamps used throughout Canada?

- Alberta 1906–1930
- British Columbia from 1879–1981
- Manitoba from 1877–1901
- New Brunswick from 1884–1977
- Ontario from 1864–1940
- Quebec from 1864–1923
- Saskatchewan from 1907–1968

Many thanks to Randall Baran for loaning the PLA these fine examples of Canadian legal historical ephemera.

If you would like to learn a bit more, check out these interesting resources:

"Canada: Provincial Law Stamps." The Stamp Forum, 8 Mar. 2015, <https://thestampforum.boards.net/thread/1956/canada-provincial-law-stamps>

Ryan, Christopher D. "Law Stamps of Canada and the Province of Ontario." BNA Topics, vol. 57, no. 4, Oct-Dec 2000, whole no. 485, <https://bnaps.org/>

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FOOD FOR THOUGHT

by **Vanassa Richards-Thompson**

It has been about two months since the PLA launched its 75th Anniversary Food Drive in an effort to assist in alleviating food insecurity in our city by supporting Knights Table, which is located here in Brampton.

The response has been positive and as at the time of writing, the drum provided by the Knights Table and currently housed in the PLA library is very close to being full. This is a last call to members of the bar and the judiciary who may still want to contribute. We have selected **June 15th** as the closing date for the Food Drive campaign.

So, I am inviting everyone to do a quick look into their cupboards and see what you want to donate within the next few weeks. Look to see if there is a can, tin or box, or any other items that you want to donate. The items, small

though they may be, will help someone have a meal and be a bit more prepared for the spring and summer months. This last call is for **ANYONE** to bring **ANYTHING** to support the Knights Table.

If you are unable to attend at the PLA to drop food items off, then I would encourage you to utilize one of the other options available by sending a donation by cash or cheque to the PLA, in support of the Knights Table, or directly to Knights Table. If you haven't done so already, or if you have, please consider donating again. Your little can be a lot to someone who is in need.

Let's as a community, as an Association, really positively impact our city by giving back. Thank you!

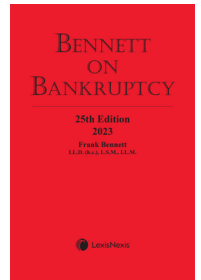


ARCHITECTURE & ENGINEERING

- [Canadian Law of Architecture and Engineering, 3rd ed.](#), 2020. McLachlin, Grant.

BANKRUPTCY & INSOLVENCY

- [Bennett on Bankruptcy, 25th ed.](#), 2023. Bennett.



CONTRACTS, REMEDIES & RESTITUTION

- [Termination and Rescission of Agreements for the Purchase and Sale of Land](#), 2023. Pratt.

CRIMINAL LAW & PROCEDURE

- [Criminal Procedure in Canada, 3rd ed.](#), 2022. Penney, et al.

EMPLOYMENT & LABOUR LAW

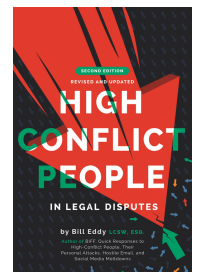
- [Disability Management: Theory, Strategy and Industry Practice, 7th ed.](#), 2023. Dyck.
- [Ontario Workplace Safety and Insurance Act & Commentary, 2023/2024 ed.](#), 2023. Dee, Newhouse.

FAMILY LAW

- [BIFF for CoParent Communication: Your Guide to Difficult Texts, Emails, and Social Media Posts, 1st ed.](#), 2020. Eddy, et al.
- [Tax Principles of Family Law, 30th ed.](#), 2023. Verity Valuation Group. (In Library Use Only)

GENERAL LAW PRACTICE

- [High Conflict People in Legal Disputes, 2nd ed.](#), 2016. Eddy.
- [Law of Affidavits](#), 2023. Shields.
- [Virtual Advocacy: Litigating from a Distance](#), 2023. Petrou, Stern.

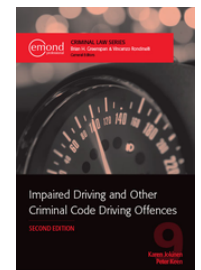


IMPAIRED DRIVING LAW

- [Impaired Driving and Other Criminal Code Driving Offences, 2nd ed.](#), 2023. Jokinen, Keen.

INCOME TAX LAW

- [Canadian Income Tax Law, 7th ed.](#), 2023. Duff, et al.



INTELLECTUAL PROPERTY LAW

- [27th Intellectual Property Law: The Year in Review](#), 2023. LSO.

Continued on page 28

...continued from page 27

MENTAL HEALTH LAWS

- [Law and Mental Health in Canada: Cases and Materials](#), 2022. Szigeti, Dhand.

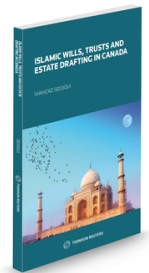


REAL ESTATE LAW

- [Duties and Liabilities of Ontario Real Estate Professionals](#), 2020. LexisNexis Canada.

WILLS, ESTATES & TRUSTS LAW

- [Annotated Powers of Attorney for Property and for Personal Care 2023](#). LSO.
- [Annotated Will 2023](#). LSO.
- [Islamic Wills, Trusts and Estate Drafting in Canada](#), 2021. Siddiqui.
- [Ontario Estate Administration, 9th ed.](#), 2023. Rintoul.



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<https://www.plalawyers.ca/pla-jobsite.html>



RECOMMENDED RESOURCES

Here is our latest collection of miscellany, uncovered in our ongoing pursuit of knowledge.

From Jo-Ann McQuillan, Law Library Director

[A Primer on Canadian sanctions legislation](#)

It can be hard to stay on top of the myriad sanctions in play at any given time. This article from Blakes helps provide a fascinating overview.

Now that we appear to have COVID in the rearview mirror, we can now start to understand its true impacts - here is a sobering look at just one negative outcome: [Effects of the COVID-19 pandemic on civil court cases in Canada](#).

Here's another troubling read: [The Disappeared: Indigenous Peoples and the International Crime of Enforced Disappearance](#).

Using pronouns can be tricky and a bit of an adjustment. This article will help you to understand WHY it is so important to make the effort: [Pronouns are not preferences: Human rights tribunals weigh in on pronoun use in the workplace](#).

Check out this new ebook: [Criminal Law: Canadian Law, Indigenous Laws & Critical Perspectives](#). According to the Editors: "This is the first Canadian open access criminal law casebook, incorporating a wide range of traditional and audio/visual materials such as podcasts and documentary films. It is also notable for being the first to present Indigenous laws alongside Canadian criminal law."

This report from Statistics Canada shows that

while confidence levels are rising, racialized groups have wildly different experiences with, and perceptions of, the justice system (which should shock nobody): [Confidence in the police, the justice system and courts, the Federal Parliament, and the Canadian media varied across racialized groups](#).

Another Statistics Canada report, this one is much more in-depth, paints a stark reminder of the horrific reality of [Gender-related homicide of women and girls in Canada](#).

Sometimes you need a case that is NOT available online. What to do? This excellent blogpost from the Great Library staff provides steps to finding the "unfindable": [Finding "Unreported" Ontario Decisions: Unreported, but not Unretrievable?](#)

The Overton Window shifts: [Order Establishing Criteria Related to Certain Offences Listed in the Schedule to the Expungement of Historically Unjust Convictions Act](#).

We should always be challenging our assumptions, especially with people living on the fringes, such as sex workers: [By Us, For Us: A needs and risks assessment of sex workers in the Lower Mainland and Southern Vancouver Island](#).

Words hold power - can we change family law by neutralizing the language we use? [Changing the Language of Family Separation](#).

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RECOMMENDED RESOURCES

...continued from page 29

And here are some interesting articles and cases recently enjoyed and discussed by PLA Library staff:

From Julie Dobson, Library Technician:

[Human Rights: Gender Identity in the Workplace](#) - Commentary

- “People very often confuse the notion of their right to have an opinion with their right to do whatever they want. The manager in this case obviously had an opinion that Jesse Nelson’s non-binary gender was nonsense. He was (and is) entitled to that opinion. What he was not entitled to do was to deliberately address Jesse Nelson using pronouns they asked him not to use. That is discrimination.”

[Human Rights: Gender Identity in the Workplace](#) - Summary of Case

Case: [Nelson v. Goodberry Restaurant Group Ltd. dba Buono Osteria and others, 2021 BCHRT 137](#)

From Lily Duong, Library Technician:

[Sumner v. OPS, 2022 ONSC 1651](#)

- “A person does not have the right to use the justice system to bring claims that, on their face, have no legal merit, or that are brought solely to harass, annoy or intimidate. This is such a claim.”

[Stokes v Heck, 2023 ABKB 58](#)

The PLA has access to some of the newsletters available in the Westlaw database. One of these newsletters is *Franks & Zalev - This Week in Family Law* which highlights cases of interest related to family law. In one of their articles, they provide commentary on the case *Stokes v Heck*. In this case, the Court found it necessary to incarcerate the Respondent for contempt due to his continued defiance of a Court Order as monetary fines just weren’t working. Access to *Franks & Zalev* is currently available through the research computers in the PLA library.



CELEBRATING OUR PAST PRESIDENT

We are so proud of our now Past President, Vanassa Richards-Thompson (front left), who was recently presented with the Emerging Leader Award from the [WLAO](#).

Photo courtesy of the WLAO,
image by Julie Williams, www.PrettyinPictures.ca

MEET OUR WEIRD AND WONDERFUL MEMBERS!

An Interview with Dora Konomi from the *Doralicious Show*

How long have you been doing your show?

This year, I am celebrating the 10-year anniversary of the *Doralicious Show*. The show has aired on Agape Greek Radio in Toronto, Ottawa and online since 2013. *The Doralicious Show* has grown with me and has become a community staple. During these 10 years, *The Doralicious Show* has won two awards from the Canadian Ethnic Media Association (2019 and 2020).

How did this gig arise?

It was serendipity. In a nutshell, it was combination of having a vision and meeting the right people. I am thankful that my passion has allowed me to create, communicate, and build ideas from the ground. I had moved to Canada from Greece when I was 14 years old and I realized that there was a gap between first generation Greeks and their children and grandchildren. The younger generation was interested in Greek music and culture but not the same way that their parents and grandparents were. I then met my producers, Stan Papulkas and the late Tom Michalopoulos, who also saw this gap. So, we decided to bridge it and *The Doralicious Show* was born.



How can people find your show?

People can tune in to the radio every Sunday (yes – old school radio) at 3pm in Toronto on 1690AM and in Ottawa on 97.9FM. They can also check us out online at agapegreekradio.com, or they can download the Tune In Radio app or the Itoc Radio app. They can also check us out on Instagram at @doralicious23 and @agapegreekradio.com.

What sort of content do you feature?

The Doralicious Show is a weekly talk show that features everything with a Greek flavour. Every week, we have a new guest, we talk about relationships, current affairs, social issues, and entertainment. For example, throughout the years, I have hosted John O'Hurley (people might remember him from *Seinfeld* as J. Peterman) because he was filming a movie in Greece, the Greek-Canadian comedian Angelo Tsarouchas, the Greek-Canadian musician Pavlo, the actor Tomas Arana (known from movies like *Gladiator* and the *Bodyguard*) for his participation in a Greek film, the Greek-Canadian hockey player Mike Zigomanis (Bruins, Leafs), Canadian political figure Jim Karyigannis, Demi Chalkias (Greek-Canadian female race car driver), Hill Kourkoutis (Juno award-winning producer), and Pythia known from *Canada's Drag Race* to name a few.



Do you record in a studio or offsite at locations, or both?

Both. Covid has allowed us to excel and use Zoom to record interviews with incredible guests throughout the world. I have interviewed people in Australia and Europe because of how accessible the world is now.

Continued on page 32

MEET OUR WEIRD AND WONDERFUL MEMBERS!

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Who are some notable guests you have had on your show?

I have also had the pleasure of interviewing legendary Greek singers, actors, and athletes like George Dalaras, Glykeria, and Giorgos Karagkounis (captain of the Greek National Team that won the Euro Cup in 2004). Most of us grew up with these figures. Think of someone interviewing the Madonna of Greece – total girl crush.

Why do you do this?

It is all about passion. I believe that as human beings we are multidimensional. I am compassionate and I carry a keen understanding of the importance of balancing my pursuit of professional success with giving back to my community and using my platform to lift and empower others, especially women and minorities.



What do you enjoy most about this?



I enjoy giving a voice to people who otherwise would not have one and giving back to my community. At the same time, I also like challenging ideas and addressing social issues, which might make people uncomfortable. In 2019, I aired the story on "Ashley: Being Greek & Transgendered". The interview explored the struggles Ashley faced growing up transgendered in a traditional Greek household in Canada. This story then went on to win an award.

Furthermore, through my platform, I am able to support my 'crazy' ideas. I spearheaded and chaired the hugely successful Agape Greek Radio Music and Fashion Show raising funds for the Greek Community of Toronto's Paideia (Education Department) and W.I.N. Hellas, a Greek-based charity aimed at raising awareness for women's abuse in Greece. The sold-out event had more than 1000 people in attendance.

I also used the Music & Fashion Show as a vehicle to promote local Greek-Canadian artists to showcase their music and bring together a community of 100+ models of Greek descent from 2 to 66 years old.

I am also a festival organizer for the Greek International Film Festival Tour of Canada (GIFFT), a celebration of Greek cinematography, that takes place in nine different cities across Canada. (<https://giff.ca/>)

Any interesting anecdotes to share?

I have many funny ones. Once, I was at the courthouse and this woman started screaming my name "Oh my God, you're Doralicious!"

**Do you have an interesting story to share? Do you have an unusual hobby?
Have you won a prize, achieved an amazing feat, or been celebrated for something special?
We want to know!**

Please reach out to Jo-Ann at eo@plalawyers.ca

YES, AN EMPLOYEE CAN OUTGROW THEIR EMPLOYMENT CONTRACT

by Jonathan N. Borrelli

The Court of Appeal for Ontario found that a termination clause within an employment contract was invalid after the employer gave the employee significant new job duties without a formal promotion.

According to the Court, these enhanced job duties altered the “substratum,” being the “central substance” of the employment contract, therefore the termination clause was outdated and the employee had in fact outgrown his employment contract.

Facts

In the case of *Celestini v Shoplogix Inc.*, 2023 ONCA 131, Shoplogix Inc. (the “Employer”) hired Mr. Celestini as Chief Technical Officer (“CTO”) in 2005 in a written employment agreement. The agreement stated that the worker would perform the duties of a CTO, as set by the company’s by-laws and as specified by the CEO, as well as “any other duties that may reasonably be assigned to him by the CEO or the board.”

The contract also included a clause that provided termination entitlements of 12 months of pay and benefits, instead of a “minimums only” termination clause.

When he started working, the Plaintiff’s duties focused on the internal transfer of product and corporate knowledge. He had no direct reports, and importantly no responsibilities related to sales, travel, infrastructure, or financing.

In 2008, a new CEO joined the company who fundamentally changed the senior management structure. As a result, the Plaintiff’s job changed in all of the following ways:

- He received new duties relating to sales, marketing, business development, technical solutions, and quality assurance;
- He gained significant responsibilities relating to the company’s infrastructure and soliciting investment funds;
- He inherited managers and other employees who began to report directly to the Plaintiff; and
- He was expected to travel to pursue international sales.

The company also increased the Plaintiff’s compensation through an Incentive Compensation Agreement and Management Incentive Plan, which gave the employee new and different compensation entitlements. Despite all of these important changes (most being related to compensation and job duties), the employee’s contract had not been updated.

In 2017, the company terminated the Plaintiff’s employment and provided 12 months of termination entitlements as under the original contract.

Continued on page 34

YES, AN EMPLOYEE CAN OUTGROW THEIR EMPLOYMENT CONTRACT

...continued from page 33

Trial

The employee sued the company for wrongful dismissal, arguing the termination clause in the original 2005 employment contract was unenforceable because the fundamental changes to his employment duties changed the “substratum” of the employment relationship between him and the company.

The Ontario Superior Court of Justice agreed on the basis of the “change of substratum” doctrine. Specifically, the Court stated the employee’s duties and compensation had changed substantially and fundamentally over the course of his employment. While the employee’s title never changed, the changes to his duties and compensation fundamentally changed the substratum of the original employment contract. The termination clause in that contract therefore could not have been intended to apply to his role at the time of termination. For that reason, the termination clause was unenforceable.

Appeal

On appeal, the Court of Appeal for Ontario upheld the trial decision.

The Appeal Court clarified that the “change of substratum” doctrine did not require an employee to be formally promoted in order to outgrow a termination clause. Instead, the employer essentially promotes an employee when the employer gives the employee fundamental increases in duties and responsibility. This applies even where the employee’s assigned job title remains the same.

Discussion

The decision and appeal in *Celestini v Shoplogix* are further reminders to employers to act cautiously and intentionally when bestowing new duties to employees, especially where they are substantial; but also for any future wage or salary increase, or title change. Every employer (and their counsel) should review existing contracts to confirm whether the contract expressly states that it continues to apply despite changes to the employee’s duties, or compensation, or title. If not, there is a risk that the contract including the termination clause could be deemed to be unenforceable (leading to common law notice of termination) if an employee’s terms of employment are substantially different from when that contract was signed.

Employers can mitigate the risk of the “change of substratum” doctrine by ensuring that employment contracts allow for the assignment of job duties to employees (as suggested by the Superior Court), and/or that any future changes to employment terms are confirmed in writing, with the employee’s signature to implement that change.

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CriminalSource	Monday, June 12 12:30 pm - 1:30 pm	CLICK HERE TO REGISTER
Estates&TrustsSource	Thurs, June 8 9:00 am - 10:00 am	CLICK HERE TO REGISTER



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Date Time	Registration Link
Tuesday, June 13 11:00 am	CLICK HERE TO REGISTER
Tuesday, June 27 11:00 am	CLICK HERE TO REGISTER

A BRIEF HISTORY OF BRAMPTON, CALEDON AND MISSISSAUGA: THE FUTURE FORMER PEEL REGION

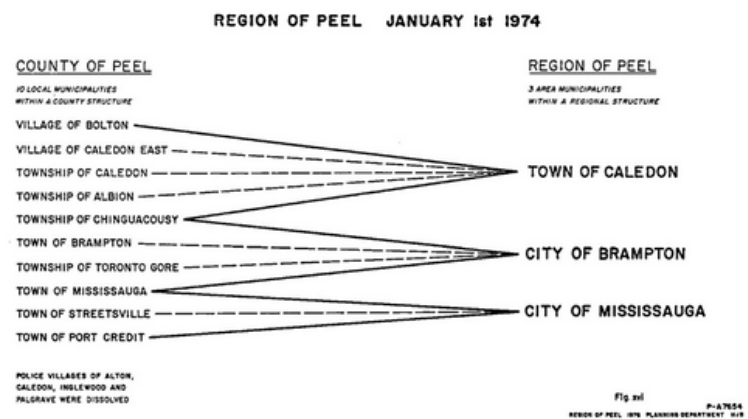
by Kathleen Prinsen, Library Technician Co-op Student

The area covering present-day Brampton, Caledon and Mississauga was acquired by the British Crown through a series of treaty agreements with the Mississauga indigenous people, beginning in 1805 with Treaty 13A. Treaties 22 and 23, known as the Credit Treaties, were signed in 1820, and completed the acquisition.[1]

Early residents of present-day Brampton referred to the area as “Buffy’s Corners,” a nod to William Buffy, a local businessman who in 1834 opened a tavern at the current site of Brampton City Hall.[2] The “Buffy’s Corners” moniker proved less popular with the area’s growing population of Primitive Methodists, led by wealthy English friends, John Elliott and William Lawson, who each came to the area by way of Brampton, Cumberland, England. Around 1831, they began to develop, purchase and sell land in the area they dubbed Brampton.[3]

The village of Brampton, incorporated in 1852,[4] began to blossom with the introduction of the Grand Trunk Railway, which built its Brampton Station in 1855, and began regular railway service between Brampton and its other stations the following year.[5] In this time before becoming incorporated as a town, Brampton constructed a courthouse, jail, and other public buildings in quick succession, including a large flower nursery, which led to Brampton being recognized as “The Flowertown of Canada” for generations. Industries and developments slowed in response to the Great Depression and World Wars.

When Brampton was incorporated as a city in 1974, it was included in the creation of the new Peel Region, encompassing Brampton, Caledon and Mississauga. This change resulted in more rapid developments in housing and industry, and the emergence of the more culturally diverse community that exists today.[6]



Caledon, like Brampton, began to form its settlements around local industry. Early towns, including Alton and Bolton, were formed around mills in areas rich with sandstone and clay deposits, which influenced the development of the local Cheltenham Brick

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[1] Wilkinson, Matthew. “Mississauga’s Connection to the History of Treaties Recognition Week.” *Modern Mississauga*, 4 Nov. 2020.

[2] Olga. “Former Buffy’s Corners.” *Elocalpost*, [blog post], 9 Oct. 2015.

[3] Golding, Lynn. “The Little-known Roots of Brampton.” *Convivium*, 25 Jul. 2016.

[4] “Brampton History.” *City of Brampton*, 2023.

[5] “Brampton Station (The Grand Trunk Railway).” *Toronto Railway Historical Association*, 2023.

[6] “Brampton History.” *City of Brampton*, 2023.

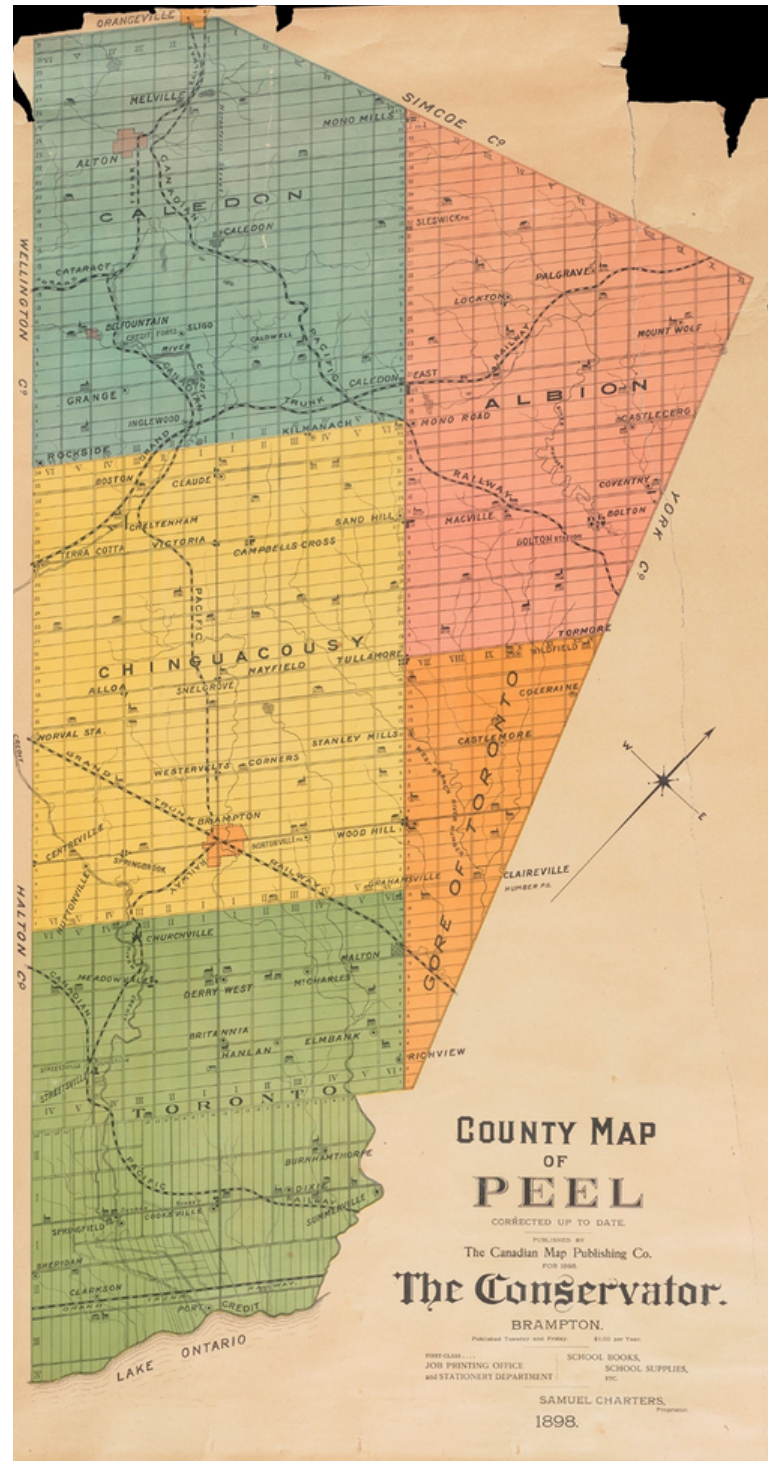
A BRIEF HISTORY OF BRAMPTON, CALEDON AND MISSISSAUGA

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Works. The area has a rich agricultural history, with early farmers growing large crops of grains and farming wool. At one time Caledon exported its celebrated ginseng crops internationally. When it joined Peel Region in 1974, the Town of Caledon included the smaller areas of Bolton, Caledon East, Inglewood, Mono Mills, Palgrave and Sandhill.[7]

Today, Mississauga includes the smaller historic communities of Clarkson, Cooksville, Dixie, Erindale, Lorne Park, Malton, Meadowvale Village, Port Credit and Streetsville.[8] So-called "Lost Villages," or small villages and hamlets which used to be included in present-day Mississauga, but declined over time include: Barberton, Britannia, Burnhamthorpe, Derry West, Elmbank, Frogmore, Hanlan, Harris' Corners, Hawkins' Corners, Lisgar, Mount Charles, Palestine, Pucky Huddle, Sheridan, Summerville and Whaley's Corners.[9]

Mississauga was officially known as Toronto Township until residents elected the name "Mississauga," meaning "River of the North of Many Mouths"[10] by popular vote. It was reincorporated as The Town of Mississauga in 1968, having beaten the second choice, "Sheridan" by an impressive margin, netting 73% of the vote.[11] In 1974, when joining the new Peel Region, Mississauga officially amalgamated with the smaller townships of Port Credit and Streetsville and reincorporated as the City of Mississauga.[12]



Source: Peel Archives

Note: If you want to read more about the history of Peel Region, be sure to check out [Peeling the Past](#), a blog about Peel's historical records by staff at the Region of Peel Archives

[7] Moreau, Nick. "Caledon." The Canadian Encyclopedia, 18 Oct. 2012.

[8] "Founding Villages." Heritage Mississauga, 2023.

[9] "Lost Villages." Heritage Mississauga, 2023.

[10] "Mississauga's History." Heritage Mississauga, 2023.

[11] "Why We're Called Mississauga." City of Mississauga, 2023.

[12] Moreau, Nick. "Mississauga." The Canadian Encyclopedia, 24 Oct. 2012.

Youth in the care of Peel CAS

- CAS is the statutory parent, not a surety.
- CAS' consent is required before being named in release conditions.

Youth not in the care of Peel CAS

- CAS is neither the statutory parent nor a surety.
- CAS does not consent to being named in release conditions; this may result in a breach at no fault of the youth.

Peel CAS Youth Court Worker - assists families with developing proposed plans for release and navigating the justice system, liaises with other child welfare authorities, and acts as a resource to court participants.

Order requiring attendance of parent – a youth justice court may by order require the presence of a parent if deemed to be necessary or in the best interests of the youth (s.27(1) YCJA).

Referral to Peel CAS - a youth justice court may refer the youth to Peel CAS for assessment to determine whether the youth is in need of child welfare services (s.35 YCJA).

Peel CAS will not report a breach of a release condition; however, police may be contacted for any safety or child protection concerns.

A TRAINEE MEDIATOR'S REFLECTIONS: THE ROLE OF THE LAWYER (A HOW-TO GUIDE)

by Gerard J. Michaud

This is the second in a series of articles. The story so far...I am a long-time family lawyer training to be a family law mediator. The first article dealt with "Journey and Destination." This one focuses on lawyers working with a mediator.

Learning to be a mediator has taught me a few things about being a lawyer working with mediators.

Although they deal with the same subject matter and have various other similarities, they are different professions. They have different approaches, priorities, and focuses.

Is Your Case Appropriate for Mediation?

Mediation is not the right tool in some cases. For example:

- One or both parties may not be open to mediation. They may be incapable of compromise. They may be fixated on their rights.
- One party may only be interested in delaying.
- A major decision maker may not be a party to the proceeding/mediation.
- Important decisions may rest on complicated legal arguments.
- There may not be much room for negotiations...the law may clearly mandate the appropriate terms.
- There may be a need for an urgent temporary order to stabilize the situation.
- Mediators can take steps in the mediation to address problems of domestic violence and power imbalances. But some cases are too extreme. The abuser may not be able to accept restrictions. The abused may still be in trauma and unable to make decisions.
- A party may not be able to assert their position, even with the protections put in place by the mediator.

- A party may not have the competency to make decisions or engage in mediation due to mental health or cognitive/communications disabilities.

A mediator may decline to mediate such cases.

Is this the Right Time for Mediation?

Consider:

- Are both parties ready to mediate?
- Is there a no-contact order in place that prevents the parties from participating in mediation?
- Are the parties ready? (Willingness to negotiate and compromise can fluctuate. Mental health and emotions can also change).
- Is there a third party (not involved in the mediation) whose decision is necessary?
- Does the chaos need to be stabilized first?
- Is there sufficient information to make informed decisions?
- Is an expert report necessary? Is input from the OCL needed?
- Does either client need an opinion or decision from a judge before they are prepared to compromise or to see that litigation is not as simple an answer as they thought?
- Is there a vulnerable client or high conflict and the mediator cannot reasonably manage the mediation sufficiently?

What About a Vulnerable Client?

The mediator should spend at least a half hour doing an intake and screening with each client. The goal is to assess the client for domestic violence, power imbalances, limits, and other vulnerabilities.

The mediator then plans the mediation to address any of these concerns.

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A TRAINEE MEDIATOR'S REFLECTIONS

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What Issues to Mediate?

You may be sending your client to mediation about all the outstanding issues or for just some. Are some issues more open to mediation? If you resolve some issues, will the rest flow from those decisions?

Parenting involves personal priorities and practical arrangements. The test is "the best interests of the child." The parties may be the subject matter expert regarding this child. Support and property settlements flow from numbers and formulas. The financial issues truly open to negotiation may be narrow.

Private or Court-Based Service?

With private mediation you can choose your mediator and you may have more control over the timeline. In some cases, there can be uncertainty about a private mediator's qualifications, compared to court-based mediation services, where the mediators are screened and supervised.

Court-based mediation services are either free (for on-site mediation) or on a sliding scale (for off-site). They are subsidized by the Ontario government.

Open or Closed?

The parties may agree on open or closed mediation. With closed mediation, the only information the mediator releases is the terms agreed upon (in their Mediation Report), if any. They may disclose whether a party participated in the intake process.

Open mediation means more information is released. How much depends on the agreement.

With a court-based mediation service, closed mediation is the default. Open mediation is

extremely limited (likely includes only the list of issues mediated).

Open mediation can draw the mediation into the litigation. It is more likely there will be an attempt to call the mediator as a witness. It is more likely that a party will be using what they say in mediation to position themselves in the litigation.

On-Site or Off-Site?

For court-based, on-site mediation usually occurs in the courthouse (unless it is by Zoom). It is limited to three hours (one hour intake and two hours mediation). Usually, it is restricted to narrow issues, involving parenting or child support. It is free.

For court-based, off-site mediation usually occurs in an office away from the courthouse (unless it is by Zoom). More hours are available. It can address complicated issues of parenting, child support, spousal support, or property. (If the issues include spousal support or property, the mediator is usually also a lawyer.) Fees are based on the gross income of the parties and are relatively modest.

On-site mediation may be converted to off-site. However, on-site should not be used as a test ground for mediation. Some cases should be dealt with as off-site from the beginning.

How to Prepare Your Client

Mediation will be explained to your client as part of the intake process with the mediation service. However, it is helpful to explain what mediation is and is not. Client's expectations of mediation should be reasonable.

What Does the Mediator Need?

A summary of the case and the issues to mediate can be helpful. The mediator will ask for this

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A TRAINEE MEDIATOR'S REFLECTIONS

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information from the client, but it may be helpful to provide the client with a brief written summary to provide the mediator.

Parties must make informed decisions. They need reasonable financial and other disclosure. For example:

- sworn financial statements
- documents showing income, major assets and debts
- valuations of major assets

Parties may agree to negotiate with poor financial information. However, reasonable financial disclosure is required for enforceable Separation Agreements (and to protect lawyers from negligence claims).

If there is an assessment of some sort, the mediator will likely need it. If the OCL is involved, their position may be important.

You will need to collect this information in any event. There is no need for the mediator to go chasing it from your client as well. It can delay the mediation, increase costs, and may frustrate the mediation.

Lawyer Behind the Scenes?

Mediators will recommend parties obtain legal advice before, sometimes during, and always after mediation. If the mediator sees an important legal issue, they will specifically recommend legal advice about this issue (and they should obtain legal advice). Parties will be told that the mediation report is not a legally binding document...they should get help from a lawyer to turn it into a Separation Agreement or Minutes of Settlement.

Mediators can give some legal information only, but not legal advice (even if the mediator is also a lawyer). Often good legal advice (from a family

law lawyer) is necessary for mediation to be effective. It is counterproductive to negotiate terms, only to have a party surprised when a lawyer advises against the terms.

Invitation to Lawyer to Participate?

Sometimes, a mediator will suggest the lawyers attend the mediation. (They are usually not needed for the intake where the party is screened.)

This is done when the mediator believes:

- a party needs support, especially if there has been family violence
- there are complex legal issues (especially spousal support and property)
- a party may agree to a term that a lawyer may strongly advise against

The function of a lawyer at mediation is not to directly engage in the mediation. They are there as an advisor to their client. (Private meetings between lawyer and client can be arranged during the mediation session.)

The lawyers may also be able to provide information and calculations.

A lawyer is bound by the mediation agreement (including confidentiality), as a result of their client signing it.

Mediation Report and Some Limits

The Mediation Summary Report (name can vary) contains the terms agreed upon. It should state that it is not a legally binding agreement.

The mediator may be a lawyer and skilled in drafting family law agreements. They may have a non-legal background and may struggle with drafting. The mediators may (or may not) use a good template with common terms.

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A TRAINEE MEDIATOR'S REFLECTIONS

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The Reports are often prepared the same day as, perhaps during, the mediation. This is particularly true of on-site mediations.

The quality of the draft terms may vary. It is the responsibility of the lawyer to ensure that the terms of a Separation Agreement or Minutes of Settlement reflect the intent of the parties and are effective.

After mediation, disputes about the wording and intent of terms can be rather problematic. In some cases, the parties need to be sent back to the mediator for clarification of terms in dispute.

Court Steps During Mediation?

The Agreement to Mediate may bar the parties from taking any further step in the court proceeding while mediation is ongoing. This is the case with the court-based mediation agreement.

Consider this before sending the client to mediation: does the agreement allow emergency steps in the proceeding?

If mediation breaks down, consider getting confirmation in writing from the mediator, so you do not have issues with taking further steps in the case.

Mediation "Failure"?

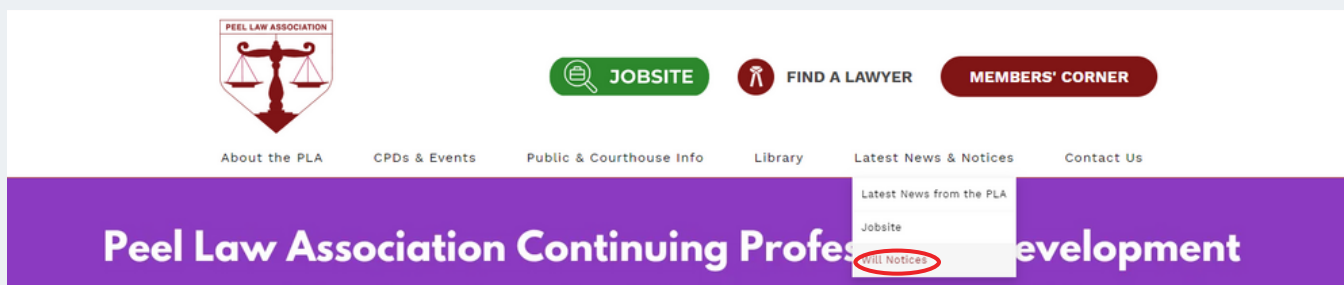
To a mediator, even when a mediation does not result in terms of a settlement, it may have still been useful. Mediation tries to bring people together. They may not arrive at an agreement, but working out a settlement later may be much easier because of the work done in the mediation.

(Sometimes, mediation is premature or inappropriate ... the time and effort can be without benefit.)

Indeed, it is quite possible, after the litigation has proceeded a ways or other developments occur, that mediation may become a good option again.

As a lawyer training to be a mediator, I see some of the frustrations that mediators and lawyers have with each other. I hope these series of articles help lawyers work more efficiently with mediators.

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Visit the PLA website for assistance.



The screenshot shows the Peel Law Association website. At the top, there is a navigation bar with links: About the PLA, CPDs & Events, Public & Courthouse Info, Library, Latest News & Notices, and Contact Us. Below this, there is a large purple banner with the text "Peel Law Association Continuing Professional Development". On the right side of the banner, there is a dropdown menu with the following options: Latest News from the PLA, Jobsite, and Will Notices (which is circled in red). Above the banner, there are three buttons: JOBSITE, FIND A LAWYER, and MEMBERS' CORNER.

This service is being offered for free and postings will be up on the PLA website for approximately 60 days.

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to attend the Retirement Celebration for**

Madam Justice Nancy M. Mossip

on

Thursday, June 22, 2023

6:00 - 9:00 p.m.

(ceremony to begin at 6:45 p.m.)

at

Cutten Fields

190 College Ave. E. Guelph ON N1H 6L3

Ticket Price \$60.00

e-transfer to laurie@feralaw.ca

Note: This event is not being held by the PLA.

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Royland Moriah is now at Rusonik O'Connor Robbins Ross & Angelini LLP located at 36 Lombard Street, Suite 100, Toronto, M5C 2X3, telephone: (416) 598-1811.

Miculinic Lawyers is pleased to announce that they are now operating as a limited liability partnership, "Miculinic Lawyers LLP". They have also opened a new office in Milton, located at 345 Steeles Avenue East, Suite 201, Milton, Ontario, L9T 3G6.

Marie Nickle of Marie Nickle Law Office is now located at 80 Birmingham Street, Suite C4, Toronto, M5A 3P2, telephone: (416) 603-1346.

Frank Pinizzotto is now at Lawrence, Lawrence, Stevenson LLP, located at 43 Queen Street W., Brampton, L6Y 1L9, telephone: (905) 452-6876, fax: 905-451-5058.

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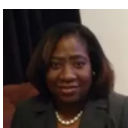
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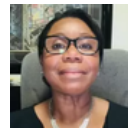


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