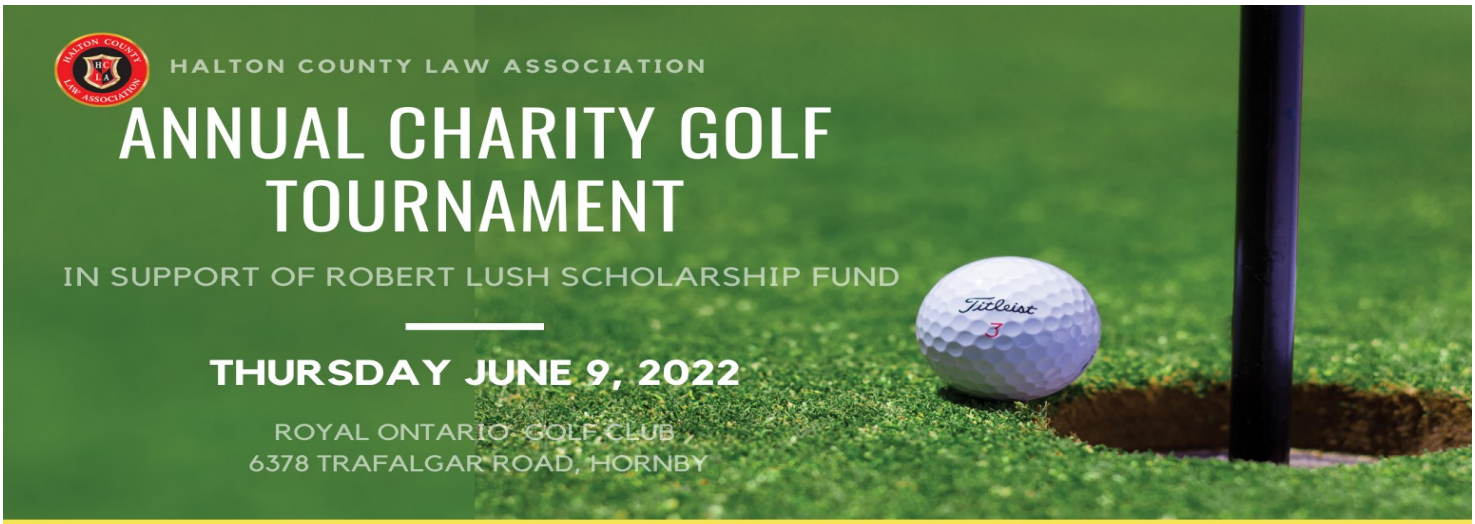
HCLA NEWS

Newsletter of the Halton County Law Association

Volume 13 Issue 2 Spring 2022



GOLF REGISTRATION

EARLY BIRD: REGISTER BY MAY 1st

$200.00	MEMBERS
$225.00	NON-MEMBERS

REGISTRATION AFTER MAY 1st

225..00	MEMBERS
$250.00	NON-MEMBERS

SPONSORSHIP OPPORTUNITY

HOLE SPONSOR $250.00

Includes signage with company name and logo at tee-off area and on HCLA website

- SHOTGUN START AT 2:00 PM
- Registration fee includes golf with cart and dinner
- Each golfer receives a prize!
- Contest holes and prizes!!

Register today at www.haltoncountylaw.ca or email info@haltoncountylaw.ca for further information.

All pricing includes HST - HST #107462350

PRESIDENT'S REPORT

by Melissa Fedsin

I am sure that I was not the only one to breathe a deep sigh of relief to see those first crocus blooms peeking through. After what seemed like a long winter, the hope of spring and future change is more than welcome.

It was a pleasure to see so many of you at our virtual Annual General Meeting in March. We were delighted to have a number of honoured judges and guests attend to address our membership, plus a special opportunity to celebrate Her Honour Justice Victoria Starr and her inaugural recipiency of the Justice Victoria Starr Award for Excellence in Advocacy for Families and Children. We sincerely hope and expect that next year we will be gathering in person once again.

March also saw the long-awaited re-opening of the Milton Courthouse, including our law library and lawyer's lounge. With many court operations now returning to in-person once again, there have also been a flurry of updated Notices to the Profession, which have been circulated by email and posted to our website.

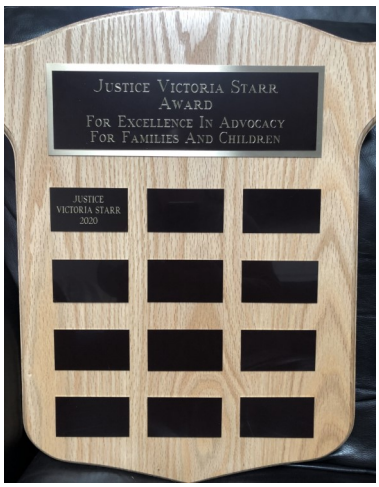
In April, we celebrated our 71st Anniversary with a members' social in Burlington. Next month, we hope to see you all out at our annual Golf Tournament on June 9, 2022! Please also keep an eye on your email or check our website for more information on other upcoming socials this summer, as well as our Family Fun Day and Wine Tour events scheduled for this fall!

In May, we will be attending FOLA's Spring Plenary and will provide our members with any important updates thereafter.

Later this month, members of the executive will also be attending the quarterly "Bench and Bar" with Justice Kurz of the Superior Court of Justice. We appreciate that with the number of Notices to the Profession and new practices and procedures over the past few months, members have questions. If members have concerns they want to raise with His Honour or the court, please ensure that you forward them to our attention as soon as possible and by no later than May 24, 2022.

Finally, we wish to extend a warm welcome to Her Honour Justice Sonia Khemani of the Ontario Court of Justice, who has recently been assigned to sit in Milton. We know that there have been many struggles in the Ontario Court of Justice over the last year and we look forward to Her Honour's efforts in getting operations back on track. The Association will continue to make best efforts to address any members' questions or concerns arising from this transitionary period.

Otherwise, I hope that all of you are able to get outside sometime this week and enjoy this long waiting spectacular weather!



Justice Victoria Starr Award for Excellence in Advocacy for Families and Children

LSO TREASURER NEWS

by Teresa Donnelly

Thinking your practice, business, or firm would benefit from an articling candidate but concerned that you do not have enough work, time, or money to sustain an articling position for the required 8-month term?

Have you thought about setting up a mutual arrangement with another firm or legal workplace to structure an articling placement, but questioned whether that is even allowed by the Law Society of Ontario? And if allowed, do you wonder how this would work when confidentiality, conflicts, supervision, time allocation, benefits, and payment of remuneration may all be an issue?

To most of us, the traditional conception of an articling placement is: one candidate, one organization, one supervisor. However, there are many ways to structure placements to balance the objective of ensuring a quality training experience for the articling candidate and the needs and resources of the employer. The Law Society of Ontario offers flexibility in the articling program—joint placements, part-time placements, national placements, and international placements are all permitted.

If you are wondering about what this may look like in practice, then I offer you this interesting example:

For decades, Halton Region has hired an articling candidate in its legal department. A few years ago, the Region's Commissioner of Legislative Services & Corporate Counsel, Bob Gray, and his colleagues in the Region's Legal Services Department, led by Jody Johnson, noted that it was getting harder to recruit municipal law lawyers. One approach to develop interest in the field was to expose articling candidates to a wider array of practice areas available in municipal legal departments, in the hope that it would attract more candidates. In turn, the Region would be developing or "growing" municipal lawyers.

With a purpose and a sense of creativity, the Halton Region legal team worked with colleagues at the Town of Oakville and the Halton Region Police Service (HRPS) to develop a program of sharing a cohort of articling candidates who would "rotate" through the three organizations during an articling term, similar to the way articling candidates rotate through various legal departments in a law firm. Although neither the Town of Oakville nor HRPS had hired an articling candidate previously, Town Solicitor Doug Carr and his team, together with Counsel to the HRPS Ken Kelertas, became enthusiastic partners in the exploration of this opportunity.

From this visionary collaboration, with the support of the Law Society of Ontario, a unique municipal law-based articling program was born. The program has just hired its third cohort of articling candidates set to start work in the summer of 2022. A memorandum of understanding governs the relationship between the three organizations and ensures that all operational, supervisory, and program responsibilities are addressed. Although there are three different placements, the candidates are employed by the Region throughout their entire term and are paid by the Region.

I sat down with Jody Johnson to explore how the program worked in practice and to learn about the benefits, challenges, and outcomes. She told me that the program has been a huge success – for articling candidates and for the Region, Town of Oakville and the HRPS.

The Halton articling program hires three candidates for 12 months with each candidate spending four months with each organization. There is an Articling Principal at each rotation – so each candidate is supervised while experiencing unique perspectives in municipal law during their articles. In addition to the formal candidate/Principal relationship, the law-

yers, paralegals, and law clerks working at the Region, the Town and HRPS are all committed to mentoring, teaching, and supporting the articling candidates. With orientation, continuing legal education, practice discussions, guidance, and time for the candidates to work with a variety of legal professionals at varying years of licensure, each placement is dynamic, engaging, and supportive.

To ensure confidentiality of information, each organization has its own policies binding the articling candidates during their placement in that organization. To further protect confidentiality, each candidate has a separate email address for each organization, which ensures that substantive work matters at each location remain confidential. While placements are structured to reduce conflicts of interest, the three organizations have established a process to address them if they arise.

Now entering its third cohort, the articling program is a success. All three candidates from the first cohort are now working as lawyers in municipal legal departments.

I spoke with Taylor Knowlton who was an articling candidate in the first cohort and is now Associate Corporate Counsel at the Region. Being exposed to different areas of law, organizational structures, and types of practice at a lower tier, upper tier, and with a police service was interesting, challenging, and enriching. Taylor's reflections on the program are that it was a good experience, she was supported consistently throughout, it was well organized, and she enjoyed the work: "It is a really good program and I encourage other articling students to apply".

This creative articling program could not flourish without the support of the dedicated legal professionals at the Region of Halton, Town of Oakville, and the HRPS. Their commitment to enhancing articling opportunities, increasing the number of articling positions and "growing" future municipal lawyers is impressive and reflects the highest standards of the bar.

If you would like to share your story of a flexible or creative articling or LPP placement program, please reach out to me at Treasurer@LSO.ca. For more information on types of articling placements, check out: Beginning a Placement.

BENCHER NEWS

by M. Claire Wilkinson

Licensing update:

As you may have already heard, in March 2022 the Law Society discovered a breach involving advance knowledge by some licensing candidates of leaked online licensing examination questions or answers. In other words, some of the licensing candidates were caught cheating. As a result, the Law Society was forced to take the unusual move of cancelling the exams scheduled for March 2022. The investigation is complex, and rapidly evolving. In order to protect the integrity of our licensing process, the Law Society was unfortunately also required to move the June licensing exams to July 2022. Whereas the examinations had previously been conducted online as a result of the pandemic, this discovery of cheating in the licensing process has forced us back to an in person format. The Law Society and Benchers appreciate that this situation has caused disruption and stress in the lives of all of the honest students who have now been forced to delay their examinations until July. But the Law Society did not cause this situation; the candidates who tried to cheat the system caused this situation. Details of the public announcement can be found at https://lso.ca/news-events/news/latest-news-2022/licensing-examinations-cancelled-to-protect-public

Mandatory minimum wages for articling students approved:

In 2018, Convocation approved a motion that called for mandatory minimum wages to be paid to articling and experiential training students. However, due to the pandemic, this policy was not implemented. The Professional Development and Competence (PD&C) committee was therefore faced with the issue again in the fall of 2021, and had to grapple with the reality that the pandemic removed articling positions, and as well, the reality that the number of students being trained internationally and then coming back to Ontario to seek articles has put even greater pressure on the articling system, resulting in ever greater competition for available articling positions. Due to concerns that even more articling positions will be lost if mandatory minimum wages are required, the majority of the PD& C committee recommended that the Law Society advise licensees that it was Best Practice to pay students at least minimum wage, but that it would not be mandatory to do so. The Law Society then called for comment from the profession regarding this issue, and the profession responded! Over 20 associations and over 150 individuals took the time to write to the Law Society to express their views on mandatory minimum compensation. The vast majority of responses were clear in their message: That the profession prioritizes mandatory minimum wage requirements over the desire to protect articling positions. The vote at Convocation was as close as it gets: 25 in favour of mandatory minimum compensation, and 24 in favour of a best practices approach to minimum wage compensation. There are still many issues the PD &C Committee will have to address, such as whether exemptions can be granted? How will hours be calculated? Will overtime be paid? No doubt other issues will also arise. The intention is for the requirement for mandatory minimum wages to be applied to the May 2023 articling cycle. Stay tuned for more developments!

Annual General Meeting

The Law Society's Annual General Meeting will take place online at 5:15 p.m. on May 11, 2022. Licensees

may participate in the meeting by logging in to the Licensee Portal and clicking on the link to the 2022 Law Society Virtual Annual General Meeting. A link to the meeting website and unique password will then appear. Those who wish only to observe the meeting may do so by using the login information on the Law Society's website.

Business and Technology Transformation Initiative:

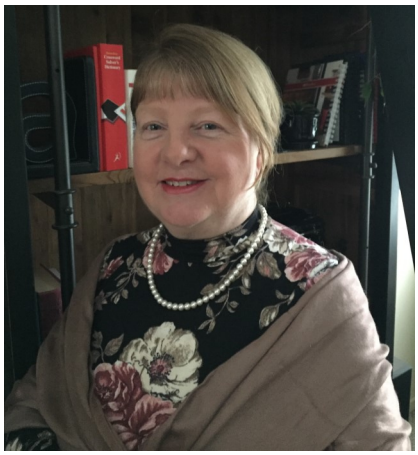
It is time for the Law Society to modernize technologies and systems. It is estimated that the update will take five years to complete, at a cost of $3.5 to $4 million per year, or $17 million over the life of the project. In order to ensure efficiencies and effective governance, these updates are necessary and required, and will result in better service for licensees.

Mental Health Summit and Member Resources:

The Mental Health Summit took place on May 3, 2022, with over 5000 licensees registered. It was an excellent program, with former Supreme Court Justice Clement Gascon giving the key note address. As Chair of the Member Well-Being and Resources Group, it has been my goal to reduce the stigma associated with mental illness through education and understanding. If you are struggling with mental health or want to better understand how to support clients, colleagues and family who are, visit the new LSO's Well-being Resource Centre. We know that as a profession we are at risk for struggling with burnout, addiction issues, anxiety and depression. Help is here! It is free of charge, and completely confidential. Check out MyAssistPlan.com Visit: https://lso.ca/lawyers/well-being-resource-centre. You are not alone!

LIBRARY NEWS

by Karen Cooper



Milton Court House Re-opens

Well, it has most certainly been an interesting couple of years!! I am pleased to report that the Milton Courthouse and the HCLA/Law Library have returned to normal operations. While there is still work being done in regards to the mold remediation project, the balance of the construction is being completed after hours, with no disruption during regular business hours.

I'm really looking forward to re-connecting with you all in person and seeing you in the law library!

New Electronic Products

I'm excited to announce the launch of many new electronic products, thanks to LiRN (Library Information Resource Network).

These resources are now accessible from all the lawyer computers in the law library. Come in and check them out!!

- Advance Quicklaw
- Lexis Practical Guidance (formerly Practice Advisor) We subscribe to all 15 modules, including Commercial, Employment, Family Law, Insolvency, IP, Litigation & Dispute Resolution, Personal Injury and Wills & Estates. This is a great resource for precedents and checklists.
- WestlawNext, including Family Source, Criminal Source and Estates Source
- vLex—A collection of Irwin Law Titles

The Lexis Advance Quicklaw and Practical Guidance training session on April 5th with trainer Gordon Brough was a great success and many were able to take advantage of the free CPD hour of professionalism.

Watch for details about future training sessions!!

CIVIL LITIGATION NEWS

by James Page

THOSE PESKY PIERRINGERS: COURT OF APPEAL FINDS PIERRINGER AGREEMENT DOES NOT RELEASE THIRD PARITES

Last month the Ontario Court of Appeal once again tackled the difficult concept of Pierringer Agreements and released their decision in in *Maio v. Kapp Contracting Ltd.*

Briefly, the facts are as follows. The plaintiffs brought an action against three defendants arising from flood damage. The defendants crossclaimed against one another and also issued third-party claims. The third parties then issued a fourth-party claim.

The plaintiffs subsequently settled with one of the defendants, the City of Vaughan (the "City"). As part of the settlement, the plaintiffs and the City entered into a Pierringer Agreement. The agreement included the following term:

> THE PLAINTIFFS AND THE SETTLING DEFENDANT AGREE AND CONSENT to the dismissal of the action commenced in the Superior Court of Justice at Toronto under Court File No.: CV-10-410508 (the "Action") on a without costs basis as against the Settling Defendant. It is understood and agreed that, should the Plaintiffs so choose, the Plaintiffs may continue to pursue their claims against the Remaining Defendants, but that such claim will only be pursued solely with respect to the several liability of the Remaining Defendants. [Emphasis added.]

After entering into the agreement, the plaintiffs dismissed their claim against the City. The remaining defendants also dismissed their crossclaims against the City. The dismissal Order included a term that the plaintiffs were to amend their statement of claim to restrict their claims against the remaining defendants to each defendant's several liability.

Later, the plaintiffs dismissed their claim against one of the two remaining defendants, Kapp Contracting Ltd. ("Kapp"), leaving only one remaining defendant, Mer Mechanical Inc. ("Mer") – as well as the third parties and fourth party.

The issue on appeal was whether the Pierringer Agreement and dismissal Order precluded Mer from pursuing its third-party claims because the action was restricted to Mer's several liability only.

The Court of Appeal found that Mer is not prevented from pursuing its third-party claims. The Court found that the agreement and Order merely prevents the plaintiffs from recovering damages against Mer that may be attributable to the City and to Kapp. But that in no way affected Mer's ability to seek contribution from the third parties.

The key finding, in my view, was that the ONCA found that a Pierringer Agreement that restricts the plaintiff's claim to the several liability of the remaining defendants does not mean that the plaintiff's recovery is limited to only those damages directly attributed to those remaining defendants. Rather, the agreement merely ensures that the plaintiff does not recover any damages attributable to the defendant or defendants release in the agreement – unless the agreement is specifically worded otherwise.

In this case, there was no specific wording otherwise. There was no basis for finding that the parties to the Pierringer intended to reduce the plaintiffs damages to those that could only be specifically attributed to the remaining defendants, thereby releasing all third and fourth parties from any potential liability.

The moral of this story then is a typical Pierringer Agreement merely prevents plaintiffs from recover-

ing damages caused by the released defendants. It does not restrict the plaintiffs to recovering damages only specifically caused by the remaining defendants, and no other person – and that is a critical distinction.

Stated more simply, but not as comprehensively, a typical Pierringer Agreement does not release third, fourth or subsequent parties, from legal responsibility.

ESTATES NEWS

by Suzana Popovic-Montag

A Primer on Substantial Compliance for Wills

With the enactment of section 21.1 of the *Succession Law Reform Act* [*SLRA*][1], Ontario is now effectively a substantial compliance jurisdiction. Substantial compliance legislation, also known as the dispensing power[2], permits documents to be admitted to probate that do not comply with all technical statutory formalities. In Ontario, this means that non-compliance with sections 3 and 4 of the *SLRA* will now only render "a document *prima facie* invalid as a will, and inadmissible to probate without an application to the court" under section 21.1[3]. Prior to the enactment of this provision, compliance with sections 3 and 4 of the *SLRA* was mandatory.[4]

Since there is no caselaw addressing the interpretation of section 21.1 yet, this article explores how it may be interpreted in light of jurisprudence from other provinces. Substantial compliance legislation has been operative in Canada since 1983[5], and almost all of the provinces and territories now have substantial compliance legislation[6].

Ontario's substantial compliance provision

Section 21.1 came into force on January 1, 2022. The first subsection states:

Court-ordered validity

21.1 (1) If the Superior Court of Justice is satisfied that a document or writing that was not properly executed or made under this Act sets out the testamentary intentions of a deceased or an intention of a deceased to revoke, alter or revive a will of the deceased, the Court may, on application, order that the document or writing is as valid and fully effective as the will of the deceased, or as the revocation, alteration or revival of the will of the deceased, as if it had been properly executed or made.

Most substantial compliance provisions in Canada require the impugned document to embody or set out the deceased person's "testamentary intentions."[7] In other provinces, the term "testamentary intentions" has been interpreted as a deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death[8].

Subsection 21.1(1) is largely comparable to most substantial compliance provisions in Canada, but its overall wording is most similar to the Nova Scotia[9] and New Brunswick[10] legislation. In all three provinces, the legislation may be applied to a "document or writing" not executed in compliance with the formal statutory requirements, and the court may issue an order to make the non-compliant document both "valid and fully effective". The provisions in these jurisdictions also do not require a minimal level of execution before the courts may apply the dispensing power.[11] For this reason, section 21.1 is technically a will-validation provision, rather than necessarily (at least not explicitly) requiring substantial compliance with the *SLRA*'s formal requirements. In practice, however, we can only expect that it will be applied consistently with substantial compliance principles seen in other provinces.

Having said that, a noteworthy difference between the *SLRA* and the legislation in Nova Scotia and New Brunswick is the type of document that can be probated or altered, revoked, or revived. In Ontario, section 21.1 can only be applied to a non-compliant will, or used to alter, revoke, or revive a will, whereas Nova Scotia and New Brunswick's legislation can also be applied to "a document other than a will," as long as that document embodies the deceased's testamentary intentions. On this point, Ontario's provision is more similar to the dispensing power in Alberta,[12] Nunavut,[13] and the Yukon,[14] which also only apply to wills. Since the scope of section 21.1 is narrower than the dispensing power in many other jurisdictions, caselaw from other provinces

may end up being of “limited application” in Ontario.[15]

Applying section 21.1

Jurisprudence from other jurisdictions indicates that the dispensing power can be applied to a variety of documents, including:[16]

an improperly witnessed will;[17]

an unsigned will;[18]

a holograph will that is not entirely in the testator's own handwriting;[19]

an improperly executed will alteration;[20] and

an improperly executed document revoking a will. [21]

There are also limits on the types of documents that the dispensing power can save. In all likelihood, based on experiences in other provinces, section 21.1 cannot be used to make any of the following documents valid:

a substantively invalid will;[22]

an electronic will;[23]

a document that the deceased did not see, read, write, authenticate, or adopt;[24] or

a document that was not prepared at the request of the deceased, or that the deceased was unaware of[25].

Another noteworthy limitation is that an application can only be brought under section 21.1 if the testator died on January 1, 2022 or later[26].

The legal test

Typically a non-compliant document must pass a two-step inquiry before it can be validated by the court. First, the court must be satisfied that the document or writing is authentic. Second, the court must be satisfied that the document sets out the testamentary intentions of the deceased.[27] The burden of proof is the balance of probabilities and falls upon the applicant.[28] In *George v Daily*,[29] the Manitoba Court of Appeal described this onus as “significant,” noting that:

> … the court must be ever mindful that the question for determination is testa-

mentary intention and the person who can best speak to that intention, the deceased, is not present to give evidence. The onus will only be satisfied by the presentation of substantial, complete and clear evidence relating the deceased's testamentary intentions to the document in question. Oral evidence describing the circumstances surrounding the creation of the document and the deceased's actions and words in relation to the document might well afford an applicant a better opportunity of satisfying the s. 23 onus than affidavit evidence alone.[30]

At the first stage of the application, the evidence necessary to confirm authenticity will depend on the nature of the document's deficiency and whether there is any serious challenge to its authenticity.[31]

To pass the second stage, it must be clear that the non-compliant document sets out the deceased's testamentary intentions. The following factors may be used to confirm that a document expresses a fixed and final testamentary intention: the document was signed; it revoked previous wills; the document provided instructions for funeral arrangements; and the document included specific bequests.[32] The title of the document may also be relevant.[33] Courts in Manitoba and British Columbia have also held that the further a document departs from the formal stat-

utory requirements, the harder it may be for the court to find that it embodies the deceased's testamentary intention.[34]

Conclusion

While a testator's intentions will no longer be defeated automatically due to failure to comply with the technical requirements in the *SLRA*, it is important to remember that there are no guarantees that a non-compliant document will be validated under section 21.1. The court's curative powers are "inevitably and intensely fact-sensitive."[35] With this in mind, there truly is only one way for a person to ensure that his or her final wishes can be submitted to probate – by executing a will that complies with sections 3 and 4 of the *SLRA*.

[1] RSO 1990, c S.26 [SLRA].
[2] See McCarthy Estate (Re), 2021 ABCA 403 at para 7 [McCarthy].
[3] Ian M. Hull & Suzana Popovic-Montag, MacDonnell, Sheard and Hull on Probate Practice, 5th ed (Toronto: Thomson Reuters, 2016) at 97.
[4] BMO Trust Company v Cosgrove, 2021 ONSC 5681 at para 23. Also see Sills v Daley, 2003 CanLII 72335 (ON SC).
[5] Substantial compliance was first legislated in Manitoba; see the Wills Act, CCSM c W150, s 23.
[6] The only jurisdictions that do not have substantial compliance legislation are Newfoundland and Labrador and the Northwest Territories.
[7] Quebec's legislation does not require a technically deficient will to embody the deceased's "testamentary intentions." See the Civil Code of Québec, SQ 1991, c 64, art. 714.
[8] George v. Daily, 1997 CanLII 17825 (MB CA) at para 61 [George].
[9] Wills Act, RSNS 1989, c 505, s 8A.
[10] Wills Act, RSNB 1973, c W-9, s 35.1.
[11] See Ouellet Estate (Re), 2012 NBQB 116 [Ouellet]. A minimal level of execution also is not required in many other provinces, including British Columbia – see, for example, Young Estate (Re), 2015 BCSC 182 at para 21 [Young].
[12] Wills and Succession Act, SA 2010, c W-12.2, ss 37, 38.
[13] Wills Act, RSNWT (Nu) 1988, c W-5, s 13.1.
[14] Wills Act, RSY 2002, c 230, ss 30, 31.
[15] See Hood v South Calgary Community Church, 2019 ABCA 34 at paras 26-27.
[16] Please note that this is not an exhaustive list.
[17] McNeill Estate (Re), 2016 ABQB 645. In this case, the will was executed with only one witness.
[18] Ouellet, supra note 11.
[19] Estate of Perley McEvoy, 2020 NBQB 11 at para 21.
[20] Swanson Estate, Re, 2002 SKQB 115.
[21] Klaprat v Chezick, 2017 MBQB 105.
[22] Hadley Estate (Re), 2017 BCCA 311 at para 34 [Hadley].
[23] SLRA, supra note 1, s 21.1(2).
[24] George, supra note 8 at para 56.
[25] Ibid at para 67.
[26] SLRA, supra note 1, s 21.1(3).
[27] McCarthy, supra note 2 at paras 10-11; Young, supra note 11 at para 34.
[28] McCarthy, ibid at para 13; Ouellet, supra note 11 at para 41.
[29] George, supra note 8.
[30] Ibid at para 97.
[31] See McCarthy, supra note 2 at paras 13, 20.
[32] See Young, supra note 11 at para 36.
[33] McCarthy, supra note 2 at para 20.
[34] George, supra note 8 at para 81; Young, supra note 11 at para 37.
[35] Young, ibid at para 34, cited in Hadley, supra note 22 at para 36.

FAMILY LAW NEWS

by Kathy Batycky

More change in the OCJ – Family

Please be advised that Regional Senior Justice Paul R. Currie has assigned Justice Sonia V. Khemani to preside in Milton until further notice. Her honour also assumes the responsibilities of Acting Local Administrative Justice for all family matters in Milton.

We are pleased to welcome Justice Allan Maclure to presisde at the Ontario Court of Justice, Family in Milton. Since his appointment in 2015, Justice Maclure has been presiding in London, Ontario. Mr. Justice Maclure will join our court on June 1, 2022.

Creation of Case Management Audit Court

As Acting LAJ, Justice Khemani has sent out a Memorandum to the Profession, regarding Domestic Matters in the Milton OCJ, which took effect May 2, 2022.

There are two main things to note. First, **commencing June 1, 2022** and unless otherwise ordered by the court AFTER May 2, 2022 all DOMESTIC family court appearances **except** First Court Appearances and **including** Trial Management Conferences and Trial Audit/Assignment Courts shall proceed in person.

Second, effective immediately **all domestic** court appearances are converted to a "Case Management Audit" Appearance.

We have been informed by Justice Khemani that the practice memorandum essentially creates a PRESUMPTION that all matters that are currently scheduled to proceed will proceed as a Case Management Audit appearance, regardless what they have been scheduled for UNLESS, the court receives a Form 14B motion and Affidavit requesting the matter to proceed as scheduled for an Settlement Conference, Trial Management Conference, motion, trial, etc. In which case, the court will determine if it ought to proceed as scheduled or whether a Case Management Audit is appropriate in the circumstances.
Further, if counsel take issue with the practice memorandum, then same may be raised with the court when they attend on their matter.

This memo reminds us all of the duty of counsel/ parties to confer before a conference about:

(i) each party's outstanding requests for financial disclosure;
(ii) any other procedural matters that need to be addressed; and
(iii) a resolution of the outstanding issues, unless the parties are prohibited from such communication by court order or terms of recognizance, or there are concerns about family violence and the alleged abusive party is not represented by counsel.

Each party shall file a 17F confirmation [not to exceed 2 pages] with respect to (i)–(iii) above.

Further, if you wish to seek an exception to the Case Management Audit Appearance and you are of the view that your matter must proceed as scheduled, a Form 14B motion MUST be filed seeking confirmation of same to the attention of the LAJ with reference to the Memorandum to the Profession and an affidavit not to exceed 2 (TWO) pages setting out reasons why.

We hope this new process will assist with the efficient resolution of the many cases in the Ontario Court of Justice.

FLIC IS MOVING – AND MORE LEGAL AID NEWS

The IRC/FLIC office is moving to the office outside the elevator on the 3rd floor of the OCJ wing. This move is imminent, and the hope it that it will be

completed by the end of May.

The IRC will be there on Monday and Wednesday (which are conference days in OCJ).

Duty Counsel will also be on the 3rd floor, located in and office in front of courtrooms 1 and 2.

Duty Counsel will see people by appointments.

Duty counsel will take bookings and meet in the office on the 3rd floor.

Onsite mediation services will do hybrid onsite mediation from the 3rd floor.

Please note that FLIC is taking bookings right now.

Counsel who are taking certificates: Please remember that if you need any help, Samantha Keser has an open door policy, and is happy to assist and answer questions about the legal process, including account issues. She has informed us that the best day to contact her is Wednesday. For assistance call 437-218-3506 or email to kesers@lao.on.ca.

Legal Aid still needs help: the difficulties of legally aided clients with certificates to find legal help still exists -- clients who have received legal aid certificates for family law (domestic) matters cannot find lawyers who will readily take on the case. If there are lawyers who are currently on the Legal Aid Ontario roster for family law have any space in their practice for more work please consider taking a certificate file.

Legal Aid has experienced an uptick in IPV files, so any help taking on a certificate file would be appreciated.

Connect with us on social media:

www.haltoncountylaw.ca

https://www.facebook.com/HaltonCountyLawAssociation/

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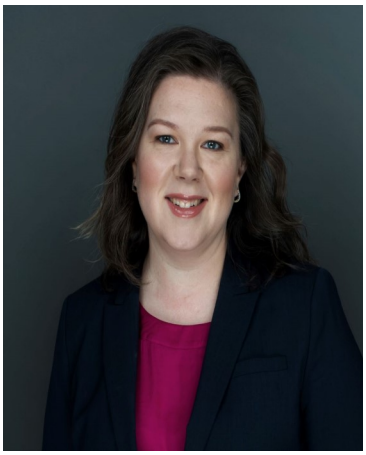
Halton County Law Association
https://www.linkedin.com/company/halton-county-law-association

IMMIGRATION LAW NEWS

by Melissa Babel



Canada-Ukraine Authorization for Emergency Travel

As part of the Government of Canada's response to the situation in Ukraine, Immigration, Refugees and Citizenship Canada has created the Canada-Ukraine Authorization for emergency travel (CUAET). This is not a refugee stream, but a bespoke process created to allow Ukrainians and their family members to come to Canada temporarily due to the crisis in that country.

The CUAET allows Ukrainians and their family members to apply for a free visitor visa which can allow for a stay of up to three (3) years. Additional benefits include the ability to apply, free of charge, for an open work permit with their visa application and access to study permits. Applications from Ukrainians are being prioritized, and those who are eligible for CUAET are exempt from Canada's COVID-19 vaccination entry requirements, but must meet other public health requirements for travel. Exemptions from providing upfront medicals and fee exemptions are also contemplated in the program.

IRCC has established a dedicated service channel for Ukrainian enquiries by phone (**613-321-4243**) and through IRCC's webform using the keyword **Ukraine2022**.

To read more: https://www.canada.ca/en/immigration-refugees-citizenship/news/2022/03/canada-ukraine-authorization-for-emergency-travel.html

Fully vaccinated travelers no longer need to provide a pre-entry COVID test to enter Canada

Effective April 1, 2022, fully vaccinated travelers will no longer need to provide a pre-entry COVID-19 test to enter Canada by air, land or water. Travelers may still be selected for mandatory random testing on arrival to Canada.

For partially or unvaccinated travelers who are currently allowed to travel to Canada, pre-entry testing requirements remain the same. Unless exempt, all travelers aged 5 years of older must continue to provide proof of an accepted type of pre-entry COVID-19 test result. These include:

A valid negative antigen test, administered by an accredited lab or testing provider, taken outside of Canada no more than 1 day before their flight departure time or arrival time at a land border

- a valid negative molecular test taken no more than 72 hours before their scheduled flight departure or arrival at a land border

A previous positive molecular test taken at least 10 days days, but not more than 180 days before their schedule flight departure or arrival at the land border

All travelers must continue to submit their information in the ArriveCan app before their arrival in Canada, and those who do not may have to test on arrival and quarantine for 14 days, regardless of vaccination status. Different rules apply to travelers on cruises.

To read more: https://www.canada.ca/en/public-health/news/2022/03/government-of-canada-will-remove-pre-entry-test-requirement-for-fully-vaccinated-travellers-on-april-1.html

US Immigration Update
EB-5 Investor Immigrant Program - Regional Center

On March 15, 2022, President Biden signed a law that includes authority for an EB-5 Immigrant Investor Regional Center Program, that will be in effect through to September 30, 2027. The EB-5 Immi-

grant Investor program allows investors and their spouses and unmarried children under 21 to apply for a Green Card if they make the necessary investment in a commercial enterprise in the United States and plan to create or preserve 10 permanent full-time jobs for qualified workers. This stream of the EB-5 had been on hold for several months leading up to the very welcome announcement this month.

To read more: https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program

USCIS announces new efforts to increase efficiency

On March 29, 2022, U.S. Citizenship and Immigration Services announced a series of efforts to increase efficiency and reduce burdens to the legal immigration systems.

The announcement focusses on the stated goal of reducing processing backlogs in key categories, including the I-129 (non immigrant employer petition) and I-140 (immigrant employer petition), as well as naturalization processes and family based petitions. It also includes an expansion of the Premium Processing availability to include applications to extend/change non-immigrant status applications for work authorization made from within the U.S. as well as additional classifications under the employer petitioned immigrant categories.

To read more: https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work

Express Entry Update March 2022

There have been no draws from the Express Entry pool for Canadian Experience Class, Federal Skilled Workers or Federal Skilled Trades applicants in March 2022. This marks another month without draws from the main economic immigration catego-

ries. It is unclear when draws will resume, but the Minister of Immigration has indicated that we could start to see draws resume in 'Spring 2022.'

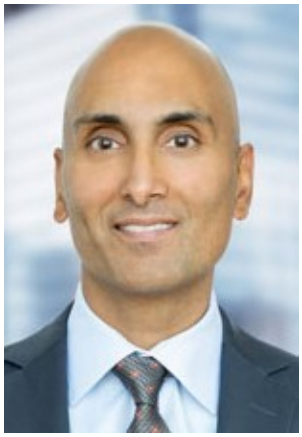
After many months of no draws, the Express Entry pool is swollen with highly qualified applicants waiting for an invitation to apply. We expect that when the draws resume, unless significant numbers of invitations are issued in these classes, that the CRS points required to receive an invitation to apply will be higher than we have seen in several years.

Post-graduate work permit holders are particularly impacted by the lack of draws and the inability to extend their work permits. We await an announcement from IRCC about relief for this group. Applicants in Canada whose work permits are expiring should consider their eligibility for extended temporary status (work and study permits) and employers whose labour force depends on foreign workers should consider options to move key workers to employer specific work permits, where possible.

To read more: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/submit-profile/rounds-invitations.html

TAX LAW NEWS

by Amit Ummat



Paletta Estate Awarded $2.24 Mil in Costs

***Paletta Estate v. HMQ* 2021 TCC 41**

Summary

The Appellant was almost entirely successful on appeal[1], but was not able to reach an agreement as to costs with the Crown. The Appellant sought 75% of its fees. The Court awarded 45% plus disbursements.

Background

In or around 1999, the Appellant was introduced to a tax plan which would generate non-capital losses through forward foreign exchange trading. These transactions are referred to as straddle transactions. In simple terms, the Appellant entered into a set of forward foreign exchange contracts. He agreed to buy offsetting contracts to both buy and sell a foreign currency at a future date. The plan would then generate non-capital losses. The Appellant then decided the amount of the loss to be taken in that year, and the gain would be carried over the following year. Justice Spiro found as a matter of fact that the sole purpose of the trading each year was the realization of the target loss, which was used to eliminate most (if not, all) of the appellant's taxable income in that year.

The Appellant benefitted tremendously by entering into the straddles. Despite having received over $38,000,000 of income from 2000 to 2007, the appellant managed to keep his aggregate taxable income over the same period to just over $1,000,000 by means of forward foreign exchange trading.

Reassessments

The Minister reassessed in 2014 (well outside the normal reassessment period) to disallow the losses on the basis that the forward foreign exchange trading was a sham, and that there was no source of income against which the claimed losses could be deducted. Gross negligence penalties were also assessed.

The Crown's primary argument was that the appellant's trading was not a source of income. In other words, the Crown asserted that a tax loss scheme could not be considered a business.

The Appellant argued that there was no sham and the straddles were legally effective.

Was there a business purpose?

It was agreed that the forward foreign exchange trades were entered into for deferral purposes. But the Court indicated that an absence of business purpose did not mean that there was no source of income. The Court relied on the Supreme Court's statement in *Stewart*[2] that where the nature of an activity is clearly commercial, there is no need to analyze the taxpayer's business decisions. Such endeavours necessarily involve the pursuit of profit. As such, a source of income by definition exists, and there is no need to take the inquiry any further.

The Court further found that there was a degree of risk, which was contrary to the Crown's position that the trades bore no risk.

The Court found no sham. There was simply nothing intentionally false or misleading about the trading documents.

Apart from filing errors resulting in the under-reporting of income in the 2002 taxation year and

penalties imposed thereto, the appeals were allowed.

Costs Decision

The Appellant argued that since it was almost entirely successful, it was entitled to a lump sum of $3.5Mil in costs. The Crown argued that success was divided and that costs should be awarded pursuant to the Tariff.

The Court reviewed the factors contained in Subsection 147(3) of the T*ax Court of Canada Rules (General Procedure)* and considered which party was favoured by each of those factors.

The factors considered include the result of the proceeding; the amount at issue; the importance of the issue; settlement offers; volume of work; complexity of the issue; justification of expert evidence and any other matter relevant to costs. The Court found that the result was not divided; there was a significant amount at issue; the issue was important; no settlement offers had been made; there was a high volume of work, given that there were 15 days of trial and three days of argument, and the issue was very complex.

The Court found that each party likely called one too many experts, and adjusted the disbursements claimed by the Appellant's least helpful expert accordingly.

Paragraph 147(3)(j) permits a Judge to also consider any other matter relevant to costs. Here, the Court identified two matters which a) "muddied the evidentiary waters" and b) prolonged the trial. Namely, the Appellant a) failed to concede a fact earlier in the trial and b) spent an inordinate amount of time qualifying an expert whose testimony would have been irrelevant. This had the effect of reducing the costs award by 5%. A further 5% was deducted from the costs award based on the Court awarding costs to the Crown in respect of a year in which it was much more successful than the Appellant.

The Appellant was awarded $2,241,025, which included 45% of its legal fees and adjusted disbursements.

Takeaway

A Tax Court of Canada litigant should seriously consider whether it makes sense to suggest that the Court award costs pursuant to the Tariff in cases as complex as Paletta, given the factors in section 147(3) of the *Rules*.

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[1] The Crown has appealed the TCC decision

[2] Stewart v. Canada 2002 SCC 46

OJEN NEWS

by Inga B. Andriessen

So often I use this column to appeal for Mock Trial Coaches, Judges or speakers for classrooms, but not this time, this time I'm excited to tell you about an incredible event OJEN-Halton just organized.

If you don't already know, Fareen Jamal and Fadwa Yehia of the Halton law firm Jamal Family Law are arguing a case before the Supreme Court of Canada on April 12, 2022. This is an interesting child abduction case involving children the father is seeking to return to Dubai.

When I first learned of this case, I will confess, my immediate thought was: how can I get the lawyers to talk about the case to Halton High School students? Thankfully, the answer was simply ask and you shall receive a yes.

Despite being focused on preparing for the Appeal, Fareen and Fadwa spent and hour with Halton High School students from Public, Private and Catholic schools, by Zoom on March 30, 2022. The students were able to review the factums ahead of the Zoom call and had interesting questions prepared for the lawyers. The lawyers were wonderful and the feedback was only positive – it was a great event.

These students will now watch live as the Appeal is argued April 12, 2022 and they are all feeling very much invested in the proceedings as they understand the lead up to it.

What a great opportunity for High School students who normally just read cases but don't have the chance to see the cases in progress.

This is such a great example of how fantastic our Halton legal community is and how much stronger the legal education of students in our region is because of it.

If you have an interesting matter you'd like to speak to students about (you knew the ask was coming, right) then please email me and we'll get a webinar organized.

Inga B. Andriessen, J.D., Chair, OJEN-Halton Committee

iandriessen@andriessen.ca

CLASSIFIED ADS

Looking for a Will

Anyone with knowledge of a will for Paula VandeCoevering who lived at 526 Stafford Drive, Oakville born April 21, 1935, who died on March 23, 2022 is asked to contact her daughter Michelle Neilson by email michellevdcneilson@gmail.com or 905-808-5886.

Paula and her husband Tony had their wills done by Lawyer John H. Ham of Oakville in around 1996 - thank you.Paula and her husband Tony had their wills done by Lawyer John H. Ham of Oakville in around 1996 - thank you.

HCLA NEWS

Newsletter of the Halton County Law Association

Advertising Rates

Size	Dimensions	Per Issue Rate	Annual Rate
Business card:	2”h x 3.5”w	$90.00	$310.00—save $50.00
Half page:	4.5”h x 7”w	$150.00	$500.00—save $100.00
Full page:	9”h x 7”w	$300.00	$1,000.00—save $200.00
Classified ads:		$5.00 per line	

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

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

CALENDAR OF EVENTS

Thursday, May 19
4:30-6:30 pm
Child Protection Series:
Day One of Trial and Pre-Trial Motions
Register here!

Friday May 20
9:00 am—12:00 pm
Annual Estates Webinar
Register here!

Friday May 20
OJEN Mock Trials
Halton Championships

Monday May 23
Victoria Day
Court House Closed.

Thursday, June 9
HCLA Annual Charity Golf Tournament
Register here!

Thursday, June 16
4:30-6:30 pm
Child Protection Series
Documentary Evidence and Briefs at Trial
Register here!