



HCLA News

Newsletter of the Halton County Law Association

Volume 3 Issue 4

Fall 2012



Robert G. Lush Q.C. receives Alan B. Sprague Award for Excellence by Cathy Hoffman

Annual Dinner & Dance
November 24th
Oakville Golf Club



Gerry Lush, Robert Lush and Ruthanne Bowker

This issue:

Robert Lush receives the Alan B. Sprague Award	1
President's Report	2
Criminal News	6
Library News	7
Rollie Willis receives the Queen's Diamond Jubilee Medal	8
Witness for the Prosecution	9
Classified Ads	10
People on the Move	10
Annual Family Law Seminar	11
Annual Dinner & Dance	12

Deadline for Next Issue:
January 1, 2013

On September 20, 2012, along the shores of Lake Ontario where Bob Lush Q.C. once raced sailboats--the Halton County Law Association had the pleasure of hosting a celebratory dinner in his honour at the Harbour Banquet & Conference Centre. There was a tremendous turn-out for the evening from a wide

spectrum of the legal community which illustrated the respect and admiration we all have for Bob. Some of the attendees included the Honourable William Sharpe and the Honourable John Robinson; many Justices of the Superior Court and Ontario Court, including Justice Goodman, Justice Fitzpatrick,

Justice Brown, Justice Takach, Justice Zisman, Justice O'Connell; Justices of the Peace Scisizzi and O'Halloran; numerous defence counsel including Paul Stunt, Bruce and Laura Hillyer, Jeffrey Manishen, Michael Caroline, Gordon Norsworthy, Joe Servos, Wendy Oughtred and Lynne Thompson, just to name a few; Crown Attorney Anthony Mackinnon and

Continued on page 5



President's Report by Ted Graham

Over the last several weeks many of you will have undoubtedly noticed the flurry of activity at the Milton Courthouse. A couple of trailers have been set up and various parts of the building have received some attention. Alas this is not the sign of a new courthouse being built from the inside out but merely an expensive upgrade of an aging structure.

At one time, a courthouse was regarded as an essential component of a community's infrastructure. One need only travel to such towns as Woodstock, Goderich and Cayuga to appreciate the importance courthouses played in ensuring citizens had a tangible means of accessing justice. In fact, Milton's old courthouse is a perfect example of this.

Mr. Justice Stephen Brown eloquently commented on the state of our institutional

resources in the recent decision of R v Papandrea [2012] OJ No 4880. He stated:

32 Because of the chronic persistent and growing demands on the limited resources in Halton Region, we are slipping further into a crisis situation where the lack of allocation of government resources by way of an increase in judicial resources and a proper physical plant and infrastructure to deal with the explosive growth in this region is leading to a breaking point.

33 There has been no further addition to the judicial compliment in Halton since 2004 when one additional judge was added.

34 We have to deal with two separate court houses and if a court list in Milton collapses, it is difficult or impossible to transfer a case from Burlington to Milton or conversely from Milton to Burlington. A distance of 30 kilometers separates these two court facilities and adequate public transportation does not exist for parties without access to private motor vehicles.

35 Based on the results of the Canadian census of 2006 and 2011, the Ontario Ministry of Finance states: "Halton is projected to be the fastest-growing census division in Ontario over the projection period, with growth of 86.9 per cent to 2036." (source: Ministry of Finance Information Centre, Ontario Population Projections Update 2010 - 2036).

36 While the infrastructures and resources for all other vital community services have been enhanced to address the population surge in Halton, our judicial system has not. For example, the Halton Regional Police Service has been funded to hire 15 to 20 new officers every year for a number of years now.

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~ George Bernard Shaw

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"A man to know"

New schools, a new hospital, and other vital community services are continuing to be built to address the population increase.

37 However when it comes to the judicial system in Halton, patchwork, cosmetic, and superficial changes are deemed sufficient.

38 We have seven judges who are responsible for all criminal and family court matters in the two inadequate courthouses located in Burlington and Milton in the Halton Region. Two of these judges are tasked with the enormous family law needs of this jurisdiction which are as well exploding due to population increases and, without the benefit of a Unified Family Court in this region, they can only devote a smaller percentage of their judicial resources to criminal law matters.

39 As a result of this, the resource requirements for fair and effective dealing with the needs of the justice system in Halton have been and continue to be ignored. Such is the prerogative of the legislative branch of the government and its implementational arms of the bureaucracy that are necessary to achieve these goals, and it is beyond the scope of my duties or qualifications to change that. I can, however, observe its effects on the day-to-day operations of the Ontario Court of Justice in Halton Region and apply it in my analysis of cases involving delay in criminal proceedings.

40 The *Charter of Rights and Freedoms* is the supreme law of our country. The right to trial within a reasonable time is a right is enshrined in our Constitution and as such is an integral, fundamental, and basic

right that every person facing charges in the Criminal Justice system is entitled to. As the Askov crisis of just over two decades ago showed, governments that ignore adequate funding for the justice system do so at the peril of having society robbed of having trials heard on their merits.

41 In *R. v. Morin supra*, Justice Sopinka asked the following question some twenty years ago in para 48:

How are we to reconcile the demand that trials are to be held within a reasonable time in the imperfect world of scarce resources? While account must be taken of the fact that the state does not have unlimited funds and other government programs compete for the available resources, this consideration cannot be used to render s. 11(b) meaningless. The Court cannot simply accede to the government's allocation of resources and tailor the period of permissible delay accordingly. The weight to be given to resource limitations must be assessed in light of the fact that the government has a constitutional obligation to commit sufficient resources to prevent unreasonable delay which distinguishes this obligation from many others that compete for funds with the administration of justice. There is a point in time at which the Court will no longer tolerate delay based on the plea of inadequate resources.

42 In Halton Region the resources available to the justice system are inadequate and are becoming intolerable. We as judges are running out of options.

All of my colleagues in the Halton bench are extremely competent and hardworking. All of them devote much of their evenings, weekends and vacations to just try to tread water in this jurisdiction and to keep on top of the burgeoning workload. Our local administrative judge has spent the past week designated to be a holiday week for her in her chambers writing judgments. Yet despite this commitment and dedication the situation is getting worse, not better.

43 Trial dates are now being set in this jurisdiction at the outer limit of tolerable delay. Trials are being added on to impossibly overbooked lists in the hope that some trials on those lists will collapse and the trial list will thereby become manageable. Some days this works and other days it does not. We are seeing more days now that it doesn't work than when it does.

44 As such, I expect that we can anticipate an increase in 11(b) applications being advanced in this jurisdiction. As more and more defence counsel become aware of this problem they may commence setting cases on client instructions with a slim chance of success at trial, because they will likely advise their clients that even though they may be bereft of defences, their hope of getting reached on the first trial date becomes less likely, thereby opening up the possibility of a stay of proceedings.

45 Though the client will ultimately make the decision whether to go to trial or not and pay the retainer fee for doing so, this is a consideration that I found many of my clients balancing during the lead up to, and in the fallout from the Askov crisis over two decades ago when I was defence counsel.

46 The success of using the protection of s 11(b) as a sword instead of a shield is a distinct possibility in this climate of crisis and may have a negative influence on our already overcrowded case lists.

47 This strategy is next to impossible to detect by judges but it can be stated simply in the following way; if the client's case will result in catastrophic consequences for their life, for instance the loss of their job or liberty, is it worth the risk, weighed against the "discount" for an early guilty plea to spend the money on setting a case for trial when no legal defences exist.

48 A defence counsel may inform their client that 20 percent of cases in an overburdened jurisdiction are generally not reached on an average trial day. The client then weighs the 'benefit' of not getting tried within a reasonable time and having a successful stay application against the 'risk' of having to throw away the cost of their legal fees and whatever benefit may be obtained by an early guilty plea against the value to them of avoiding the consequences of a conviction.

49 This is a subtle yet important consideration of the allocation of resources to allow trials within a reasonable time. In jurisdictions where there are six to nine month waits for trial this is not a consideration but in jurisdictions that are struggling, as Halton is, then this is a valid concern that further resources are needed to head off this mindset. Once the individuals facing trial in the jurisdiction realize that they have a chance of obtaining stays based on delay that can have an exponential effect on an overburdened region, resulting in a 'perfect storm', the need to withdraw or dismiss cases against a significant number of individuals who should be facing the consequences of their conduct.

If additional judges are appointed to Halton, there are no courtrooms to put them. There are insufficient interview rooms for counsel and witnesses to meet and prepare. The holding cells are inadequate. A similar crisis exists

in the Superior Court. Those of you who were in Milton on October 1st would have witnessed the embarrassing sight of a long line of jurors snaking around the front and side of the building. Even when they entered the building there was nowhere comfortable for them to wait. The current situation is not merely unacceptable. As Justice Brown states we are at significant risk of experiencing a “perfect storm”.

It is unlikely that the new plumbing and heating and office renovations will lead members of the public to conclude that they are being well served by the administration of justice. No new courtrooms are planned. Jurors will still have to sit in the stairwells. Family litigants will have to resolve their issues in the cafeteria. The only solution of course is a

new courthouse.

We know the Province has certain fiscal restraints. However the explosive growth noted by Justice Brown is a result of a deliberate Provincial policy called “Places to Grow”. Growth requires infrastructure and the Province needs to provide financial support to the regions it has targeted. A courthouse is a necessary part of that infrastructure. If the Provincial economy is to grow then these investments have to be made.

In April, some members of the HCLA Executive met with Regional Chair Gary Carr, now retired Chief of Police Gary Crowell and Robert Maich of the Police Services Board. There was a clear consensus that a new courthouse was

urgently needed. Chair Carr sent a letter to the Attorney General requesting a meeting to discuss the issue. This was followed by my own letter to the Attorney General. Mr. Paul Stunt also wrote a letter. In addition all fifteen Judges and Justices of the Peace of the Ontario Court of Justice wrote to the Chief Justice of the Province of Ontario. Judges of the Superior Court of Justice have also expressed concern. None of these efforts have met with success thus far.

The HCLA has now engaged the services of a consultant in order to assist us in advocating for a new Court House. I expect it will be a long process and we need to be patient.

In the interim I would encourage all members of the Association to write to the Attorney General to express your support for a new centralized courthouse. Perhaps a sustained and concerted effort will help ensure that this issue gains the attention it deserves.

Lost and Found

Found in Courtroom M16 at the Milton Court House Law Society of Upper Canada black tote bag, containing a Tremear’s Criminal Code, pair of sunglasses and a Carswell textbook. Please see the Librarian to claim this item.

Dinner for Robert Lush (continued from page 1)

Deputy Crown Charon Kerr, Laurie Jago as well as a number of other Assistant Crown Attorneys; Deputy Chief Andrew Fletcher and Halton Police Inspectors Albano and Duraiappah; and so many of our paralegals and court administration staff that have worked with Bob during his 46 years as a Barrister and Solicitor.

As we all know, Bob is more than just a lawyer, and an appointed Queen's counsel since 1979—he's first and foremost a man who loves his family. At the beginning of the evening, I spied Bob walking up the sidewalk into the banquet hall, and true to form, he was holding hands with his lovely bride, Maureen, as they laughed together (likely at some ribald joke he had just told). Maureen also gave a touching speech during the event, complete with a great slide-show of Bob's life and family. I loved the picture of his "inventive" bedroom filing system; next time you run into Bob, ask to see some of his modelling pictures from back in the day (Paul Newman would be put to shame!). It was wonderful to see so many members of Bob's family also in attendance, including his sister Ruthanne Bowker who gave a hilarious speech that really captured Bob's wit and sense of humour. All of Bob's children attend-

ed, except for Curtis who is still skiing and attending the University of New Hampshire. Even son John surprised the party from British Columbia—two weeks later Bob made a return trip out west while he and John went on a motorcycle trip (which makes us all feel incredibly lazy).

Special thanks to Master of Ceremonies, Stephen Collinson who kept the night entertaining and heartfelt; long-time colleague and Halton County Law Association President Ted Graham, the speakers for the evening, including Justice Alan Cooper, Gerry Lush, David Bowker and Anthony Mackinnon, and last but not least, HCLA law librarian and organizer extraordinaire, Karen Kennett. I know Bob also received many letters and emails from some who unfortunately could not attend that meant so much to him: including from Justice Gray, Justice LeDressay, Justice Forsyth, Justice Baldwin, and Scott Aird, to name a few.

The Halton County Law Association Vice-President Laura Oliver presented Bob with an engraved card holder (for all his varied business interests) as well as for only the second time in our history, the

Judge Allan B. Sprague Award for Excellence. This Award was created in 1989 to acknowledge outstanding service in the profession of Law, with William Dunlop being the first recipient. As Justice LeDressay stated in his letter regarding Bob: "You are notorious for your ability to see through the nonsense and then to articulate that to others in a brief yet insightful manner". Bob Lush is our deserved recipient in 2012, the first recipient was William Dunlop back in 1989. The proceeds from the banquet were donated to one of Bob and Maureen's favourite charities—The Darling Home for Kids: A Children's Hospice/Respite Experience.

Many of the accolades attested to throughout the evening touched on the qualities we've all seen Bob Lush display throughout the years while in his private practise and also now as a Federal Crown Attorney: fairness, respect, and last but not at all least, of course a sense of humour. To paraphrase from a letter sent by our Local Administrative Justice Lesley Baldwin about Bob: "you always want to be at his table at the party". Thanks to all for a great evening!



Robert and Maureen Lush



Justice Alan Cooper, Sherri Cooper, Robert Lush and Cathy Hoffman



Criminal Bites by Brendan Neil

a major shift in the law of care and control, I believe that on review the effect will be somewhat less dramatic.

Justice Fish indicates that, while most individuals found in a motor vehicle under the influence of alcohol and with the capability of putting the vehicle in motion will be found guilty of care and control, there is one major exception. The exception being, if there was evidence of a verifiable alternate plan. Justice Fish worded his decision using the term a realistic risk that the accused would put the vehicle in motion. He went on to indicate that this realistic risk had a low threshold.

The accused was found in his vehicle with the keys and the motor running. He was located in a parking lot of a

drinking establishment. Previously a damning set of facts. The accused argued that he had made arrangements to get home by way of a taxi and that he was simply waiting in the warm vehicle until the cab arrived. The court found that this plan resulted in an exception to the standard proposition leading to conviction and held that the accused should be acquitted.

What was essential for the accused in this case was evidence that a plan was in place/initiated. Essentially the existence of the plan, in other words the fact that a taxi had been called and the police had simply come upon the scene prior to the taxi arriving, was evidence of a lack of intent to set the vehicle in motion and as such overcame the assumption that the accused intended to drive while under the influence.

Obviously it will be the case with specific facts that will be able to utilize this case but it certainly opens the door for cases where alternate plans of transportation have been set in motion. This case is demonstrative of an evidence to the contrary type of defence and must be built upon evidence supportive of a realistic plan.

Brendan Neil is certified by the Law Society of Upper Canada as a Specialist in Criminal Law and sits on the Board of the Halton County Law Association. Comments in the above piece are his alone and should not be considered as the position of the HCLA or it's respective members.

The Supreme Court has recently released three decisions dealing with impaired driving related cases. One of the most interesting is the decision authored by Justice Fish dealing with the issue of Care and Control in the case of *R. v. Boudreault*, 2012 SCC 56.

The case looked at the troubling issue of criminal culpability simply by being intoxicated while being situated within a motor vehicle with the ability to put the car in motion. While initial reviews of the decision suggested that this decision is

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Library News by Karen Kennett

New coin-op system

You may have noticed that the photocopier in the law library has been fitted with a coin-op/copy card system, whereby copy cards may be purchased from the machine and then topped up with value or you may use cash (coin and/or bills) in order to make copies.

I am pleased to advise that, as one of the many benefits of membership, members in good standing are entitled to a free copy card, with \$5.00 pre-loaded and you have until December 31, 2012 to attend at the law library and pick up your card, or have a staff person

pick up on your behalf. The cards may be topped up with value through the vending machine.

It will no longer be possible to have running tabs for photocopies. Members in good standing may be invoiced for cards with a value of \$20.00 or more.

COLAL Conference

I attended the Annual COLAL Conference from October 24-26 in Toronto. LibraryCo arranged for a terrific line up of speakers and topics. The theme for this year's conference was "Future Ready" and the key-note speaker on this topic was Stephen Abram.

Gary Cheong, Senior Financial Analyst provided an update from Law Society Finance.

Martha Foote and Joan Rataic-

Lang spoke on the topic of Aligning Ourselves to be Future Ready.

"Ready, Set, Growl", a session led by HR Consultant Steven Lowden, examined change and the driving forces which might help move it along and the restraining forces that might hold it back.

Rebecca Jones led a lively and interactive session entitled "Can You Hear Me Now?: Relationships & Influence".

There was an open forum with LibraryCo Chair, Alan Silverstein. Their business plan for 2012-14 was presented and LibraryCo's new strategic priorities are:

- Ensuring accessible, universal resources and services for all lawyers;
- Designing and delivering services, based on objective research, to all lawyers regardless of geographic location; and
- Advancing recognition of LibraryCo's value among its shareholders and stakeholders.

The LibraryCo Board of Directors Q & A session provided an opportunity to discuss matters of concern with the board.

Thanks to LibraryCo for organizing this conference and providing this opportunity for the Ontario Court House Librarians to network and learn.

**“He who
wins last,
wins”**

Earl Cherniak, Q.C.
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Rollie Willis receives the Queen’s Diamond Jubilee Medal

Halton County Law Association member Rollie Willis, Q.C. has received the Queen’s Diamond Jubilee Medal.

In his letter accompanying the award, Governor General David Johnston, thanked Rollie “for your dedicated service to your peers, to your Community and to Canada”.

The medal was presented to Rollie in his orchard in Milton, by the Honourable Lisa Raitt, the Minister of Labour, and Member of Parliament for Halton.

Rollie Willis and Christine Torry are members of the law firm of Willis & Torry in Mississauga.

Rollie is a former President of the Peel Law Association. In 2011, Rollie received the P.L.A. Lifetime Achievement Award.

Congratulations Rollie!!



(L to R): Marilyn Willis (Rollie’s wife), Rollie Willis and Lisa Raitt, MP for Halton

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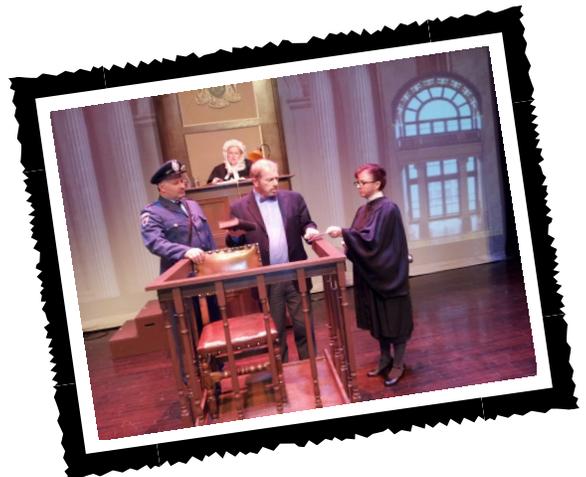
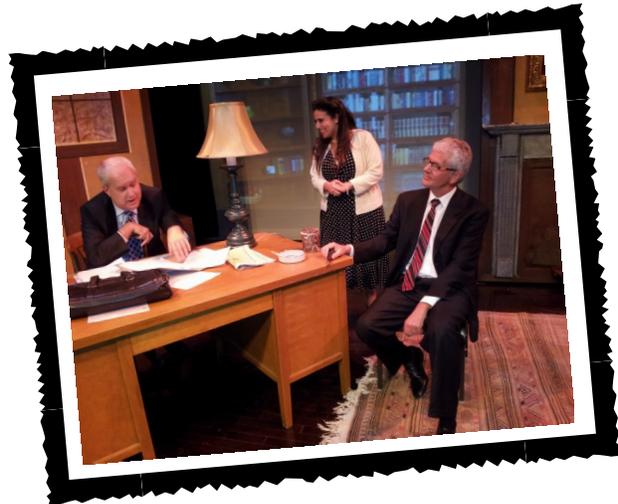
O N T A R I O - W I D E S E R V I C E

Witness for the Prosecution

Congratulations to the cast and crew of the recent production of Agatha Christie's *Witness for the Prosecution*, that played at the Milton Centre for the Arts for three performances from Thursday, October 18 to Saturday, October 20th. The play, set in 1950's Southern Ontario, tells the story of Leonard Vole who is arrested for the murder of a wealthy spinster, Emily French. Emily become close friends with Leonard and subsequently makes Leonard her principal heir, which provides the motive for Leonard's prosecution. Leonard's wife agrees to testify, but not in Leonard's defence, but rather as a witness for the prosecution. The play takes many twists and turns in resolving the guilt or innocence of Mr. Vole.

Cast

Greta..... Fay Hassaan
 Carter..... Michael Ruhl
 John Mayhe.....Jarvis Sheridan
 Leonard Vole Ken Mitchell
 Wilfrid Robarts, Q.C. Stephen Collinson
 Inspector Hearme Bill Perras
 Policeman..... Frank Alfano
 Romaine Carla Zabek
 Justice Wainwright Wendy Oughtred
 Clerk of the Court Lynda O'Reilly
 Mr. Myers, Q.C. Russell W. Browne
 Mr. Myers' Assistant..... Jackie Doyle
 Mr. Myers' Assistant (Sat).....Ashley Alfano
 Dr. Wyatt..... Logan Rathbone
 Janet MackenzieMaureen Currie
 Samantha Clegg..... Volga Pankou
 The Other Woman.....Leanne Fioravanti





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People on the Move



William Perras has moved his offices to suite 105 (from suite 210), 1540 Cornwall Road, Oakville, ON L6J 7W5. Telephone, fax and email remain the same.

Classified Ads

Downtown Oakville-Office Space available for one or two lawyers-lease one or both-cross referral opportunities from 9 lawyers in building. Receptionist service, telephone equipment and reception area included; shared signing room on main floor. Call Mike or Ed—905-842-8600.

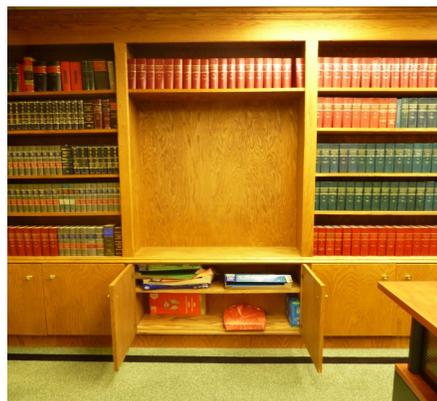
Lawyer seeking associate position

My name is Dan McKeown, I am a lawyer of 4 years experience currently practicing in Ottawa. I was born and raised in Burlington, went to McMaster University, and I have strong ties to the Hamilton/Halton region. My family and I are now moving back to the area, so I am seeking to join a firm in Hamilton/Halton. I was called to the Bar in 2008 and have practiced primarily in family law, but I have experience in other areas of civil litigation generally. I am interested in keeping a family practice, but I am open to expanding in other areas of litigation. I am currently at a firm with an outstanding collegial and supportive environment, and I am looking to join a firm with the same values. If you think I would be a good fit to help grow your firm, I would be pleased to speak with you and provide you with my CV and references. You can reach me by email at dpm@abblaw.ca or 613-569-9500.

Looking for a Will

Anyone having knowledge of a Will of Myroslaw (Marvin) Karas, of 368 Sawyer Road, Oakville, Ontario, who died on Saturday, October 27, 2012, is requested to contact Darlene Jenner at 905-844-9357.

Large, custom made, solid maple wall unit complete with reference books. A lovely, austere decorative piece suitable for any law office. 8'10"high x 13.5" deep x 119.5" length. Comes apart in 3 sections of aprox 41" each. \$500 or best offer. Call Linda Barichello at 905-828-6006 or email lbarichello@rogers.com



Halton County Law Association Annual Family Law Seminar



Topics/speakers:

Epstein's "Year in Review" – Brian Burke

Bankruptcy and Family Law – Robert A. Klotz

Pension Regs: One Year Later – Mel Norton

Spousal Support Panel – John G. Cox, Catherine A. Haber and Robert S. Martin

Unbundling of Services - Mr. Justice R. John Harper, Senior Family Court Justice

Topic tba— Madam Justice Kendra Coats, Superior Court of Justice and
Madam Justice Roselyn Zisman, Ontario Court of Justice

Date: Friday, December 7, 2012

Location: Halton Region Museum
5181 Kelso Road, Milton

Time: 9:00 a.m. to 12:30 p.m.
8:30 a.m. Registration, coffee & muffins

Cost: \$85.00 for HCLA members
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Payable to the Halton County Law Association
(includes HST R10462350)

Call the Halton County Law Association today to register!!



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

Annual Dinner & Dance

Saturday, November 24, 2012

Oakville Golf Club

*1154 Sixth Line
Oakville, Ontario*

Cocktails 6:00 p.m. - Dinner 7:00 p.m.

*\$90.00 per person
(hst included)*

Entertainment: The Gathering

*RSVP:
Karen Kennett
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