HCLA News

Newsletter of the Halton County Law Association

Volume 8 Issue 3/4

Fall 2017

This issue:

Deadline for Next Issue:
January 26th 2017

HCLA

Annual Dinner & Dance

Saturday, November 18th, 2017

Burlington Golf & Country Club

422 North Shore Boulevard East

Burlington, Ontario

Cocktails at 6:00 p.m. & Dinner at 7:00 p.m.

$100.00 per person
(hst included)

Entertainment: Enrico Galante

Thank you to our sponsor:

MARTIN & HILLYER
BURLINGTON'S INJURY LAWYERS

Please RSVP by – November 10th 2017

Andre Blake - Law Librarian

Halton County Law Association

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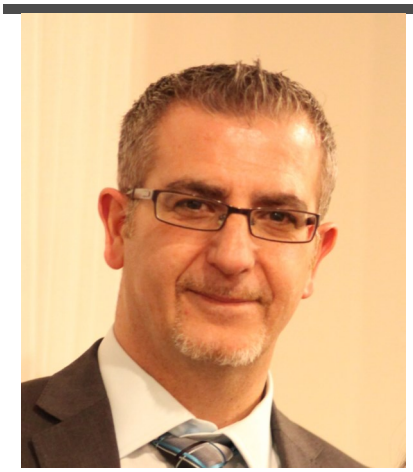

President's Report by Sam Misheal

I hope that all members enjoyed the summer months and found time for vacation and relaxation!

I am sure by now all have heard the announcement for the new courthouse in Halton. This was the result of many years of efforts led by Paul Stunt and number of other people who were involved in making this happen. On behalf of the association, I would like to extend my sincerest thanks and appreciation for making this possible.

In June, the Association held our Annual Charity Golf Tournament at Crosswinds Golf and Country Club in support of *Home Suite Hope*. The tournament was a great success. Once again, I would like to thank Katherine Henshell who looked after the silent auction and once again did a great job in raising funds for this year's charity.

Thanks to our major event sponsors, SB Partners and Katherine Batycky, and to the many hole sponsors ... your support is greatly appreciated. Finally, thanks to all the participants, who have made this annual event a great success, and looking forward to seeing you again next year on June 14, 2018!

Let´s enjoy the days we´re here, let us celebrate, an occasion´s coming near, tickets are selling quickly, don't delay in signing up this year to the Halton County Law Association's annual Dinner & Dance that is taking place at the Burlington Golf and Country Club on Saturday November 18, 2017. I would like to extend a special thanks to our generous sponsor, Martin & Hillyer.

Lastly, On September 28, 2017, the majority of Convocation agreed to change the name of the Law Society of Upper Canada, but could not agree that the name should be "Law Society of Ontario".

The decision around the new name has been deferred until the next Convocation in early November so that the Law Society could undertake a consultation and test a few other options. Furthermore, Rob Lapper CEO of The Law Society announced his resignation effective October 31, 2017.

"Litigants with Mental Health Issues "

Law Library, Milton Court House
Oct 30th, 2017

4:30 p.m. to 6:30 p.m.

Video replay followed by discussion led by:

Justice Victoria Starr.

A panel of experts will provide you with practical tips about dealing with clients in both child protection and domestic matters who suffer from mental health issues. This panel includes an experienced psychologist, as well as three respected and knowledgeable Toronto family lawyers.

Chair: Justice Carolyn Jones

Panel:

Dr. Daniel Fitzgerald

Clinical Psychologist Karen Freed

Counsel, The Children's Aid Society of Toronto Anthea Cheung

Counsel, Office of the Public Guardian and Trustee Sarah Clarke, Child and Family lawyer, Clarke Child and Family Law

accredited cpd

This program is eligible for .5 professionalism hours and up to 1.0 substantive hours.

Fee: $25.00 – credit card, cash or cheque payable to Halton County Law Assoc. Includes HST#107462350

Criminal Law News by Ken Kelertas

Jordan, Cody and the Wagon Train of Canadian Justice

There have been numerous landmark criminal decisions rendered by the courts since I started practicing. *Askov was released* just a few months after I was called to the Bar. In quick succession came the Court's decisions in *Garofoli , W (D)*, *Stinchcombe*, and *Morin*, and then years later, *O'Connor*, Feeney, *Mills, Mann, McNeil, and Grant*. All of these decisions have influenced how I have read and practiced law.

However, no decision has had more impact than the Court's 2016 decision in *R. v. Jordan. Jordan* threw a live grenade into many a police service's investigative units -not to mention the offices of Crown Attorney's across the country-and we have been struggling ever since to come to terms with its practical implications with respect to disclosure and pre-trial procedure. Despite the challenges posed by *Jordan*, I have personally welcomed it. You might think that strange, given the fact that I have been a police lawyer for much of my career. However, I see *Jordan* as having a real impact in addressing a plague on Canadian justice, namely systemic delay.

R. v. Jordan 2016 SCC 27 reformulated the framework used to assess whether an unreasonable delay in criminal proceedings has occurred as contemplated by section 11(b) of the *Charter*. Presumptive ceilings were set in which the accused must be brought to trial : 18 months in the provincial courts and 30 months in superior court. Once the ceiling is exceeded, the Crown must justify the delay by showing that exceptional circumstances that lie beyond their control existed, which can either be due to the complexity of the case or because of discrete events, such as the illness of a key witness. In cases where the delay is below the presumptive ceiling, if the defence is arguing a breach of section 11(b), must demonstrate that: 1) it made sustained efforts to accelerate the proceedings; and 2) the case took significantly longer than it reasonably should have.

Where an unreasonable delay has occurred, a stay of proceedings will result. That being said, these requirements were softened somewhat by the allowance for "transitional exceptional circumstances". In cases where any part of the delay occurred before the *Jordan* decision came out, that delay's reasonableness can be weighed against the factors considered in *Morin*- institutional delay and seriousness of the crime- factors that are no longer part of the *Jordan* framework.

Jordan sends a strong signal that delay must be dealt with and remedied - even at the cost of staying some serious charges. It calls on judges to be more vigilant case managers. Excuses like not enough government funding, not enough judges, or Crown and defence counsel not co-operating with each other will no longer cut it. To paraphrase the ratio in Jordan : "Time to speed things up and work together, or suffer the consequences."

After the SCC released *Jordan*, some critics said the sky was falling. Some called for a more moderate approach. Some even said that the Court had picked the 18 and 30 month deadlines out of thin air. However, in July of this year, the SCC released its first follow-up decision to *Jordan* - *R v. Cody* 2017 SCC 31- and affirmed its direction to address systemic delay in the criminal justice system. Cody was charged with drug and weapons offences in January, 2010. It took until January, 2015 for his trial date to be set in the Supreme Court of Newfoundland and Labrador- a 60 1/2 month delay. Before trial, defence counsel asked for a stay of proceedings.

In their decision, the Supreme Court of Canada did the math: 60.5 month delay, minus 13 months waived by the accused, minus 3 months attributable to the defence, minus 7.5 months due to discrete events effecting the Crown, which amounted to a real delay of 36.5 months. Since the delay was over the 30 month ceiling, the delay was deemed unreasonable. The Court underlined the importance of preventing delay in order to effect real change in the criminal justice system. They also emphasized the role to be played by all players in the justice system to achieve that goal: "...*all* justice system participants—defence counsel included—must now accept that many practices which were formerly commonplace or merely tolerated are no longer compatible with the right guaranteed by s. 11(b) of the *Charter.*"

The Court also noted the important role of trial judges in "changing court room culture", given their case management powers and control over the conduct of

In other words, *Cody* confirms that the Supreme Court of Canada expects concrete action to eliminate unreasonable delay in the criminal courts. That is not say that we can now expect that everything will be sweetness and light in our courts. *Jordan and Cody* require that criminal proceedings be expedited. This has resulted in a diversion of judicial resources from the civil and family courts to the criminal courts to accommodate the new timelines. In Ontario and particularly in the GTA, this has led to a tangible impact on the civil and family lists. Trial dates that were already being set at comically distant times pre-*Jordan* are now being set even further into the future. It has been found that Canadian courts are between 5 and 10 times slower than equivalent courts in Europe, Australia and New Zealand in getting matters to trial. Long delays have become the norm in Canada. Rather than being a finely tuned race car, our justice system plods along like a wagon train from the 1800s.

All stakeholders need to act soon or whatever faith still exists in the Canadian justice system to deliver efficient and cost effective resolutions to disputes will be lost. Months before the decision in *Cody* was released, justice ministers from across the country met to discuss solutions to the fall-out from *Jordan* in the criminal courts. The time has come for these same players, along with the legal profession and other stakeholders, to come together to address the same issues of inefficiency and complacency in our civil and family courts, and before our administrative tribunals.

*-**Ken Kelertas** is Vice President of the HCLA and Director of Legal Services with the Halton Regional Police Service (HRPS). This article reflects the views of the author and are not necessarily those of the HRPS or the HCLA.*

Newsletter of the Halton County Law Association

Advertising Rates

Size	Dimensions	Per Issue Rate
Business card:	2”h x 3.5”w	$90.00
Half page:	4.5”h x 7”w	$150.00
Full page:	9”h x 7”w	$300.00

Classified ad: $5.00 per line

Size	Annual Rate
Business card:	$310.00—save $50.00
Half page:	$500.00—save $100.00
Full page	$1,000.00—save $200.00

- The HCLA News 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 JPEG format.
- 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.

You Can't Play that Song by Ryan Smith

Music will never go out of fashion. But the love for a politician is infinitely more fickle.

During any political campaign season, one is certain to see politicians glad-handing their way through crowds of adoring admirers or at least potential supporters. These kind of events would be significantly dryer were it not for the music reverberating out of the hall speakers.

In a carefully thought out marketing campaign, the marketer carefully chooses the music that will accompany their brand. It is the desire to link the thoughts, feelings, and emotions that are associated with and generated by the song with the brand and in this case the politician. It is hoped that all the positive attributes of the song will begin to be associated with the politician and consequently what happens at the same time is that hearing the song triggers memories of that politician.

For those old enough to remember the 1992 Nike television advertisement set to John Lennon's song Instant Karma, can anyone still hear Instant Karma now and not think of Nike? Did Nike with that advertisement forever link John Lennon and Nike as well?

In the case of Instant Karma, the song was licensed to Nike by John's widow Yoko Ono, so there was no question that Nike had the consent of the owner of the song to use it in the advertisement. (In 1987 Nike had used the Beatles' song Revolution without the proper permissions and the case reportedly settled on undisclosed terms.)

You are also likely aware that public venues such as concert halls or public parks often host the performance of live music by persons other than the original singer or songwriter or feature the playing of recorded music over the public speaker system. Do they have the permission of the song owner? Does the song owner support the event if political positions are espoused? In these cases the public venues have, or should have, licensed the right to broadcast or perform the music from the collective agency that administers those licenses on behalf of the artists/owners. So, assuming the public venue has the correct permissions, it would be legally permitted to play the music. However, having the legal permissions does not mean that the artist/owner of the music supports any cause or event at which the music is played.

So, how can an artist or owner of music control how their music is used, especially when someone wants to use it in support of a person or cause for and with which the artist or owner does not wish to offer any endorsement or be associated? The owner of the music has to exercise their moral rights in the music.

In Canada moral rights in music arise automatically in the author of the music when the music is created. Moral rights are specifically mentioned in the *Copyright Act* of Canada. Moral rights are usually divided into three specific rights, namely, the right to integrity of the music, the right of association with the music, and the right of attribution with the music.

The right of integrity gives the owner of the moral rights the power to control how the music may be changed from its original expression; for example, music meant to be performed on an organ may sound horrendous according to the author of the music if played on electric guitar and mixed with trance music. The owner of the moral rights could use the right of integrity to prevent the music from being distorted into an expression or form contrary to the wishes of the owner.

The right of association makes it possible for the owner of the music to control with what the music is associated. In our example of a politician, a musician may become aware that a politician is using their music to promote the politician. If the musician does not support the politician or does not wish the music to ever be associated with that politician, and assuming the musician has retained the power to exercise the moral rights under the license agreement with the politician, then the musician could use those moral rights to stop the politician from ever using their music again.

The right of attribution is the power to compel the use of the author's name or the author's pseudonym with the music. The author can even use this power to remain anonymous in respect of the music.

Importantly it should always be remembered that moral rights cannot be assigned by the person who owns them, rather they may only be waived. So, when licensing or transferring works protected by copyright, one must consider who owns the moral rights in the copyrighted work.

Conclusion

* * * * *

Many musicians will retain ownership and control over their music, even if they allow others to use their music under license. From the perspective of a licensee, one should always investigate whether the music can be used irrespective of the owner's own position on the relevant person or cause. It also makes sense to determine prior to the use of any music whether the musician would object to its proposed use. If both the musician and proposed licensee of the music are in agreement, the licensee can be certain that it can use the music it wishes in the manner intended without any interference from the musician.

Ryan K. Smith is a Lawyer and Trade-mark Agent at Feltmate Delibato Heagle LLP. He is a corporate and commercial lawyer with expertise in software, marketing, and intellectual property matters. You can reach Mr. Smith at (905) 287-2215 and rsmith@fdhlawyers.com. This article represents general information only and does not constitute legal or other professional advice or an opinion of any kind.

Estates News by Suzana Popovic-Montag

Estate and Insurance Planning Implications of Medical Assistance in Dying

Introduction to Physician-Assisted Death

A major turning point with respect to the legality of physician-assisted death in Canada came with the release of the *Carter v. Canada (Attorney General)* decision (the *Carter* decision) by the Supreme Court of Canada (SCC) in February of 2015. Since that time, federal legislation has been updated and the option of physician assistance in dying has introduced several important incapacity, estate, and insurance planning considerations.

Historically, physician-assisted death was prohibited under the Canadian *Criminal Code* (the Code). The SCC, however, found that these provisions of the *Code* infringed upon the right of Canadians to life, liberty, and security of the person, in violation of the Canadian *Charter of Rights and Freedoms*. In the *Carter* decision, the Supreme Court suspended the invalidity of the prohibition against physician-assisted death to allow the federal government the opportunity to update legislation to reflect this landmark decision.

Criteria for Access to Medical Assistance in Dying

Between the date of the *Carter* decision and the implementation of legislation regulating physician-assisted death, the Ontario Superior Court of Justice introduced a Practice Advisory with respect to applications to the Court for authorization to access physician-assisted death.

The Practice Advisory provided interim guidelines, which mirror those referred to within *Carter* and now appearing within the applicable legislation, with respect to the availability of medical assistance in dying, which was temporarily granted by Superior Courts of Justice on a case-by-case basis.

[2015] 1 SCR 331.
R.S.C. 1985, c. C-46.
Enacted as Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.), which came into force on April 17, 1982.
Ibid; *Carter v. Canada (Attorney General),* [2016] 1 SCR 13.
"Practice Advisory – Application for Judicial Authorization of Physician Assisted Death" *Ontario Superior Court of Justice*, available at: http://www.ontariocourts.ca/scj/practice/application-judicial-authorization-carter/.

Results Achieved Fee disallowed as Contingency Fee by Katherine Batycky Associate Lawyer, Haber & Associates Lawyers, Burlington

A lesson learned from *David Jackson v. Stephen Durbin and Associates, 2017 ONSC 5396*.

In Ontario, Section 28.1 of *the Solicitors Act*, R.S.O. 1990, s.S.15, which regulates contingency fee agreements states:

28.1 (1) A solicitor may enter into a contingency fee agreement with a client in accordance with this section.

(2) A solicitor may enter into a contingency fee agreement that provides that the remuneration paid to the solicitor for the legal services provided to or on behalf of the client is contingent, in whole or in part, on the successful disposition or completion of the matter in respect of which services are provided.

(3) A solicitor shall not enter into a contingency fee agreement if the solicitor is retained in respect of, (a) a proceeding under the Criminal Code (Canada) or any other criminal or quasi-criminal proceeding; or (b) a family law matter.

(4) A contingency fee agreement shall be in writing.

In this day of ever increasing alternative fee arrangements, a lawyer should pay attention to this section of *the Solicitors Act*, or could be required to repay monies to a client. That is what occurred recently in the case of *David Jackson v. Stephen Durbin and Associates*, 2017 ONSC 5396.

The basic facts relevant to this section of the Solicitors Act is set out in the reported decision of Mr. Justice Lofchik, as follows:
Davis Jackson ('the client ") retained the services of Stephen Durbin and Associates ('the law firm ") to represent him in divorce litigation, in which one of the contentious issues was custody of the client's six-year old daughter. The client signed a written retainer agreement. The terms of the retainer agreement included hourly rates that would be charged by the different lawyers and support staff in the firm. In addition, the retainer agreement stated that the client could be charged "with a daily counsel fee for court or tribunal appearances at ten-fold the lawyer's hourly rate, and an increase in fees in the event of a positive result achieved ("results achieved fee")". Before the conclusion of the case, when the retainer funds provided by the client had been depleted, the firm agreed to continue to act for the client on the understanding that the firm's fees would be paid from any settlement funds or judgment obtained. The client signed several authorizations to the law firm during the course of the case, in which he agreed to direct any funds payable to him to be paid to the firm in trust. He also signed an authorization directing the law firm to use funds received into trust on his behalf to pay any outstanding accounts.

The litigation resulted in a 36-day trial. At the conclusion of the trial, the client was successful in his claim for custody. He was due to receive half of the proceeds from the sale of the matrimonial home. He was awarded costs in the amount of $192,000.

The client ultimately recovered $217,000.00 after fees following the trial. He had an outstanding account of $132,597.74 to be paid from those funds. However, that was not the end of the charges to the client. The law firm then issued a separate statement of account charging the client an additional total fee, inclusive of HST, of $72,433.24. This fee was charged to the client as the "results achieved fee ".

The client disagreed with this additional fee, and sought an assessment of the fees and charges levied by the firm, pursuant to section 3 of *the Solicitors Act*.

The assessment related solely to the "results achieved fee" of $72,433.24 charged to the client and transferred from the trust account as payment, in accordance with the Authorizations signed by the client.
The Assessment Officer of the Hamilton court hearing the assessment decided that he could not proceed with the assessment as he lacked jurisdiction due to the need for a legal issue to be determined - that is whether any part of the account rendered related to contingency fees.

The client therefore brought an Application to the Superior Court of Justice seeking judicial determination as to whether the inclusion of a "results achieved fee" in a family law matter contravenes the provisions of section 28.1(3) of the Solicitors Act, on the basis it is in fact a contingency fee agreement.
The Application was heard by Mr. Justice Lofchik of the Ontario Superior Court in Hamilton. In the Application the client took the position that the "results achieved fee" should be paid back to the client as it was truly a contingency fee, which is prohibited in family law cases by the provisions of the *Solicitors Act*.

The law firm took the position on that requiring a client to pay a premium if certain results are achieved, is not the same as a contingency fee, and therefore does not violate the provisions of the Solicitors Act because the nature of the retainer agreement itself was not conditional upon success .

The law firm distinguished the specific retainer agreement from a Contingency Fee agreement, in that an element of a "Contingency Agreement" was that the client was only required to pay a fee to the lawyer in the event of success in the litigation, whereas the specific retainer agreement required the payment of an hourly rate or a fixed fee for services rendered with an additional payment of a bonus if a certain result was obtained. It was the position of the law firm that, as a result, the specific retainer agreement was an entirely distinct agreement, and was not a contingency fee agreement.

Mr. Justice Lofchik disagreed and ordered the law firm to refund to the client the sum of $72,433.24 plus interest as set out in *the Courts of Justice Act.* In so doing, the court distinguished most of the cases relied on by the law firm, as being civil litigation cases. The decision of the one family law case referred to disallowed a "premium fee" that was rendered in a final account 'at which the complexity of the issues and the result obtained may be taken into consideration when deciding the amount of the final fee."
After considering the cases closest on point Mr. Justice Lofchik stated '"Section 28(2) of *the Solicitors Act* describes a contingency fee agreement as an agreement that provides that the remuneration paid to the solicitor for legal fees provided to or on behalf of the client is contingent, in whole or in part, on the successful disposition or completion of the matter in respect of which services are provided. The retainer agreement before me provides that in addition to the hourly rate of the lawyers, there be an increase in fees in the event of a "positive result achieved".

The logical interpretation of that agreement is that the "results achieved fee" is only chargeable if a successful result is achieved. I find that the language of the retainer agreement combined with the way the results achieved fee was charged (by way of a separate account), confirms the firm's intention that the fee was contingent on the successful disposition or completion of the matter in respect of which services were provided. As such, the results achieved fee charged by the respondent to the applicant is a contingency fee defined by the *Solicitor Act* and is a prohibited charge."

A read of this case, and the cases discussed in this case is a good read in the lesson that, no matter what name is given to a fee contingent on the success of the case, in family law it is prohibited and should not be charged.

1 2017 ONSC 5396, paragraphs 8 ff.

2 At paragraph 25 ff. of the reported decision, the court states, in part" Respondent's counsel relies upon the decisions in *Teplitsky, Colson v. McCrea*, [2008], O.J. No. 6014 (Sup.Ct.), *Meagan Warnica v. Casey Van Moorlehem*, 2012 ONSC 4241 (CanLII), *Pakka v. Nygard*, [2004] O.J. No. 2121 (Sup.Ct.) and *Darichuk v. Currie*, [1999] A. J. No. 2(Q.B.), in attempting to distinguish between contingency agreements and "premium" payments. In my view, these cases may all be distinguished on their facts. …they are all civil litigation damage cases and effectively hold that lawyers may charge a percentage of recovery as part of their fees in damage cases.

3 Pakka v, Nygard [2004] O.J. No.2121
4 The case of *Hyde v. Szabo* 2007 CarswellOnt 7000, [2007] O.J. No. 4227.in which Quigley J. addressed the issue (even though abandoned by the law firm) and concluded that the "premium for success" contemplated in the retainer agreement was a prohibited contingency fee arrangement contrary to the Solicitors Act.. In *Thompson v. Thomson*, 2005 SQB 345 the Saskatchewan Court of Queen's Bench considered a provision similar to that of the *Ontario Solicitors Act* with respect to contingency fees and found that the lawyer's entitlement to charge a fee of 1.6 times the lawyer's hourly rate if the client received judgment in excess of $300,000 amounted to remuneration that is contingent, in part, upon a successful disposition of the matter. Thus, the "bonus fee" agreement was determined to be nothing more than a contingent fee agreement as defined by the Rules of the Law Society of Saskatchewan and was disallowed. The case of *Zloty v. Malamud*, in which the Manitoba Court of Queen's Bench was to determine the appropriateness of contingency fees and family lawyer matters and stated: "Contingency fees are appropriate in accident/personal injury cases and in estate cases where a tariff is applicable. The same principles do not apply in domestic proceedings where so much of the result obtained depends not only on the skill of the lawyer, but on the position of either party."

5 Paragraph 37

Personal Injury News by M. Claire Wilkinson

ODSP changes – Caps on general damages removed!

People receiving benefits through the Ontario Disability Support Program have strict parameters around the amount of money they are allowed to keep in their bank accounts at any given time.

Section 5(1) of the Ontario Disability Support Program Act stipulates that "no person is eligible for income support unless… (c) the budgetary requirements of the person and any dependants exceed their income and their assets do not exceed the prescribed limits, as provided for in the regulations."

Until recently, the "prescribed limit" in the regulations was just $5,000.00 for individuals, with a series of exceptions. One of the exceptions was for general damages recovered from a personal injury claim, however a maximum cap was imposed on this exception of $100,000.00 in most circumstances. As a result, if a seriously injured person recovered more than $100,000 in compensation for his or her pain and suffering, that person ran the risk of having his or her ODSP payments terminated.

The legislation meant that plaintiff personal injury lawyers had to get creative when resolving cases for their seriously injured clients on ODSP, to ensure the clients could recover fair compensation without jeopardizing their entitlement to ongoing benefits. Lawyers would employ tools such as Henson trusts to attempt to protect assets, or lawyers would also ask for permission to set aside the excess funds for well-substantiated future expenses their clients would likely have to incur as a result of their injuries (such as costs for attendant care services, medical & rehabilitative treatment, assistive supports, psychological counselling costs, and so on).

Lawyers also would try to apply for special permission from the Director of ODSP for their clients to use the excess funds to purchase an "exempt asset" (such as a home or a car). But generally, ODSP did not allow those on ODSP to use their pain and suffering settlement funds in excess of $100,000.00 to purchase a home or a car, as to do so would require the recipient to have more than the $100,000.00 exemption in his or her bank account – even if the money was going to be used immediately to purchase a mortgage on a home. This circumstance could lead to the unusual situation of an ODSP recipient potentially being terminated from ODSP in the month that he or she purchased a home, and then being re-approved for ODSP once the excess funds were no longer present in the injured person's bank account. But none of the creative solutions used by plaintiff personal injury lawyers could be guaranteed to work: many were subject to approval by ODSP, and there was always the possibility that benefits could be cut-off in future if ODSP decided down the road that it did not did not agree with the way a settlement or award was structured. This created a great deal of uncertainty for injured people trying to figure out how best to financially plan for their futures.

Effective September 1, 2017, however, the Ontario government introduced a series of reforms to the ODSP regulations. As a result, the basic "prescribed limit" for assets an individual may have while still being eligible for ODSP has increased from $5,000 to $40,000. In addition, the cap on general damage awards has been *completely removed*. As a result, injured people and their lawyers no longer need to resort to fancy accounting or careful justifying of all amounts recovered – an injured person can simply keep the pain and suffering compensation awarded to him or her.

By eliminating the cap and increasing exemption limits to ODSP, individuals now have the autonomy and flexibility to use their awards in a manner that addresses their individual needs.

The new bill also increases the basic exemption for those receiving Ontario Works benefits from $25,000.00 to $50,000.00.

These legislative changes are an important step forward for Ontario's most financially vulnerable citizens. In particular, survivors of sexual abuse who often suffer from lifelong financial hardship, depression, anxiety and other psychological disabilities, will now not be forced to choose between remaining on ODSP and pursuing justice through the courts.

Whistle While You Work by Noel A. Nolasco da Silva'

Happy Days. Just like Fonzie, Richie and the rest of the Cunningham family on the 70's sitcom Happy Days, it is great to go to work with a smile on your face, accomplish what your client wants and get paid to do it. This happened recently in a file in which an engaged couple wanted a Cohabitation Agreement that would become a Marriage Contract when they marry. Lawyers are often leery about doing this type of domestic contract as so many have been set aside by the courts. They are problematic because they can also be the source of a Law Society complaint.

After the initial approach from the client we decided to use the Collaborative Law method to negotiate the terms of the agreement. I only open a collaborative file if there is a properly trained lawyer representing the other party. Here I was fortunate to have such a person who was a very cordial, smart, detail oriented lawyer who is a member of Collaborative Practice Toronto.

During the first meeting with the client the financial disclosure aspect of the negotiations were discussed among many other subjects and issues. By the time our first collaborative meeting took place I was able to present a draft Financial Statement of the client to the other side along with a disclosure brief of the client's assets, liabilities, income and tax returns. Prior to the meeting a telephone call took place to discuss the agenda and what we wanted to accomplish for our clients. The open, respectful discussion was very helpful to make the first meeting efficient and to the point. The clients appreciated that. We were not wasting their money. The other lawyer also arrived at the first meeting with her client's Financial Statement and disclosure documents.

Even though lawyers in the collaborative law/practice process maintain their roles as advocates, the clients were encouraged to speak and express their goals and everything they wanted to achieve with the agreement. We discussed their instructions, assets structure and how future acquired assets were to be dealt with. It is vital to have full participation from the clients. After all, it is their life and their agreement.

We set the date for the next meeting, assigned homework to the lawyers and parties. Then a debriefing session of a few minutes was held with each client and then with the lawyers only. The purpose was to see what we could do better next time, iron out any misconceptions and discuss any other concerns.

At the next meeting in Toronto, which was less than an hour in length, all remaining issues were ironed out. The sample property division calculation was explained and amended for clarification.

The other lawyer generously took on the drafting task. I have revised that draft after a review. Once each client reviews it and signs, the deal will be done.

If you saw and heard a person in the car next to you, whistling on his way to and from work, it was me. It is terrific to practice law this way. The simple secrets for a takeaway were signing a participation agreement not to go to court, full disclosure, open, respectful dialogue and good faith negotiations. It is so refreshing!

Noel is a Brampton Family Lawyer and Mediator trained in the Collaborative Process. He is a member of Peel/Halton Collaborative Practice, Collaborative Practice Toronto, Ontario Collaborative Practice Federation and the International Association of Collaborative Professionals.

Halton County Law Association

Lawyer Social

**** A Special Invitation to Young Lawyers and Recent Calls****

When: November 15th 2017

Where: Bryden's Pub

270 Main St E, Milton

Time: 5:30pm – 7:00pm

Upcoming Social Events:

December 12th – Tavolo Restaurant in Oakville

January 18th – Fionn MacCool's in Burlington

February 22nd – Emma's Backporch in Burlington

****No registration required.***

Select appetizers will be provided courtesy of the HCLA.

Community Foundation of Halton North
For Good For Ever

The Community Foundation of Halton North (CFHN) , www.cfhn.ca, provides an opportunity for people to donate to their favourite cause or causes, numerous times, with only one donation. Gifts made to CFHN are placed in endowments. The principle amount is never disbursed or depleted. The endowment generates revenue and from that revenue, grants are distributed into the community each and every year.

Donors can give to a specific charity or choose to support a desired area of interest including health and social well-being, art and culture, the environment and/or sports and recreation. Donors can even support several charities at the same time.

Individuals can make a gift today or can choose to make a gift as part of their estate plan. A bequest to CFHN will not affect one's current lifestyle and donors can direct their bequest to a particular charity or area of interest. Making a bequest has many tax advantages and will benefit the community in a significant way.

Consider a gift to the Community Foundation of Halton North. A gift made today will have an impact for generations to come. Community Foundation of Halton North – for good for ever.

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