



KDLA NEWS JUNE 2022

QUARTERLY NEWSLETTER OF THE
KENORA DISTRICT LAW ASSOCIATION



Phaedra Olinyk
Hook Seller & Lundin LLP
President of KDLA

Message from KDLA President

by Phaedra Olinyk

The KDLA Executive hopes that everyone’s summer is off to a great start.

With in-person proceedings becoming more and more common, we expect the law library will be put to use one again. With this in mind, we have replaced one of the computers.

We continue to seek an interested member who would be willing to chair our social committee. We are eager to arrange in-person social events and CPD sessions in the following months. Specifically, we are hoping to hold our semi-annual AGM late September or early October of this year – a date is yet to be solidified, however we will be looking to incorporate a CPD component. Please stay tuned for these details and as always, please contact the Executive with any ideas or issues you may have.

We look forward to seeing everyone in the fall! Have a safe summer.

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STATEMENT ON THE LAW SOCIETY TREASURER ELECTION

The following statements can be attributed to Douglas W. Judson, Chair of the Federation of Ontario Law Associations (FOLA):

FOLA Welcomes Treasurer Horvat

“FOLA congratulates Bencher Jacqueline Horvat on her election to succeed Teresa Donnelly as Treasurer of the Law Society of Ontario.

“Ms. Horvat brings to this role over a decade of experience at Convocation, including on various committees at the forefront of its public interest mandate. She also brings valuable leadership experience and perspective from her own practice.

“We look forward to working with Treasurer Horvat over her term. We hope to meet with her in the near future to discuss some of FOLA’s priorities – particularly the need to protect Ontario’s county and district law library system.

“This election marks the first time in the Law Society’s 225-year history that the role of Treasurer has changed hands from one woman to another. Treasurer Horvat will be just the sixth woman to hold this title in that time period.

“We thank outgoing Treasurer Donnelly for her service and dedication to the profession, and her ongoing friendship and support of FOLA.

BENCHER VACANCY

“This Treasurer election has also triggered a vacancy among the ‘outside Toronto’ slate of benchers. As the next-ranked candidate in the 2019 bencher election, this vacancy was presented to me yesterday.

“I have declined this role, owing to my recent elevation to the role of Chair at FOLA, which would place me in a position of conflict at Convocation. FOLA has recently seen significant turnover on its board and executive, and it is in need of sustained leadership and capacity-building, which I intend to provide. We have important and exciting work underway.

“By standing down, I am also in a position to congratulate my Kenora colleague and past FOLA chair Cheryl Siran on her expected appointment as bencher. Ms. Siran is a proven leader in the legal profession, and I am delighted to see another strong voice for the Northwest and law associations at Convocation.”

Contact:

Douglas W. Judson (he/him/his)
info@douglasjudson.ca

KDLA DUES REMINDER

Invoices for 2022 membership dues were sent at the beginning of March.

If you have not received yours, please let Maria know and she will prepare a duplicate.

The executive has held the dues at the reduced rate again this year, in recognition of the financial strain caused by the pandemic.

Please let Maria know if you wish to withdraw from the Association

Please remember that the KDLA library should not be used for audio or video court appearances. You are welcome to use the Lawyers’ Lounge if necessary.





New at

Major Sobiski Moffat LLP

Isabel Davila-Pereira is originally from Ecuador. She moved to Toronto 6 years ago, where she went to law school and moved to Kenora last summer to join Major Sobiski Moffatt LLP as an Associate. Growing up surrounded by mountains, she missed being close to nature and is excited to be surrounded by water and nature now that she has moved to Kenora.

Before coming to Canada, Isabel studied law in Ecuador for three years, with a focus on human rights. In Canada, she studied at Osgoode Hall Law School, with a specialization in International, Transnational and Comparative Law. While at Osgoode, Isabel was part of the Environmental Justice and Sustainability Clinic, and focused her research on environmental law and rights, the intersections with Indigenous sovereignty and rights, and the Rights of Nature, a framework that is part of the Constitution in her home country of Ecuador. In her spare time, she volunteers as a board member at Canadian Lawyers for International Human Rights, explores her passion for film or goes on hikes with her dog, Bucky.

Thrilled to be in Kenora, Isabel is eager to meet the legal community and explore Lake of the Woods.



A View from My Window



Like legendary Avalon, Lake of the Woods was shrouded in mist on the official first day of summer this year.

TECH IN THE LIBRARY

We have finally replaced the Lawyer 1 computer (the one opposite the Librarian's desk) The old computer, which was still running Windows 7, gave up the ghost during a thunder storm not long ago.

Both of the lawyer work stations are now set up to give you access to LiRN's e-suite of resources. There are links on the desktop to take you directly to Westlaw (including Law Source, Family Source, Criminal Source, and Wills & Estates Source) We continue to subscribe to Lexis Advance QuickLaw, and we now also have access to Lexis Practical Guidance. Here you will find practice notes, precedents and checklists to assist you with most of your legal matters.

Coming soon:

LiRN will be implementing a pilot project to give remote access to vLex for lawyers practicing in northern counties and districts. vLex gives you access to a range of Canadian caselaw, legislation and commentary. Our vLex subscription will also give you access to Irwin Law's e-library, and the AI assistant Vincent.

There are still a few bugs to be worked out. Once that is done, we will provide you with the link to register for this service.





BOOK REVIEW - PART 2

ANGER AND FORGIVENESS

BY MARTHA NUSSBAUM

(OXFORD UNIVERSITY PRESSE, 2015)

The Road less taken: Non-anger and Taming the Furies in Criminal Court

“In the first part of my review of *Anger and Forgiveness* (Oxford University Presse, 2015), I outlined that philosopher, Martha Nussbaum, promotes the idea that the rational response to hurt and injury is stoic non-anger and that we pivot from anger into projects of reform—transition anger. She also argues that the ideal response to anger is unconditional forgiveness, and, going further, unconditional love which demands no apology and seeks no atonement or reparations.

Looking through the lens of non-anger, how does the criminal justice system stand up?

Nussbaum acknowledges that deterrence (specific and general), incapacitation and reform are suitable sentencing goals. However, a focus on punishment makes it impossible for judges to be Adam Smith’s judicious spectator or Aristotle’s gentle-tempered person, her touchstones on the ideal judge or to work effectively to reduce crime and the conditions which produce it. Echoing a common critique, she says that prisons are for payback and status-reduction: they fuel blood vengeance, the break-up of family and social bonds, the perpetuation of poverty and communities which are more, not less, vulnerable to criminal behaviour.

Though the extremism of the sentencing practices of her home country with its massive rate of incarceration sharpens her critique, her questions challenge accepted wisdom on either side of the border. Nussbaum picks three targets for criticism: sex offender registries, victim impact statements, and community conferencing.

Her critique of community conferencing is mild and conventional: the potential for the intrusion of anger, power imbalances, and the forfeiting of due process.

With respect to Nussbaum’s view that victim pact statements are expressions of unfiltered rage, the comment must be understood within the context that criminal courts in the United States allow victims to direct venom at an accused and allow them to influence sentencing. For example, in the family of Ahmaud Arbery, a young Black man murdered while jogging, persuaded a judge to impose harsher sentencing conditions on the killers. Such unchecked expression and such influence are foreign to Canadian criminal courts.


Nussbaum is wrong to say that the goal of impact statements is solely to express anger and to seek retribution. The real-world example she cites more than once, that of a murder victim’s family expressing forgiveness to a killer, belies her assessment and shows—something which tough on crime proponents fail to consider—that some victims want more sympathy for an accused than the law permits.

Her critique of sex offender registries is blunt: she dismisses them as tools to impose shame and humiliation. Nussbaum’s comments are, unfortunately, an aside; they do not form part of her discussion of the criminal justice system. Readers would have appreciated a fuller discussion.

Nussbaum also examines how we might treat criminal conduct outside the criminal justice system through her examination of South Africa’s truth and reconciliation process, where offenders were offered amnesty for testifying to horrendous criminal and racist conduct. Her analysis provides an interesting contrast to Canada’s Truth and Reconciliation Commission which did not demand the participation of perpetrators of residential school abuse or seek confessions. It also promoted an atonement and reparations model.

Nussbaum’s unconditional forgiveness (and certainly unconditional love) will not soon find a home within the hard shell of the criminal justice system; however, through the example of Nelson Mandela, the philosopher shows how these ideals can be implemented in the service of nation-building.

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BOOK REVIEW PART 2

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“Through what the author calls a “pragmatic” use of generosity, courtesy and respect and an abjuration of payback and humiliation, Mandela formed partnerships with his people’s oppressors in pursuit of building of a new nation and a lasting peace.

Translated into the criminal justice system, we could give Mandela’s magnanimity the name of mercy. Though tough on crime laws fetter mercy’s room to play, plea bargaining and creative sentencing workarounds, help it breathe. Nussbaum’s overall leaning towards mercy and forgiveness is tempered by her comment that “sympathetic understanding of the defendant’s circumstances” should not always lead to mitigation—a position which is echoed in the application of Gladue.

Though parts of the book require close reading, *Anger and Forgiveness* is well worth the effort. The writing is clear, the author fearlessly expresses her preferences and is not afraid to take aim at accepted wisdom or poke fun at herself. Her analysis of the myriad, often trivial, occasions for anger and of modern societies which do nothing to rein in rude and inconsiderate behaviour, her review of ancient teaching about forgiveness rituals, and her examination of heroic, non-anger responses to deep hurt and injury, is inspiring.

Finally, though *Anger and Forgiveness* is not a self-help book, Nussbaum’s critique of therapeutic “insistence on accessing buried anger,” rather than, say, urging the injured to take up a hobby or go for long walks, is refreshing.

Peter Kirby LL.B.
(non-practicing)



Here's a view looking back at the courthouse from McLeod Park. High water levels on the lake mean soggy shoes for anyone who might wish to rest a bit on this bench. Many thanks to Mark Mymko for the picture.



Recent Library Acquisitions

NEW TITLES

Alternative Dispute Resolution in the Construction Industry in Canada (Kirsh)
Canada Business Corporations Act & Commentary (Fasken) 2022/23
Canadian Tort Law (Linden et. al.) 12th ed.
Canadian Tort Law: Cases, Notes & Materials (Linden et al) 16th ed.
Drafting Wills in Canada: a lawyer's practical guide (Solnik, Gillingham & Kiva) 3rd ed.
Employment Law During a Pandemic (O'Donnell)
A Guide to the Ontario Not-for-Profit Corporations Act 2010 (Bourgeois)
2022/23 Guide to the Youth Criminal Justice Act (Tustin & Lutes)
The Law of Privacy (Power) 3rd ed.
Legal Opinions in Commercial Transactions (Estey) 4th ed.

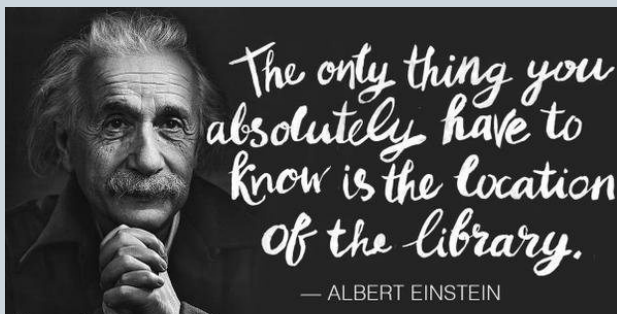
NEW CPD

From LSO

Family Law Refresher 2022
16th Family Law Summit 2022
Six-Minute Administrative Law and Practice 2022
Six-Minute Commercial Leasing Lawyer 2022
Six-Minute Criminal Lawyer 2022
Wills and Estates Refresher 2022

From OBA

Advanced Issues in Child Protection Law
19th Annual Current Issues in Employment Law
Annual Update on Human Rights
Annual Update on Workplace Safety and Insurance Law
Building Communities
Buying and Selling a Business: a Comprehensive Guide
Corporate Law Basics
Divine Discoveries: Building a Great Case
Elder Law Day: A Conference for Lawyers
Introduction to Workplace Safety and Harassment Law and Investigations
Key Transactional Issues with Respect to Condominiums
Motor Vehicle Tort Litigation: Your Essential Update
Privacy Law Basics
Privacy Law Summit
Serving the Family: Critical Insights on the Issues Impacting Families in Corporate, Estates and Family Law
The Spring Mix – Real Estate Issues You Need to Know
Writing Persuasive Legal Documents
Your First Civil Trial
Your First Estate Administration



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