

Sorbara, Schumacher, McCann LLP is the Region's largest local law firm with twenty-eight lawyers and offices in Kitchener, Guelph and Waterloo specializing in all areas of business law.

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Legislation Update: Accessibility for Ontarians with Disabilities Act, 2005

Is your business prepared for the new standards under the *Accessibility for Ontarians with Disabilities Act, 2005*, which came into force on January 1, 2012?

All providers of goods and services in the Province of Ontario with at least one employee must be compliant with the Accessibility Standards for Customer Service pursuant to the Act.

By recognizing the history of discrimination faced by persons with disabilities in Ontario, the Act aims to achieve greater accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises.

In order to comply with the new *Accessibility Standards*, employers must comply with these requirements:

- Establish policies, practices and procedures governing the provision of goods or services to persons with disabilities in accordance with these principles:
 1. The goods and services must be provided in a manner that respects the dignity and independence of persons with disabilities.
 2. The provision of goods or services to persons with disabilities and others must be integrated to enable a person with a disability to obtain, use or benefit from the goods or services.
 3. Persons with disabilities must be given an opportunity equal to that given to others to obtain, use and benefit from the goods or services.


- Any person with a disability that is accompanied by a guide dog or other service animal must be permitted to enter the premises with the animal and to keep the animal with him or her while on the premises.

- Any person with a disability that is accompanied by a support person must be permitted to enter the premises with the support person and must not be prevented from having access to the support person while on the premises.

- Provide training about the provision of goods or services to persons with disabilities to every employee who deals with members of the public or other third parties on behalf of the employer.

- Establish a process for receiving and responding to feedback about the manner in which goods or services are provided to persons with disabilities, and make information about the process readily available to the public.

If your business employs 20 or more persons, additional rules will apply.

To learn more about how the new *Accessibility Standards* will impact your workplace, please contact our office to schedule a meeting with a member of our Employment Law Group. 



Seth Jutzi, B.B.A., LL.B., is a member of SorbaraLaw's corporate-commercial practice group.

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| EXPERIENCE. QUALITY. SERVICE. |



SorbaraLaw Partners Justin Heimpel and Greg Murdoch Achieve Recent Courtroom Success


SorbaraLaw partner Justin Heimpel has been very successful in the courtroom acting on behalf of two SorbaraLaw clients.

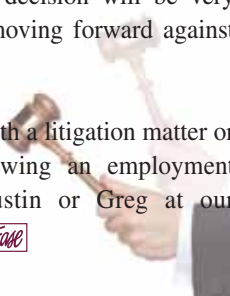
In one instance, Justin brought an entirely successful application to rectify title to a client's land. The client had an easement over a parcel of land registered in the Land Titles system. However, the easement had been incorrectly registered and thus, when the property was sold, the new owner took the position that the easement was no longer valid. After hearing arguments from both sides, the Court held that the purchaser's title to the property should be corrected to reflect the easement on behalf of our client.

Justin also successfully argued a motion for summary judgment. In that case, the Court granted an order dismissing an action against our client, a former employee, for breaches of non-solicitation and non-competition provisions in the employment contract. Following submissions from Justin, the Court held that these particular provisions were poorly drafted as they did not contain both a temporal limitation and a geographic restriction. Another successful day in court for Justin!

Likewise, SorbaraLaw partner Greg Murdoch achieved great success at the Ontario Court of Appeal. Greg argued successfully for the dismissal of an appeal brought by a

personal guarantor on a multi-million dollar commercial mortgage following Greg's win at the motion for summary judgment against the guarantor. Both at the motion and on appeal, the guarantor sought to avoid personal liability under the guarantee. Greg's argument and submissions held the guarantor accountable for the mortgage, which had been in default for quite some time. This decision will be very important for lenders moving forward against guarantors in the future.

If you need help with a litigation matter or with drafting or reviewing an employment agreement, contact Justin or Greg at our Waterloo office. 



The Support of Dependants Upon Death

Where an individual has died, either with or without a will, and has failed to make adequate provision for the support of his or her dependants, courts may order that adequate support be provided from the deceased person's estate.

The governing legislation in Ontario is the *Succession Law Reform Act (SLRA)*. Under section 57 of the SLRA, a "dependant" includes a spouse, parent, child, brother or sister of the deceased to whom the deceased was providing support, or was under a legal obligation to provide support, immediately prior to death. A "child" includes a grandchild and a child to whom the deceased demonstrated a settled intention to treat as a child of his or her family. There is no age limit in the definition.

The SLRA lists twenty-seven factors that the court must consider in determining whether proper support has been provided. These include:

- the dependant's current assets and means;
- the assets and means the dependant is likely to have in the future;
- the dependant's capacity to contribute to his or her own support; and
- the dependant's age and physical and mental health.

If the dependant is a child, the court must

consider the child's prospects for obtaining an education and the child's need for a stable environment.

If the dependant is a spouse, various factors are relevant, including:


- the length of time the spouses cohabited;
- housekeeping, child care and other domestic services performed by the spouse for the family;
- the effect on the spouse's earning capacity of the responsibilities assumed during cohabitation;
- whether the spouse has undertaken the care of a child who is over eighteen years of age but remains dependant due to illness or disability; and
- whether the spouse has undertaken to assist in paying for a child's education.

The law is clear that *proper* support means something other than *adequate* support. Courts have held that the proper support of children is not to be determined having regard only to the *Child Support Guidelines*; consideration must also be given to the moral and ethical obligations of the deceased.

Ensuring dependants are properly supported after death can be particularly complicated where one is in a second marriage and has dependant

children from a prior relationship. In addition, there may be competing needs, such as when a spouse is also dependant.

Even when a spouse is not dependant, he or she has the ability upon the death of his or her spouse to elect under Ontario's *Family Law Act* to receive an amount equal to what he or she would have been entitled to had the parties separated the day before death, rather than to accept the entitlement set out in the deceased's will. In order to avoid this situation, spouses with dependant children from prior relationships can ensure that proper support is provided to those children by naming them as beneficiaries of life insurance or RRSPs. They may also negotiate marriage contracts in which each spouse releases any entitlement to the other's estate.

Careful planning is required to maximize the funds available for the support of dependants, and to minimize the potential for conflict and expensive legal proceedings after death. Please feel free to contact our Estates Group for more information on the support of dependants and managing your estate. 

Lisa S. Toner, B. Soc. Sci., LL.B., has been with SorbaraLaw since September 2007, practicing in the areas of wills, estate planning and estate administration.

Legal Expense Insurance: The Wave of the Future?

Is Canada ahead of the game or falling behind the trend with legal expense insurance?

Essentially, legal expense insurance (LEI) is a form of insurance that covers a policyholder against the potential costs of legal action brought by or against the policyholder. In many cases, it can be purchased as an extension to existing home or auto insurance policies.

For many decades now, Canadians have been hesitant to embrace the idea of LEI. It made its first appearance in 1985 when the Canadian Auto Workers union negotiated LEI as an employee benefit in collective agreements with the Big Three automakers. At that time, however, the LEI concept left much to be desired. Yet, in the United States and Europe, LEI is highly popular and has for some time provided easier access to the legal system for those who otherwise could not afford to pursue legal remedies. In the U.S., it is estimated that some 98 million Americans (about 30% of the population) are covered by some form of pre-paid legal service plan. Even more prevalent in Europe, 42% of households in Germany and about 90% of households in Sweden have LEI policies. The U.K., which has a similar legal system to Canada, is said to have the fastest-growing LEI market worldwide.

Presently, about 5.5 million Canadians subscribe to some type of legal insurance. However, many of these policies are extremely limited, offering little more than a telephone consultation. It seems that, without the support of law societies, bar associations and government, LEI may have difficulty gaining widespread acceptance.

Nonetheless, support appears to be growing slowly. Recently, the President of the Barreau's Legal Insurance Committee in Quebec met with officials from the Law Society of Upper Canada (LSUC), including chief executive officer Malcolm Heins, to discuss the system in Quebec, where LEI has had some success. According to Mr. Heins, the LSUC continues to support LEI as a useful insurance model with the potential to improve access to justice for middle-class Canadians. However, Mr. Heins notes "the Quebec model is interesting, although the level of actual coverage is very low."

Although the exact cost of each policy and degree of coverage vary, a typical LEI policy, starting at around \$360 a year, grants the policyholder access to a hotline providing advice on common legal issues. Generally, most policies will also provide legal representation in the courtroom up to a

maximum of \$100,000 per claim and \$500,000 per year. While those figures might appear substantial, not all policies include coverage for every area of law. For instance, most LEI policies exclude criminal law and family law, two of the most common areas of legal difficulty for Canadians. It is important to make sure the policy covers each policyholder's expected needs. For those anticipating the need only for such services as drafting legal documents or dealing with disputes with neighbours (for example), LEI might be a practical option.

In any event, it is clear that, while LEI certainly has potential benefits and is gaining in acceptance as time goes on, it has yet to be fully proven in the Canadian insurance market. Those considering LEI should speak with their lawyer and/or insurance agent before committing to a policy. [Legal Edge](#)

Jessica Ennis, B.A. (Hons.), J.D., is currently completing her articling term with SorbaraLaw. She is a graduate of the University of Waterloo and the University of Detroit Mercy.



- House Insurance
 - Auto Insurance
- Legal Expense Insurance?**

There have been many exciting happenings around the firm lately.

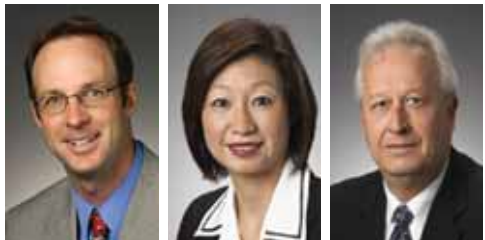
This past year, the firm had the honour of celebrating a number of momentous anniversaries. Lawyers **Peter Somerville** and **Jennifer Black** celebrated five years with the firm. **Erin Fulop**, an essential member of our corporate-commercial group, has also been with the firm for five years. We are so happy to have them as part of our team.

We are delighted that a number of lawyers and staff celebrated ten years with the firm in 2011. We know our clients have benefitted greatly from **Mervyn Villemaire** and his assistant **Charlotte Langill's** service over the past ten years.



In addition, SorbaraLaw partner **Justin Heimpel** also celebrated his tenth anniversary with the firm.

Three lawyers celebrated significant anniversaries with the firm this year. SorbaraLaw partner and litigation group manager **Greg Murdoch** has been with the firm for fifteen years. **Grace Sun** has been practicing family law with the firm for twenty years, and **Gary Keller** in our real estate group joined the firm twenty-five years ago.



Greg Murdoch Grace Sun Gary Keller

Not to be outdone, **Debbie Sauder** celebrated her 25th anniversary with the firm. Debbie is an essential member of our team and



we are extremely grateful for all her hard work and years of dedication.

Speaking of celebrations, the holiday season saw several exciting events for SorbaraLaw staff and family. Our annual children's Christmas party took place once again

in December at Bingeman's *Funworx Indoor Playland*. Many of our staff attended with their children, grandchildren, and other family members to enjoy the great activities, a pizza lunch, and a special visit from Santa and his helpers.



Our receptionist, **Diane Lammert**, also celebrated ten years at SorbaraLaw. As our front line, Diane is integral to our ability to assist our clients and we thank her for her years of service.



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the Firm

The following week, we enjoyed our annual firm Christmas party at the Elmhurst Inn in Ingersoll, a favourite location for us. Staff members enjoyed cocktails followed by a delicious dinner and dancing well into the night. Guests were treated to quite a performance when the litigation department, in full costume, sang and danced a rollicking legal parody of *Jingle Bell Rock*. Merry Christmas and Happy New Year from all of us at SorbaraLaw.




Two lawyers from our Family Law Practice Group had notable achievements in the community recently. **Grace Sun** was named to the Board of Directors of Immigrant Services – Guelph-Wellington for a two-year term beginning in September. The organization is the leading provider of innovative settlement services and programs to immigrants who have chosen the Guelph-Wellington area as their new home. **Jennifer Black** has been named to the Board of Directors of Marillac Place, a Kitchener-based shelter for young homeless mothers and their children. We are proud of Grace and Jennifer, and their dedication to these worthy community organizations.

For more information about the members of our team, visit our website. While you're at it, be sure to pop in for a visit to our new **Facebook page** (<http://www.facebook.com/SorbaraLaw>), where you'll see daily updates on the latest news from around the firm and around the legal world. Join the discussion threads on interesting topics, or simply browse the photo gallery and the recent status updates posted by members of the firm.

It was a great pleasure for SorbaraLaw to welcome over 1300 members of the community to our new office at 31 Union Street East, Waterloo, for **Doors Open Waterloo**. Visitors came see the hard work SorbaraLaw and its architects diligently undertook to preserve and restore the historical home. Many of the lawyers and staff of SorbaraLaw provided tours of the home and shared tidbits of information about its history and former owners, the Seagram and Bauer families, that we have learned over the last few years. We were pleased to have met one of the original house maids who worked at the home, as well as numerous people who had visited the home over the years, all of whom shared their own interesting stories with us.

Doors Open Waterloo was not the only visitor to the firm. On September 12, SorbaraLaw was honoured to give **Mr. Chris Bentley**, the Attorney General for Ontario (currently the Energy Minister), a tour of the Waterloo office. Many of our lawyers joined the Attorney General for lunch at the Bauer Kitchen following his tour.

It has indeed been a very busy fall and holiday season for the lawyers and staff at SorbaraLaw, and we are looking forward to more news and excitement in the new year. Stay tuned to our website and to the spring issue of *LegalEase* for more! 

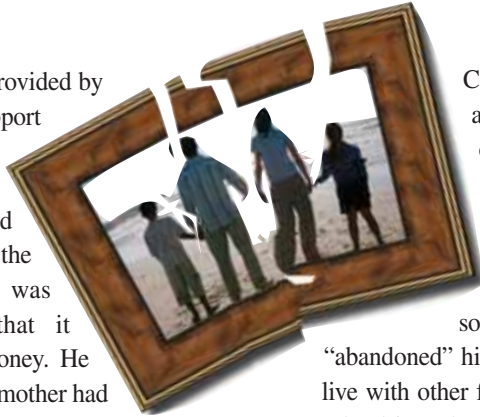


Outrageous Lawsuits or Legitimate Claims?

Some recent civil lawsuits between parents and their adult children are garnering attention in the legal world.

In Illinois, two adult children sued their mother for \$50,000 for emotional distress. Their father, a lawyer, represented them in the lawsuit against their mother.

The evidence provided by the children in support of their claim included a birthday card the mother had sent to her son that the son alleged was inappropriate in that it failed to include money. He also alleged that his mother had failed to send him care packages when he was in college and had inappropriately used threats – like calling the police – as a tactic to get him to do such common tasks as buckling his seatbelt when he was seven years old. The daughter alleged that her mother had caused her emotional distress by refusing to take her to a car show and by setting a midnight curfew during her teen years.




Fortunately, parents in Illinois can breathe a sigh of relief as the Illinois Court of Appeal dismissed the case, stating that the mother's behaviour had not been extreme or outrageous. However, despite the successful outcome for the mother, she still had to incur legal fees to defend the lawsuit.

Meanwhile, in British Columbia, a mother has sued her adult children (two sons and a daughter) for parental support despite that she has had little or no relationship with them in many years. In response to the mother's claim, one of the sons has alleged that the mother "abandoned" him as a teenager, leaving him to live with other families and forcing him to quit school in order to work to support himself. He now has a wife and children of his own to support. None of the children has had anything to do with their mother for many years. Yet their mother is suing them for support.

While the idea of a parent suing a child for support might strike some readers as outrageous, B.C. does have legislation providing that adult

children are responsible for supporting parents who are dependent because of age, illness, infirmity or economic circumstances. Indeed, Ontario has a similar requirement in section 32 of the *Family Law Act*. It is thus possible that the mother could be successful in her claim for support.

The legislation was originally drafted at a time when Canada did not have CPP and Old Age Security, which now provide financial assistance to older people. The B.C. Law Institute has recommended repealing this legislation but the law is currently valid.

In this specific case, the B.C. Supreme Court has been asked to throw out the case as the mother has not followed an order to submit certain financial documents. The Court has not yet released its decision on that issue. 

Jennifer Black, B.A. (Hons.), LL.B., joined SorbaraLaw in July 2006. She practices in the area of family law in SorbaraLaw's Kitchener and Guelph offices.

Industry Update: Preventing Corporate and Employee Fraud

Here at SorbaraLaw, we have heard the topic of corporate and employee fraud come up more and more often with our corporate-commercial clients. The fact is, corporate fraud exists, and it is a growing concern for most Canadian corporations.

A survey conducted by SAS Institute Inc. indicated that, in large firms, 48% of employees have attempted to defraud the company in some way. The number was only slightly lower (35%) in mid-size corporations. These statistics don't refer to the employee who takes office supplies

home or who borrows a loonie from the social committee pot and forgets to repay it. Fraud is a serious civil and criminal offence that can lead to criminal charges, prison and civil law suits. Additionally, the survey showed that, of those employees who committed fraud, up to 10% of them managed to escape detection and criminal charges.

Some employees who commit fraud rationalize their actions in terms of a response to being poorly treated by the company. Others may

view the company's intellectual property as unrestricted access and a means of obtaining financial rewards.

We are all familiar with the recent news reports on individuals who have committed fraud in the financial sector. But fraud exists and is a concern across all industrial and business sectors. No business, regardless of size, can afford to ignore the potential risks and damage that can result from fraud.

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LegalEase is circulated seasonally to over 2,500 businesses and individuals in and around Waterloo Region and Wellington County. If you would like more information about *LegalEase* or are interested in contributing to upcoming issues, please feel free to contact Justin Heimpel at our Waterloo office.

Preventing Corporate and Employee Fraud continued . . .

Corporate fraud affects everyone, not just the company. A domino effect occurs, which ripples and impacts clients, consumers, insurance premiums and the corporate economy. Many corporations accept a degree of employee fraud, and include a percentage factor into the financial status of the company.

With the present economic stresses, corporate and employee fraud must be controlled and minimized with a “zero tolerance” attitude. However, it is unrealistic to believe fraud can be eliminated in every corporate environment.

In dealing with the risk of fraud, corporations should consider the following questions:

1. What policies, processes, protections and protocols exist to prevent, detect, control and respond to fraud?

The policies and processes should be easily and readily communicated to all employees. They should identify the areas of concern (e.g., corporate intellectual property) as well as the organizational levels with the greatest risks.

2. How often is the company conducting a fraud risk assessment?

The assessment should be a serious undertaking that encompasses a multitude of issues, including a full review of the policies and procedures, past occurrences, how the fraud was detected, the extent of damage, and

whether the damage was controlled.

3. Is the company able to identify potential and actual risks effectively, efficiently and in a timely manner?

Supervisory controls are required to review and double-check procedures. Random risk audits conducted by independent consultants experienced in the field of corporate fraud should become a frequent form of review.

The extensiveness of the policies and procedures will depend on the size of the organization, the type of risks, what needs to be protected, the complexity of the organization, the type of business, and the levels of management.


All employees must be made aware of the policies and procedures and encouraged to recognize and report potential fraud. Balance must be maintained between reporting inappropriate activities and preventing paranoia. Corporate culture has its foundation in teamwork, cooperation and ethical behaviour. Management at all levels needs to encourage, train and promote ethical behaviour.

Many professionals (accountants, physicians, lawyers, etc.) have professional and ethical codes of conduct that are established and monitored by their respective professional societies. A similar code of conduct should be entrenched within the corporate environment and clearly communicated

to all. Additionally, those employees (whistle blowers) who do report suspicious activities should be able to do so without fear of negative ramifications.

A corporation's image within the general and business communities is not simply a reflection of profits and losses or marketing the best web site. It must have its reputation rooted internally through all levels of employees. The management of corporate and employee fraud is a significant factor in this process.

Be aware that these policies and procedures may be raised by the company and/or by disgruntled employees in the context of the use of intellectual property, performance reviews, disciplinary actions, and dismissals.

At SorbaraLaw, we work jointly with risk management consultants to ensure the appropriate policies and procedures are in place to help our corporate clients avoid fraud issues. Additionally, we provide discussion seminars and reviews of present policies. If you have any questions or concerns, or for more information, contact a member of our Corporate-Commercial Practice Group. 

Steven K. Kenney, B.A. (Hons.), M.A., LL.B., is a lawyer in SorbaraLaw's litigation group specializing in personal injury and medical malpractice matters.

SorbaraLaw Seeking Jail Time for Debtors

Recently, SorbaraLaw lawyer Cynthia Davis successfully brought a motion seeking to hold two judgment debtors in contempt of court for their disregard for the court's authority and their failure to comply with court orders.

In recent years, the Ontario Superior Court of Justice has taken a stronger stance against those who commit civil contempt. Civil contempt refers to a person's failure to comply with a court order requiring that person to do something or to refrain from doing something (aside from the payment of money). Courts have described this power as a “coercive” one that permits the justice system to enforce compliance with orders.

One couple learned this first-hand spending alternate weekends in jail this past summer after

they received 90-day sentences for breaching repeated court orders in on-going litigation. Although the couple was permitted to serve the sentences on alternate weekends so that someone would always be home to take care of their children, Justice Lois Roberts' imposition of the jail term demonstrates an increasing willingness to come down hard on individuals who fail to comply with court orders. Here, the couple repeatedly failed to attend cross-examinations and to answer undertakings in the course of litigation.

This case follows a recent Ontario Court of Appeal decision that affirmed a 14-month sentence against a man who failed to comply with a number of orders in an estate litigation matter. In its decision, the Court of Appeal was

influenced by a prior decision in 2009 that imposed jail terms of 8 and 12 months on a couple for breaching various orders requiring them to disclose assets. The Court of Appeal also ruled that people serving sentences for civil contempt are not eligible for parole and that their release date is at the discretion of the court, rather than corrections officials.

SorbaraLaw is pleased to have another tool available to assist our clients in enforcing the judgments obtained on their behalf, and will pursue civil contempt as a further means of ensuring that our clients get the best results.



Cynthia Davis, B.A. (Hons.), LL.B., was called to the bar in 2007 and is a member of SorbaraLaw's litigation group. Cynthia works out of the Waterloo office.

Dominic (Manny) Sorbara Inducted into Guelph Sports Hall of Fame

SorbaraLaw founder and partner Sam Sorbara is pleased and honoured to announce that his father, Dominic (Manny) Sorbara, is amongst the Guelph Sports Hall of Fame 2011 inductees.

Tall, rangy, fast-moving and aggressive, Manny was one of the outstanding boxers of Guelph's history. After a winning streak of 15 straight battles, he was described as Guelph's number one boxer and one of the best in Ontario.



Born in 1927, Manny began his ring career at the age of 15 in the old Y.M.C.A. He did most of his fighting in the 147 lbs. welterweight class, but in his later years moved up to the 160 lbs. middleweight class.

Manny did his boxing over a 10-year period, keeping in good shape and compiling a fine record fighting in about 250 bouts, including streaks of 16 and 13 straight wins. He boxed throughout Southern Ontario – at the Wireless School at O.A.C., at Camp Ipperwash, at Toronto's Massey Hall where 'Deacon' Allen held his shows, as well as in Oshawa, Hamilton, Kitchener, Brantford, Peterborough, Welland, Port Colborne and Guelph.

Among his trophies is the Charles Hemstead Trophy, won in 1944 at the annual Newsboys show. About this same time, he won a medal at the

Legion show in Welland and the Toronto Star Trophy in 1945.

After a decade of combat in the ring, Manny helped train other boxers at the C.Y.O. Club. Pat Campbell, Joe Morrison, Mike Garcia, Larry Sorbara, Chuck Sorbara and Joe Carere were among his pupils who distinguished themselves in the ring. After 5 years of training others, Manny retired permanently.

The Guelph Sports Hall of Fame induction ceremony took place at the



Kiwanis Sports Celebrity dinner on October 26, 2011. It was a great evening celebrating a great athlete.



- Samuel O. Sorbara
- Brian McCann
- Mark W. Schumacher
- J. Greg Murdoch
- Justin J. Heimpel
- Peter G. Somerville
- Gary A. Keller
- Grace Sun
- Ronald J. Nightingale
- James Peluch
- Lynn Dramnitzki
- Lisa S. Toner
- Denise M. Kocher
- Jennifer Black
- James Gittens
- Cynthia Davis
- Jill Renaud
- Seth Jutzi
- Jacquelyn R. Johnson
- Jessica L. Freedman
- Mervyn J. Villemaire, Q.C., Counsel
- Frederick T. Kirvan Q.C., TEP, Counsel
- Glenn Ludwig, Counsel
- James H. Tait, Counsel
- George S. Chris, Q.C., Counsel
- Andre Lichtenheldt, Counsel
- Steven Kenney, Counsel for Medical Malpractice
- Susan Liu, International Business Consultant



300 Victoria Street North
Kitchener, ON N2H 6R9
Tel: (519) 576-0460 Fax: (519) 576-3234



457 Woolwich Street
Guelph, ON N1H 3X6
Tel: (519) 836-1510 Fax: (519) 836-9215



31 Union Street East
Waterloo, ON N2J 1B8
Tel: (519) 741-8010 Fax: (519) 742-2442