

CANADIAN Lawyer

WWW.CANADIANLAWYERMAG.COM

ISSUE 46.02 | \$11.95

A portrait of Nizam Hasham, a middle-aged man with grey hair and glasses, wearing a blue suit and a patterned tie. He is sitting at a desk with his hands clasped in front of him. The background is a dark, textured wall with some faint graffiti or markings.

FULL STEAM AHEAD

Nizam Hasham helps guide CP into a new age with an eye to corporate governance and business vitality



TORTS IN FAMILY LAW

New instruments for lawyers in family breakdown cases

PERSONAL INJURY

Top boutiques are fighting the good fight

BACK TO COURT?

Virtual courtroom appearances may become the post-COVID norm

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Kel Pero, Karen Atienza

Writers

Lucy Saddleton, Annabel Oromoni, Katrina Eñano, Jason Tan, Angelica
Dino, Bernise Carolino, Kiezzsa Cruz

CONTRIBUTORS

Neill May, Maureen Palmer

ART & PRODUCTION

Designers Marla Morelos, Khaye Cortez
Customer Success Managers Cristina Tamolang, Dyanne Dimatulac
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EDITORIAL INQUIRIES

tim.wilbur@keymedia.com

NAUK SUBSCRIPTIONS CO-ORDINATOR

Donnabel Reyes
tel: 647 374 4536 ext. 243
donnabel.reyes@keymedia.com

ADVERTISING INQUIRIES

legaladvertise@keymedia.com



Key Media Canada (Law) Ltd
317 Adelaide Street West, Suite 910
Toronto, ON M5V 1P9
tel: +1 416 644 8740
www.keymedia.com

Publications Mail Agreement #41261516

ISSN 0703-2129 ©2021
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Shifting the burden of proof on virtual proceedings

Should courts go back to normal or stay virtual? Most lawyers would answer that question with a lawyerly “It depends.” In this case, they would be correct, given the variety of proceedings.

However, there has been a fundamental shift with the pandemic. We can now add another lawyerly caveat to the answer by saying, “It depends, but the burden of proof has shifted.”

In other words, the presumption before the pandemic was that all legal proceedings should be in-person. Phone and video calls were rare exceptions, and any lawyer who suggested they would work better had to prove why.

But the world has changed dramatically with the pandemic. “Our job is to be persuasive advocates, and whether that’s happening virtually or in person, I don’t really think that has fundamentally changed,” says Andrea Wheeler at Lenczner Slaght in Toronto (p. 4).

The answer to “Virtual or in-person?” will continue to be “It depends” when determining the best course. However, in-person is no longer the default

For a lawyer like Wheeler, who practises business litigation, her clients, opposing counsel, and the judges hearing her clients’ cases are likely keen to go virtual. With sophisticated clients and complex issues, business disputes are ideal for virtual proceedings.

For other areas of law, though, like criminal and family, many courts have shifted dramatically back to in-person proceedings. Judges are tired of Zoom proceedings with an inappropriate air of informality, in which witnesses are driving while they speak – or, more egregiously, proceedings are secretly recorded or witnesses coached in the background.

But what these examples illustrate are the extremes – and there are ways to address them without the knee-jerk reaction of going “back to normal.” Most lawyers now agree that credibility determinations do not require you to see a witness in the flesh.

And the access to justice benefits for virtual are immense. Zoom turned a divorce from a five-to-six-hour day into 45 minutes, and saved clients thousands of dollars per court attendance, says family lawyer Russell Alexander (p. 5).

So the answer to “Virtual or in-person?” will continue to be “It depends” when determining the best course. However, the default is no longer in-person. The question now is, “If you think in-person is best, show us why.”

Tim Wilbur, managing editor

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Top 25



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The new frontier will require both caution and confidence

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donnabel.reyes@keymedia.com

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Publications Mail Agreement #41261516

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Looking forward, good times or bad

The legal profession, and the markets, have been operating at an accelerated pace. While the pandemic did cause many things to slow down at first, it eventually meant corporate activity and the need for legal services had increased significantly by 2021.

One of the side effects of these good times was that law firms and companies could spend time focusing on more than survival and were open to change.

For the legal profession, the demand for legal services meant young lawyers could be picky about their workplace.

According to Orit Sinai at ZSA, "It's a very healthy and fruitful market for lawyers. I think that a lot of lawyers right now don't understand how many opportunities are out there" (p. 5). There has also been a significant rise in in-house opportunities. "The clients that I'm working with who are not offering a hybrid remote option, they're not going to be able to canvass great candidates" Sinai says (p. 4).

Storm clouds are now appearing. The markets are down, inflation is up, and legal budgets will likely feel the effects

Law firms and in-house departments have responded to staffing challenges by ramping up their effort to woo talent. Flexibility is the big buzzword.

In the corporate world, active capital markets have meant that environmental, social, and governance (ESG) concerns can drive decisions beyond short-term profitability. It is easier for investors to focus on the long term when times are good.

"If a company is working to demonstrate its leadership and to demonstrate its improvement from a sustainability perspective, the market is paying attention," says Ravipal Bains at McMillan LLP (p. 30).

But what happens when things take a turn?

Storm clouds are now appearing. The markets are down, inflation is up, and legal budgets will likely feel the effects. Cynics will ask if these feel-good approaches will last when the coming recession hits.

Yet the need for flexibility at law firms and for ESG concerns are vital in bad times, too. Law firms will continue to save costs using virtual technology even if legal demand goes down. And companies with their ESG house in order will perform better in challenging markets, as disclosure rules won't disappear and new ESG risks will emerge.

In other words, those who have adapted to change will continue to rise to the top.

Tim Wilbur, managing editor

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ISSUE 46.04 | \$11.95



HOLDING THE REINS ON RISK

Megan Evans prioritizes patients' interests at SickKids

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Juan Ramos

Vice President, Production
Monica Lalisan

Production Coordinator
Kat Guzman

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Sharmaine Guevara,
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EDITORIAL INQUIRIES

tim.wilbur@keymedia.com

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Firms join clients in data revolution

Law firms have always been in the business of managing data. Whether it's boxes or bytes of documents, lawyers are information experts. However, the pandemic and technological developments have supercharged the rate of innovation.

When the world seemingly became virtual overnight in March 2020, firms shed their antiquated paper documents so their teams could continue to provide legal advice, and tech companies jumped at the opportunity to support the move.

With that change come new opportunities to improve internal and external operations.

When a law firm consolidates its data into digitized form, it's much easier to use tools such as artificial intelligence to identify patterns and inefficiencies.

Lisa Stam at Spring Law (p. 4) says her firm uses data to identify team members taking too long on a task. The firm can then help that person improve.

An entirely digitized law firm ready to provide digital tools will likely top the list when a company is evaluating the need for external help

And it is not just internal improvements that law firms can make.

"Law firms have access to a tremendous amount of data related to their clients, their expertise, the legal landscape, and business intelligence that impacts their clients," says Sona Pancholy, president of Meritas (p. 4).

Take, for example, the Hospital for Sick Children. General counsel Megan Evans (p. 26) helps support the use of technology for health professionals at her institution, but her legal department also has technological needs.

"As our organization matures and grows in its adoption of AI in the clinical and research arenas, there will be opportunities for us in the legal department, the risk department, and the privacy department to think about how we can use AI in our portfolio to streamline activities and improve outcomes," she says.

SickKids' legal department frequently relies on the support of external counsel partners, so Evans seeks firms that bring substantive knowledge and expertise to the table and are interested in developing a genuine partnership with the organization.

That expertise undoubtedly involves providing data insights that Evans can use to run her legal department more efficiently and support her institution.

While Evans may manage some of this technology internally, an entirely digitized law firm ready to provide digital tools will likely top the list when a company is evaluating the need for external help.

Tim Wilbur, managing editor