Toronto Law Journal

The Vendor as Employee: Wrongful Drafting Leads to Claim for Wrongful Dismissal (*Livshin v. The Clinic Network*)

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Introduction

There are many circumstances where a vendor of a business may remain involved with the business following the closing of the sale transaction. Purchasers often want a vendor to assist with the transition of goodwill and otherwise provide familiarity with the operations. Vendors may also benefit from remaining involved in two ways: i) by receiving a higher purchase price than they otherwise would by not being involved; and ii) by continuing to receive income, whether through a consulting agreement or an employment agreement. *Livshin v. The Clinic Network Canada Inc.*, 2021 ONSC 6796 ("***Livshin***") is a reminder that employers will be held to the highest standard of compliance with their statutory obligations regardless of the level of sophistication of, or legal advice received by, their employees.[2]

Background Facts

In *Livshin*, the plaintiff sold all the issued and outstanding shares of the corporation which operated a medical practice. The transaction stipulated that the plaintiff remain involved with the business for a fixed term of three years as an employee following closing, and the parties entered into an employment agreement ("**Employment Agreement**"). Notwithstanding the fixed term, the Employment Agreement also permitted the employer to terminate: (a) with just cause; and (b) without just cause but in compliance with a certain schedule of payments and the *Employment Standards Act, 2000* (Ontario) ("**ESA**").

Following a decline in business due to the COVID-19 pandemic, the plaintiff was laid-off in March 2020. This was then deemed to be an infectious disease emergency leave and the employment was terminated in August 2020. The plaintiff was offered 24 weeks of termination pay in lieu of notice as set forth in the Employment Agreement, which was reduced to two weeks of termination pay when the plaintiff refused to sign a full and final release presented by the defendant, as required by the Employment Agreement.

The plaintiff argued that the entire termination provision was invalid and could not be relied upon by the defendant employer because the "just cause" provision did not comply with ESA standards. This argument was supported by recent case law to such effect.[3] The defendant employer argued that given the context which involved two sophisticated parties represented by counsel in the negotiation of various agreements, including the Employment Agreement, that the plaintiff did not require "protection" from the court as a traditional employee under

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[2] *Livshin v. The Clinic Network Canada Inc.*, 2021 ONSC 6796.
[3] *Waksdale v. Swegon North America Inc.*, [2020] O.J. No. 2703, 2020 ONCA 391, 446 D.L.R. (4th) 725 [*Waksdale*].

the ESA. Thereby, in the absence of a power imbalance, the parties were sophisticated enough to contract out of the statutory termination entitlement.

Ultimately the defendant employer's argument was denied by the court since it was inconsistent with recent authorities stating that all the termination provisions of an employment agreement must comply with the *ESA*, even if there is no power imbalance between the parties.[4] As a result, the court struck the whole termination provision in the Employment Agreement and awarded the plaintiff employee the 20 months' notice remaining in the term of his Employment Agreement.

If the just cause provision in the termination section of the Employment Agreement had been drafted in accordance with the ESA, then the plaintiff employee would likely have accepted the original offer of 24 weeks together with the release, failing which the defendant employer would have had to provide only two weeks' salary and benefits as a form of notice.

Livshin serves as a further warning that the sophistication of the parties does not provide a basis for circumvention of the *ESA* in the employment context.

[4] *Wood v. Fred Deeley Imports Ltd.* (2017), 134 O.R. (3d) 481, [2017] O.J. No. 899, 2017 ONCA 158; *Waksdale*.

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Reducing Family Violence and Increasing Access to Justice: The Introduction of the Tort of Family Violence in Ontario Family Law

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The decision of Justice Mandhane in *Ahluwalia v. Ahluwalia*[1] was released on February 28, 2022. Since the release of this decision, there have been no reported family law decisions applying the new tort of family violence.

Furthermore, on March 24, 2022, a Notice of Appeal was filed by the Applicant, Amrit Pal Singh Ahluwalia seeking to set aside the Order of Justice Mandhane on the basis that the "novel" cause of actions of family violence was applied without any basis in existing common law, that the Court failed to conduct the *Anns/Cooper* test in recognizing and applying the "novel" cause of action of family violence, and that the Court erred in law by referencing and applying factors and considerations in the *Divorce Act* as the test for establishing a "novel" cause of action, as well as misinterpreting those factors and considerations in establishing the "novel" cause of action of family violence, amongst other reasons.

The Tort of Family Violence in the Context of a No-Fault Family Law Regime

Ontario family law provides for a "no-fault" approach to separation and divorce. In practice, regardless of the reasons for the parties' separation, both spouses are equally entitled to the division of property as well as child and/or spousal support, subject to the facts of each case. Post-separation financial entitlements are "blind" to fault, including adultery and even intimate partner violence. In fact, pursuant to section 15.2(5) of the *Divorce Act*, the Court is not permitted to take into consideration "any misconduct of a spouse in relation to the marriage" when granting an order for spousal support.[2] The entitlement to equalization of net family properties and spousal support may be exercised through the family court. Comparatively, tort law results in the award of damages, usually monetary, as compensation for losses sustained by one party because of the other party's negligence or wrongdoing. It recognizes the "normative standard of personal responsibility in our society",[3] seeks accountability for the actions of individuals, and is entirely based on "fault", or liability, and is sought through the civil court.

Introduced as a remedy for the "extreme break of trust occasioned by… abuse"[4], the novel tort of family violence established by Justice Mandhane in *Ahluwalia* seeks to simplify the process by which survivors of intimate partner violence are permitted to seek financial relief after the end of an abusive relationship. Recognizing that it is unrealistic to expect survivors of intimate partner violence to file a claim in both the family and civil court, this new tort of family violence was established to "give survivors an avenue to pursue both accountability and financial

[1] 2022 CarswellOnt 2367, 2022 ONSC 1303, 68 R.F.L. (8th) 255, 81 C.C.L.T. (4th) 74 [*Ahluwalia*].
[2] *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) at s. 15.2(5).
[3] *Ahluwalia* at para. 70.
[4] *Ibid*. at para. 5.

independence… **through a single, family law proceeding**”[5] [emphasis added], thereby increasing access to justice for survivors of intimate partner violence. Therefore, rather than seeking monetary damages through the civil court and equalization of net family properties and/or support through the family court, the new tort of family violence permits survivors of intimate partner violence to do both concurrently through the family court.

Although this new tort certainly simplifies procedure, it seeks to do more than increase access to justice for survivors of intimate partner violence. It was established by Justice Mandhane with the intention that “the promise of significant financial compensation could make it more realistic for some [survivors] to leave violent relationships”[6] by “remov[ing] the economic barriers facing survivors that try to leave”,[7] and resolving the all-too-common power imbalance created by the financial dynamics of most abusive relationships; an imbalance disproportionately experienced by women. In the case of *Ahluwalia*, the Respondent, Kuldeep Kaur Ahluwalia¸ was awarded “$150,000.00 in compensatory, aggregated, and punitive damages for the tort of family violence”[8] as compensation for the persistent abuse she sustained throughout the course of the parties’ marriage including three specific incidents which took place in 2000, 2008 and 2013.

Referencing Justice Martin in *Michel v. Graydon*[9], Justice Mandhane in *Ahluwalia* acknowledged that there is a “direct line between survivors’ economic vulnerability and their diminished capacity to access to justice”.[10] By entitling survivors of intimate partner violence to financial compensation through the family court, the decision in *Ahluwalia* seeks to empower survivors to seek justice and accountability, to empower them to reclaim their autonomy and to provide them with the means of establishing a new life post-separation free from the remanence of financial abuse which plague most survivors after they have left their abusers. It bridges the gap between a no-fault system of family law in Ontario and liability under civil law, all in one courtroom.

What is the Test for the New Tort of Family Violence?

According to Justice Mandhane, drawing from the definition of “family violence” found in s. 2 of the *Divorce Act*,[11] in order to establish liability under the new tort of family violence, the moving party **“must establish conduct by a family member towards the moving party, within the context of a family relationship, that: (1) is violent <u>or</u> threatening, <u>or</u> (2) constitutes a pattern of coercive and controlling behaviour; <u>or</u> (3) causes the plaintiff to fear for their own safety or that of another person”.**[12]

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[5] *Ibid.* at para. 68.
[6] *Ibid.* at para. 68.
[7] *Ibid.* at para. 67.
[8] *Ibid.* at para. 4.
[9] 2020 CarswellBC 2302, 2020 CarswellBC 2303, 2020 SCC 24.
[10] *Ahluwalia* at para. 67
[11] *Divorce Act* at s. 2.
[12] *Ahluwalia* at para. 52.

(a) *Violent or Threatening Conduct*

In the case of violent or threatening conduct, it must be established that the family member "**intended to engage in conduct that was violent or threatening**".[13]

(b) *Conduct that Constitutes a Pattern of Coercive and Controlling Behavior*

In the case of conduct that constitutes a pattern of coercive and controlling behavior, it must be established that the family member "engaged in behavior that was **calculated to be coercive and controlling to the plaintiff**".[14]

(c) *Conduct that Causes the Plaintiff to Fear for Their Own Safety or that of Another Person*

In the case of conduct that causes the plaintiff to fear for their own safety or that of another person, it must be established that the family member "engaged in conduct that they would **know with substantial certainty would cause the plaintiff's subjective fear**".[15]

Mere unhappiness or dysfunctionality in the parties' relationships would be insufficient to establish liability and entitlement to damages according to the new tort of family violence.[16] Instead, the claim must be supported by the inclusion of specific examples of family violence and cannot be a series of baseless and unsupported accusations.[17]

As outlined in *Ahluwalia*, the moving party will have to plead and prove **on a balance of probabilities** that a family member engaged in a pattern of conduct that included **more than one incident** of family violence,[18] defined by section 2 of the *Divorce Act*, as: physical violence, forcible confinement, sexual abuse, threats, harassment, stalking, failure to provide the necessaries of life, psychological abuse, financial abuse, or killing or harming an animal or property.[19] At the same time, these claims need to be sufficiently detailed by the moving party to permit the responding party an opportunity to address the accusations, and to "know the case to meet".[20]

In practice, this means including the claim for the tort of family violence in box "50" of either the Applicant's Form 8: Application or the Respondent's Form 10: Answer, along with the necessary facts to support the claim, as the family law forms have not been amended to specifically carve out a section for the new tort of family violence under the sections, "Claims by the Applicant" (in the case of a Form 8: Application), or "Claims by the Respondent" (in the case of a Form 10: Answer).

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[13] *Ibid.* at para. 53.
[14] *Ibid.* at para. 53.
[15] *Ibid.* at para. 53.
[16] *Ibid.* at para. 55.
[17] *Ibid.* at para. 56.
[18] *Ibid.* at para. 55.
[19] *Divorce Act* at s. 2.
[20] *Ahluwalia* at para. 56.

How are the Damages Quantified by the Court for the New Tort of Family Violence?

Once liability has been established in trial on a balance of probability following an investigation of the responding party's conduct, "the nature of the family violence—circumstances, extent, duration, and specific harm—will all be factors relevant to assessing damages", including compensatory, aggravated, and punitive damages.[21]

In the case of *Ahluwalia*, compensatory damages were ordered in the amount of $50,000.00 **in compensation for the Respondent's ongoing mental health disabilities and lost earning potential resulting from the year of abused suffered by her at the hands of the Applicant**.[22] In the context of this case, Justice Mandhane acknowledged that the inclusion of spousal support as part of the Court's award reduced the Respondent's potential compensatory damages to avoid double-dipping, stating, "had there been no spousal support payable, I could easily have ordered compensatory damages in the range of $100,000.00".[23]

As stated by the Court in *Ahluwalia*, "**aggravated damages may be awarded for betrayal of trust, breach of fiduciary duty, and relevant post-incident conduct**"[24] and are compensatory in nature. In this case, the Respondent was awarded aggravated damages in the amount of $50,000.00 "due to the overall pattern of coercion and control and clear breach of trust"[25] during the parties' marriage, as well as his post-separation conduct which "aggravated the mother's damages", including the Applicant's refusal to pay proper support to the Respondent.[26]

In addition to compensatory and aggravated damages, Justice Mandhane also stated that, "**punitive damages will generally be appropriate given the social harm associated with family violence**"[27] and awarded the Respondent $50,000.00 in punitive damages for 16 years of abuse requiring "strong condemnation" by the Court.[28] It should be noted that the Applicant was still facing criminal charges at the time that Justice Mandhane's decision was rendered. Consequently, Justice Mandhane stated that she had "shown restraint in her punitive damage award because the [Applicant] [was] still facing outstanding criminal charges, [was] subject to ongoing bail conditions, and may face additional punitive sanctions".[29]

Ultimately, quantifying damages for the new tort of family violence requires a thorough review of the facts of each case and may be affected by things such as the receipt of spousal support, post-separation financial behaviors and a general review of the severity of the abuser's conduct during the parties' marriage. Outside of the scope of this article, the damages awarded in the new tort of family law would likely face the same, if any, cap in the amount awarded in

[21] *Ibid*. at para. 57.
[22] *Ibid*. at para. 114.
[23] *Ibid*. at para. 118.
[24] *Ibid*. at para. 57.
[25] *Ibid*. at para. 119.
[26] *Ibid*. at para. 119.
[27] *Ibid*. at para. 57.
[28] *Ibid*. at para. 120.
[29] *Ibid*. at para. 120.

compensatory, aggravated, and punitive damages in Ontario. No cap for tort of family violence is identified by Justice Mandhane in *Ahluwalia*.

Why Concurrently Adjudicating the New Tort of Family Violence with Family Law Claims Such as Equalization of Net Family Properties Just Makes Sense

On separation, married spouses are entitled to an equal division of net family properties, subject to certain deductions and exclusions as prescribed by the *Family Law Act*.[30] In most cases, matrimonial homes and other jointly owned properties are sold during a family proceeding, with the net proceeds of sale held in trust pending a final resolution of all property issues, either by court order or agreement between the parties. By permitting survivors of intimate partner violence the opportunity to seek damages for the new tort of family violence concurrently with all other family law claims, the decision in *Ahluwalia* offers a "security" in terms of collecting the damages awarded; it is an adjustment to equalization that could result in an unequal division of net proceeds held in trust. It ensures that survivors of intimate partner violence can avoid further economic abuse at the hands of their abusers, who may otherwise evade these damages had the tort of family violence been restricted to the civil court.

Conclusion

Procedurally and economically this new tort of family violence established by Justice Mandhane in *Ahluwalia* is an enormous step in the right direction for protecting vulnerable persons; however, while the new tort of family violence was established with the intention of simplifying court procedure and increasing access to justice, there will likely be unintended side effects. There is a real concern that this new tort of family violence will result in an increase in extended family proceedings and/or family trials, inflaming an already contentious process. While parties may be willing to negotiate all other issues outside of court, it does not seem likely that parties will be willing to negotiate this novel claim outside of court, especially since there is no guidance in the decision of Justice Mandhane on quantifying compensatory, aggravated, and punitive damages. Consequently, this may delay the actualizing of the equalization of net family properties and will subject survivors of intimate partner violence to extended proceedings. An additional concern is the weaponizing of this new tort of family violence, with claimants inundating the court with baseless claims unsubstantiated by any facts or evidence necessary to establish liability and entitlement to damages, increasing parties' legal fees and putting an additional stress on the courts that are still dealing with the backlog from COVID-19 delays. Only time will tell.

[30] *Family Law Act*, RSO 1990, c. F. 3 at s. 5.

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A Primer on Substantial Compliance for Wills

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With the enactment of section 21.1 of the *Succession Law Reform Act* [*SLRA*],[1] Ontario is now effectively a substantial compliance jurisdiction. Substantial compliance legislation, also known as the dispensing power,[2] permits documents to be admitted to probate that do not comply with all technical statutory formalities. In Ontario, this means that non-compliance with sections 3 and 4 of the *SLRA* will now only render "a document *prima facie* invalid as a will, and inadmissible to probate without an application to the court" under section 21.1.[3] Prior to the enactment of this provision, compliance with sections 3 and 4 of the *SLRA* was mandatory.[4]

Since there is no caselaw addressing the interpretation of section 21.1 yet, this article explores how it may be interpreted in light of jurisprudence from other provinces. Substantial compliance legislation has been operative in Canada since 1983,[5] and almost all of the provinces and territories now have substantial compliance legislation.[6]

Ontario's substantial compliance provision

Section 21.1 came into force on January 1, 2022. The first subsection states:

> Court-ordered validity
>
> 21.1 (1) If the Superior Court of Justice is satisfied that a document or writing that was not properly executed or made under this Act sets out the testamentary intentions of a deceased or an intention of a deceased to revoke, alter or revive a will of the deceased, the Court may, on application, order that the document or writing is as valid and fully effective as the will of the deceased, or as the revocation, alteration or revival of the will of the deceased, as if it had been properly executed or made.

Most substantial compliance provisions in Canada require the impugned document to embody or set out the deceased person's "testamentary intentions."[7] In other provinces, the term

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[1] R.S.O. 1990, c. S.26 [*SLRA*].
[2] See *McCarthy Estate (Re)*, 2021 ABCA 403 at para. 7 [*McCarthy*].
[3] Ian M. Hull & Suzana Popovic-Montag, *MacDonnell, Sheard and Hull on Probate Practice*, 5th ed (Toronto: Thomson Reuters, 2016) at 97.
[4] *BMO Trust Company v. Cosgrove*, 2021 ONSC 5681 at para 23. Also see *Sills v. Daley*, 2003 CanLII 72335 (ON SC).
[5] Substantial compliance was first legislated in Manitoba; see the *Wills Act*, C.C.S.M. c. W150, s. 23.
[6] The only jurisdictions that do not have substantial compliance legislation are Newfoundland and Labrador and the Northwest Territories.
[7] Quebec's legislation does not require a technically deficient will to embody the deceased's "testamentary intentions." See the *Civil Code of Québec*, S.Q. 1991, c. 64, art. 714.

"testamentary intentions" has been interpreted as a deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death.[8]

Subsection 21.1(1) is largely comparable to most substantial compliance provisions in Canada, but its overall wording is most similar to the Nova Scotia[9] and New Brunswick[10] legislation. In all three provinces, the legislation may be applied to a "document or writing" not executed in compliance with the formal statutory requirements, and the court may issue an order to make the non-compliant document both "valid and fully effective". The provisions in these jurisdictions also do not require a minimal level of execution before the courts may apply the dispensing power.[11] For this reason, section 21.1 is technically a will-validation provision, rather than necessarily (at least not explicitly) requiring substantial compliance with the *SLRA*'s formal requirements. In practice, however, we can only expect that it will be applied consistently with substantial compliance principles seen in other provinces.

Having said that, a noteworthy difference between the *SLRA* and the legislation in Nova Scotia and New Brunswick is the type of document that can be probated or altered, revoked, or revived. In Ontario, section 21.1 can only be applied to a non-compliant will, or used to alter, revoke, or revive a will, whereas Nova Scotia and New Brunswick's legislation can also be applied to "a document other than a will," as long as that document embodies the deceased's testamentary intentions. On this point, Ontario's provision is more similar to the dispensing power in Alberta,[12] Nunavut,[13] and the Yukon,[14] which also only apply to wills. Since the scope of section 21.1 is narrower than the dispensing power in many other jurisdictions, caselaw from other provinces may end up being of "limited application" in Ontario.[15]

Applying section 21.1

Jurisprudence from other jurisdictions indicates that the dispensing power can be applied to a variety of documents, including:[16]

- an improperly witnessed will;[17]
- an unsigned will;[18]
- a holograph will that is not entirely in the testator's own handwriting;[19]

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[8] *George v. Daily*, 1997 CanLII 17825 (MB CA) at para 61 [*George*].
[9] *Wills Act*, R.S.N.S. 1989, c. 505, s. 8A.
[10] *Wills Act*, R.S.N.B. 1973, c. W-9, s. 35.1.
[11] See *Ouellet Estate (Re)*, 2012 NBQB 116 [*Ouellet*]. A minimal level of execution also is not required in many other provinces, including British Columbia — see, for example, *Young Estate (Re)*, 2015 BCSC 182 at para. 21 [*Young*].
[12] *Wills and Succession Act*, S.A. 2010, c. W-12.2, ss. 37, 38.
[13] *Wills Act*, R.S.N.W.T. (Nu.) 1988, c. W-5, s. 13.1.
[14] *Wills Act*, R.S.Y. 2002, c. 230, ss. 30, 31.
[15] See *Hood v South Calgary Community Church*, 2019 ABCA 34 at paras. 26-27.
[16] Please note that this is not an exhaustive list.
[17] *McNeill Estate (Re)*, 2016 ABQB 645. In this case, the will was executed with only one witness.
[18] *Ouellet*, *supra* note 11.
[19] *Estate of Perley McEvoy*, 2020 NBQB 11 at para. 21.

- an improperly executed will alteration;[20] and
- an improperly executed document revoking a will.[21]

There are also limits on the types of documents that the dispensing power can save. In all likelihood, based on experiences in other provinces, section 21.1 cannot be used to make any of the following documents valid:

- a substantively invalid will;[22]
- an electronic will;[23]
- a document that the deceased did not see, read, write, authenticate, or adopt;[24] or
- a document that was not prepared at the request of the deceased, or that the deceased was unaware of.[25]

Another noteworthy limitation is that an application can only be brought under section 21.1 if the testator died on January 1, 2022 or later.[26]

The legal test

Typically a non-compliant document must pass a two-step inquiry before it can be validated by the court. First, the court must be satisfied that the document or writing is authentic. Second, the court must be satisfied that the document sets out the testamentary intentions of the deceased.[27] The burden of proof is the balance of probabilities and falls upon the applicant.[28] In *George v. Daily*,[29] the Manitoba Court of Appeal described this onus as “significant,” noting that:

> … the court must be ever mindful that the question for determination is testamentary intention and the person who can best speak to that intention, the deceased, is not present to give evidence. The onus will only be satisfied by the presentation of substantial, complete and clear evidence relating the deceased’s testamentary intentions to the document in question. Oral evidence describing the circumstances surrounding the creation of the document and the deceased’s actions and words in relation to the document might well afford an applicant a better opportunity of satisfying the s. 23 onus than affidavit evidence alone.[30]

[20] *Swanson Estate, Re*, 2002 SKQB 115.
[21] *Klaprat v. Chezick*, 2017 MBQB 105.
[22] *Hadley Estate (Re)*, 2017 BCCA 311 at para. 34 [*Hadley*].
[23] *SLRA*, *supra* note 1, s. 21.1(2).
[24] *George*, *supra* note 8 at para. 56.
[25] *Ibid* at para. 67.
[26] *SLRA*, *supra* note 1, s. 21.1(3).
[27] *McCarthy*, *supra* note 2 at paras. 10-11; *Young*, *supra* note 11 at para. 34.
[28] *McCarthy*, *ibid.* at para 13; *Ouellet*, *supra* note 11 at para. 41.
[29] *George*, *supra* note 8.
[30] *Ibid.* at para. 97.

At the first stage of the application, the evidence necessary to confirm authenticity will depend on the nature of the document's deficiency and whether there is any serious challenge to its authenticity.[31]

To pass the second stage, it must be clear that the non-compliant document sets out the deceased's testamentary intentions. The following factors may be used to confirm that a document expresses a fixed and final testamentary intention: the document was signed; it revoked previous wills; the document provided instructions for funeral arrangements; and the document included specific bequests.[32] The title of the document may also be relevant.[33] Courts in Manitoba and British Columbia have also held that the further a document departs from the formal statutory requirements, the harder it may be for the court to find that it embodies the deceased's testamentary intention.[34]

Conclusion

While a testator's intentions will no longer be defeated automatically due to failure to comply with the technical requirements in the *SLRA*, it is important to remember that there are no guarantees that a non-compliant document will be validated under section 21.1. The court's curative powers are "inevitably and intensely fact-sensitive."[35] With this in mind, there truly is only one way for a person to ensure that his or her final wishes can be submitted to probate — by executing a will that complies with sections 3 and 4 of the *SLRA*.

[31] See *McCarthy*, *supra* note 2 at paras. 13, 20.
[32] See *Young*, *supra* note 11 at para. 36.
[33] *McCarthy*, *supra* note 2 at para. 20.
[34] *George*, *supra* note 8 at para. 81; *Young*, *supra* note 11 at para. 37.
[35] *Young*, *ibid.* at para. 34, cited in *Hadley*, *supra* note 22 at para. 36.

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The Metaverse: It Is Not Just Fun and Games

Howard Winkler, Winkler Law[1]

The metaverse is here but it is not just fun and games. That is why lawyers need to prepare for the unique legal issues that will arise in this digital landscape.

Created by Meta's Mark Zuckerberg, the metaverse is commonly described as a fully realized digital world that exists beyond the analog one in which we live. After donning virtual reality headsets, users can interact and experience things as they would in the real world. Zuckerberg describes it as "the next chapter of the internet … an embodied internet when you're in the experience, not just looking at it."

Before visiting the metaverse you have to create an avatar. That often starts by taking a selfie, which can be customized in hundreds of ways. Your avatar can then visit any of the communities that make up the metaverse, operated either by commercial entities or by non-profit open-source communities. These can be compared to cities or countries in the real world, with avatars given the option to buy property for a fee, payable only with the metaverse's own currency.

To increase their community's value, some owners have partnered with celebrities who become members of that community. If your avatar wants to live next door to that celebrity, they can. However, the price increases with proximity. A news report states that someone paid close to 71,000 SAND (the currency of the Sandbox community) to live next door to rapper Snoop Dogg. In real dollars, that's equivalent to about US$450,000.

The large sums of money being spent in the metaverse has attracted luxury brands such as Martha Stewart and Gucci. Your avatar can visit their virtual stores and buy goods created exclusively for the online world. For example, if your avatar wants to show that they are rich and successful, they may visit the virtual Rolex store and make a purchase, with that expensive timepiece becoming part of their personality.

Because all virtual transactions are ultimately funded by real dollars, I foresee many legal issues arising. For example, what if someone is sold a knock-off Rolex watch by someone else in the community. What recourse will the buyer have to recover their investment? And how can Rolex protect its brand from low-cost imitations?

Since avatars may develop personalities and reputations, what if one defames another? What recourse will be available within the metaverse community to address any wrongdoing?

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The community owners — who are really like the gods of the virtual world — will have to address these legal issues sooner than later.

From my perspective, the best way to resolve disputes in the metaverse will be through arbitration panels. If one avatar defames another, a declaration of wrongdoing could be published, vindicating their reputation. Correcting economic transgressions will be more difficult, but perhaps the community owners — who have each developed their own unique currency — through smart contracts (a subject for another article) could be given the ability to restrict or transfer the assets held by the at-fault avatar.

The bottom line is that we're entering a new world with the metaverse. Right now, it's similar to the wild west, with no rules of law in place. That has to change. As Forbes notes, "the tech industry is unwavering in its belief in the metaverse, expecting [its value] will hit US$800 billion by 2024 and reach 1 billion people by 2030."

To regulate this rapidly expanding virtual world, some traditional laws may be transferable to the metaverse, but which ones? If a site is created by a Canadian, do our laws apply, even to avatars created elsewhere?

Instead of trying to make real-world laws work in a digital environment, I foresee community owners creating their own legal system. They will need traditional legal help with that. A universal code could be developed, applying the same legal principles across all communities.

The metaverse is intended to mimic the real world. In both domains, legal issues arise as communities grow and prosper. As lawyers, we must prepare for the challenges this virtual world will present.