



SDLA NEWSLETTER

Volume 6 #1

April 2013

SDLA Legal Briefs Newsletter

MESSAGE FROM REGIONAL SENIOR JUSTICE L. GAUTHIER

THE SUPERIOR COURT OF JUSTICE AND THE NORTHEAST REGION

When I was invited by John Michael Bray to submit an article for the Sudbury District Law Association Newsletter, I thought I would take advantage of the invitation to showcase both the Superior Court of Justice and our Northeast Region.

Some readers may be very familiar with the information that I chose to write about, although I suspect many more may not.

I hope the information is of interest to some and hopefully all of you.

Continued....

MESSAGE FROM THE SDLA PRESIDENT - PAGE 7

The Superior Court of Justice

A complement of 239 federally appointed full-time judges and 75 supernumerary judges of the Ontario Superior Court of Justice serve the roughly 13 million people of Ontario. Each Superior Court judge is also, ex officio, a judge of the Court of Appeal for Ontario.

The Judicial Executive of the Superior Court of Justice includes the Chief Justice, the Associate Chief Justice, the Senior Judge of the Family Court, and eight Regional Senior Judges for the eight judicial regions of the court:

Central East (Newmarket, Barrie, Bracebridge, Cobourg, Durham, Lindsay, and Peterborough).

Central South (Hamilton, Brantford, Cayuga, Kitchener, St. Catharines, Simcoe and Welland).

Central West (Brampton, Guelph, Milton, Orangeville, Owen Sound, and Walkerton).

East (Ottawa, Belleville, Brockville, Cornwall, Kingston, L'Orignal, Napanee, Pembroke, Perth, and Picton)

Northeast (Sudbury, Cochrane, Gore Bay, Haileybury, North Bay, Parry Sound, Sault Ste. Marie, and Timmins).

Northwest (Thunder Bay, Fort Frances, and Kenora).

Southwest (London, Chatham, Goderich, Sarnia, St. Thomas, Stratford, Windsor and Woodstock).

Toronto.

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Inside this issue:

Table with 2 columns: Article Title and Page Number. Includes entries like 'Message from the Bench (continued)', 'ARTICLING IN SUDBURY', 'FINDING ANDRÉ CLEMENT', 'COLLOQUIUM 2013 OCTOBER 17TH & 18TH', and 'MESSAGE FROM THE SDLA PRESIDENT'.

MESSAGE FROM THE BENCH (CONTINUED)

... Continued from page 1

The Superior Court has inherent jurisdiction over criminal, civil, and family cases. The Court has all the jurisdiction, power, and authority historically exercised by the courts of common law and equity in England and Ontario.

The Court's inherent jurisdiction cloaks it with authority to hear any matter that is not specifically assigned to another level of court. As well, the Court has authority over matters granted to it by federal and provincial statutes.

In addition to being a superior court of criminal jurisdiction with the power to try any indictable offence under the Criminal Code, the court has appellate authority over summary conviction cases heard in the Ontario Court of Justice.

In Ontario, all civil proceedings, including commercial matters, personal injury, bankruptcy and insolvency, wills and estates, are heard in the Superior Court. The Small Claims Court is a branch of the Superior Court, handling approximately one half of the civil claims in the province, and having monetary jurisdiction of up to \$25,000.

Jurisdiction in family matters in this province is divided between the Superior Court of Justice and the Ontario Court of Justice. In 17 of the 50 Superior Court locations, the split jurisdiction has been unified and is exercised by the Family Court.

The appellate branch of the Superior Court, the Divisional Court, conducts judicial review of government action, hears statutory appeals from provincial administrative tribunals, and has some family and civil appellate jurisdiction as well.

NORTHEAST REGION (some interesting facts)

Our region is vast, covering some 300,000 square kilometers, extending south from Hudson Bay to Parry Sound and Manitoulin Island, and east from Sault Ste. Marie and Wawa to Mattawa and the Quebec border. Of the eight judicial regions, only the Northwest is larger, geographically.

The region is comprised of the territorial districts of Algoma, Cochrane, Manitoulin, Nipissing, Parry Sound, Sudbury, and Temiskaming. There are 15 full time judges and 5 supernumerary judges serving a population of close to 600,000.

The shortest distance between two court locations in our region is 111 km, being the distance between Cochrane and Timmins, both being within the District of Cochrane.

The longest distance between two court locations is 624 km, between Cochrane and Gore Bay.

From north to south and east to west, the distance between court locations is 522 km and 433 km, respectively.

Only four of the eight judicial centres in the Northeast are serviced by commercial aircraft. As well, four of the eight judicial centres are served by a single judge: Cochrane, Haileybury, Parry Sound, and Timmins. One location, Gore Bay does not have a resident judge.

The first judicial districts in the Northeast, established in 1858, were Algoma and Nipissing.

Cochrane is the most northern Superior Court location in the region. Although the courthouse is located in the Town of Cochrane, it serves a much larger geographical area of 141,000 km and a population of nearly 30,000, including coastal and first nations communities. The District of Cochrane is the second largest district in Ontario, after Kenora. The town of Cochrane is located in the Arctic Watershed, four miles north of the 49th parallel and 2 miles east of Niven's Meridian.

The provincial judicial district of Manitoulin was created in 1889, and includes seven first nations communities, the largest of which is the unceded reserve of Wikwemikong.

Haileybury, which is now part of the city of Temiskaming Shores, is located along the western shore of Lake Temiskaming and rests against the Quebec border.

Haileybury sustained massive destruction in the Great Fire of 1922, one of the worst natural disasters in Canadian history. The courthouse and the Land Registry Office were destroyed, but rebuilt in 1923.

North Bay has the newest courthouse in the region, constructed in 1989. The city of North Bay is geographically unique in that it straddles both the Ottawa River watershed, to the east, and the Great Lakes Basin to the west.

Parry Sound borders the shores of Georgian Bay and is in the heart of "cottage country." While the permanent population is approximately 6,550, the town and surrounding area swells to 75,000 for the summer months. Consequently, a good portion of civil litigation in Parry Sound relates to road access cases, boating accidents and fatalities, and marine and shoreline disputes.

Sault Ste. Marie was one of the oldest European settlements in Canada, with a mission established by the French Jesuits in 1668.

Sault Ste. Marie is the place where, in 1911, Angelina Napolitano was the first person in Canada to use the battered woman defence to a charge of murder.

The court at Sudbury administers all of the bankruptcy work north of Toronto. Divisional Court sits in Sudbury twice per year.

Timmins, the city "with the heart of gold", has a geographic area of just over 2,900 square kilometers and is one of Canada's largest cities in terms of geographic area.

Timmins is a "satellite" court, that is, a court location which is not in the District seat of Cochrane. It has its own courthouse and resident Superior Court Judge.

The Honourable Justice Louise L. Gauthier
Superior Court of Justice
Regional Senior Justice Northeast
Region

ARTICLING IN THE BIG NICKEL

Four articling students share their experiences.

Gordon Gilbert

Articling with: Legal Aid Ontario

Hails from: Toronto

Law School: Queen Mary, University of London

Undergraduate degree: Economics

Plans post-call: To stay with Legal Aid in Sudbury

Most unique: First week of work experience: Being sworn in to be a Spanish translator to talk to a client in jail on his third day on the job.

On the Sudbury experience: One of the greatest things about Sudbury is how supportive people are: your bosses, principals, seniors, library staff and colleagues are actually invested in your success. I'm in court way more than people who are articling in Toronto, and it's that kind of practice experiences that I just wouldn't be able to get otherwise. I also love that I can cycle to work, and there's barely any traffic, and getting to work on Wikwemikong Unceded Indian Reserve has been a special experience.

Jenni Campbell

Articling with: The Superior Court of Justice

Hails from: Ottawa

Law School: University of Victoria

Undergraduate degree: Canadian Studies

Plans post-call: Remain to be seen

Proudest Northern Ontario moment: Walking to work when it was -52C

On the Sudbury experience: I'd never set foot in Sudbury before I moved here to start working— and it has surprised me in every way. Sudburians are so warm and welcoming that I felt at home immediately and it's been really easy to meet people and make friends. My co-Clerks in Toronto and other larger centres are envious of the amount of support and interaction I get with the judges here in the Northeast— it's really something special. And two roller derby leagues! What more could a girl ask for?

Valérie Foucher

Articling with: Desmarais Keenan, LLP

Hails from: Dieppe, New Brunswick

Law School: University of Ottawa (French common and civil law)

Undergraduate studies: Political science

Plans post-call: To stay with Desmarais, Kennan

Favourite Sudbury Activities: Walking the boardwalk in Bell Park and Zumba classes at the YMCA

On the Sudbury experience: I didn't realize how much French there was going to be here— I've really enjoyed getting to speak with clients in French. Something that is unique about articling here, I think, is the chance to explore different practice areas without pressure— my firm has been very encouraging and supportive about letting me try different thing out as I figure out what I'd like to focus on. Outside of work, I love walking around downtown and exploring all the little shops—I can't wait for the market to open in its new location!

Mirelle Renaud

Articling with: The Crown Attorney's office

Hails from: Sault Ste-Marie

Law School: University of Ottawa (French common law)

Undergraduate degree: Translation and interpretation

Plans post-call: Remain to be seen

Highlights of the job so far: Getting to regularly litigate in French.

On the Sudbury experience: It's a small legal community, and it's easy to make connections. There are a lot of younger lawyers, so you get a lot of support because these people tend to remember what it was like to be new. There are also opportunities to move around— for example, I've been to court in Espanola, North Bay and gotten to see how things work in other areas. The continuing education opportunities, such as last fall's Colloquium, are also really impressive— much better than what you'd expect from a relatively small jurisdiction.

FINDING ANDRÉ CLEMENT

Wastin' away in margaritaville

Searching for my lost shaker of salt

Some people claim....

Chorus from "Margaritaville"

(Jimmy Buffett)

André Joseph Clement disappeared off the radar in December of 1996. At the time he was Regional Director, Courts Administration Division, North East. I tracked him down to the tiny fishing village of San Clemente on what is referred to as the north coast of Ecuador. The self-styled investor lives there in a three bedroom apartment about 32 paces from the Pacific Ocean.

If you Google "Ecuador cycling" the name André Clement does not come up. But what does come up is Ciclopaseo; Parque Nacional Cotopaxi; and Banos-Puyo.

One of the important considerations in any cycling trip to Ecuador is altitude. Before Quito, I never much considered altitude as a factor in cycling but 2850 metres (9,348 feet) above sea level is nothing to scoff at. To put this into perspective, Sudbury is at 347.5 metres (1,140 feet). When flying in from Miami (sea level) to Quito, I expected our captain as we approached Aero Puerto Mariscal Sure to ask us to fasten our seatbelts before arriving for the final *ascent*. I had medicated myself against altitude sickness before arriving in preparation for Ciclopaseo the next day and it was good that I did. The symptoms of altitude sickness include headache; nausea; and the predictable shortness of breath.

Every Sunday in Quito a 30 kilometer route running from one end of the city to the other is closed to traffic from 8:00 a.m. until 2:00 p.m. for the benefit of residents and tourists to cycle and to walk. One very much has the sense that there is a taking back of the streets by the locals from the automobiles. Since its' initiation

in 2003, when the path was only 9.5 kilometres and 3,000 people participated, it has grown to what it is today with over 25,000 participants.

For the city of Quito, Ciclopaseo is quite an undertaking as it would be for any city of 1.8 million. It is the equivalent of organizing a 30 kilometer parade every week. Streets have to be closed off; security has to be arranged; police officers directing traffic have to be installed; and emergency medical care made available. All along the route there are places to stop and have complimentary water, not to mention bicycle mechanics to make any necessary repairs. And then there are the street vendors, should one become hungry. The whole event is well organized and for a cyclist, it is a delightful introduction to the city.

The biking Dutchman located in Quito offers one day tours from the snow line of the adjacent Cotopaxi volcano (at 4,000 metres) down to the 2,850 metre level—as if you needed that extra 1,150 metres. It is easy to get out of breath at the snow line, but the fact that the cycling is all down hill is a big help. Our tour group included four Canadians; two Aussies; two Frenchmen and a Brit (6 men and the rest women). I was glad that I brought along my long underwear and winter jacket to keep warm. Even though Quito is just south of the Equator, most of the hotels have fireplaces so you can keep warm at night. The people in Quito brag that they have four seasons in each day—spring, summer, fall and winter. It is not difficult to pack—just bring everything. The temperature variation in Quito is the same every day all year long running from just below 10 degrees to something approaching 17.

In Quito we stayed at the El Arupo which is a guesthouse on a relatively quiet street in the Mariscal. It is a converted house with a very attractive front patio. The rooms are spotless and the premises feature an immaculate communal kitchen. I never was tempted to try

the traditional dish Cuy Asado (roasted guinea pig).

The best cycling awaits us from the tourist town of Banos at 1,800 metres down to Puyo at 950 metres, a mostly downhill route for 61 kilometres. This takes you to the edge of the Amazon jungle and you return to Banos by bus. On the way down, André provided the chase vehicle whetting his appetite to actually purchasing a bike, which he did.

In Banos we stayed at the Posada Del Arte. This property truly lived up to its billing as an exquisite little guesthouse with colourful, comfortable rooms, wood floors, gigantic breakfasts and art all around. I chatted up the owners, Jim now aged 70 and wife Marsha who 8 years ago packed up from Chicago and took ownership of the property without any previous experience. You hear about such people, but rarely get to meet them.

One cannot leave the Andes without a visit to Otavalo which is a market town just north of Quito, population 39,000. It is famous for its market that for hundreds of years has been celebrating the god's of commerce. Street vendors will supply you with hand made traditional crafts. I emerged with two hammocks; yellow rubber boots; and a shawl and handbag for my wife Mary— all at great prices.

More spectacular than cycling is the geography. The vistas are so incredible and so frequent that you soon take them for granted. If the country was spread out flat, I am sure it would be three times the size.

Continued....

FINDING ANDRÉ CLEMENT

Then it was off by automobile to San Clemente for a couple of days on the beach with André. This truly is margaritaville. There was no nibbling on sponge cake but you fall asleep listening to the warm Pacific waves crashing on the beach. Every morning and every evening fishermen are out hauling in their nets.

André has come here after sojourning in the Democratic Republic of Congo for a year and a half as Chef De Section Trois (administration des tribunaux pilotes). He passes his days studying Spanish and maneuvering through Ecuadorian bureaucracy with a view to gaining an appropriate visa and an Ecuadorian driver's licence.

There is a delicious irony in a former bureaucrat having to deal with a Bureaucracy—in Spanish. He has taken to calling himself Andrés de Clemente. You hear about such people but rarely get to meet them.

Oh...and I really never did find out, but I do not think ...*that there is a woman to blame.*

Richard Keith Guy

February 2013

COLLABORATIVE FAMILY LAW

Collaborative Family Law: A Principled Participatory Approach to Conflict Resolution

In Collaborative practice lawyers and clients work together to problem solve around the issues of child care, support and division of assets.

Much like litigation, a code of procedure is adopted early on in the process. The negotiation process is interest bargaining and structured. Counsel agree on the agenda, minutes are prepared and reviewed in advance of meetings. Depending on the complexity of the matter, conflicts are addressed and usually resolved within four to six meetings and the usual time frame is within four to six months, about half the time of conventional litigation. Parties agree to be respectful, prepared, honest and to make very early full disclosure.

The goals are somewhat broader than conventional litigation. Many clients these days require a greater role in the development of a solution and in the final outcome. These clients understand that it is in their best interest to have a functional relationship with their former spouses as they are likely to have ongoing contact or will maintain relationships with others in common. The parties define a successful agreement as one with which they both can live, after being fully advised of their legal rights and obligations.

In future articles we can explore the evolution of collaborative practice, and discuss how clients connect so well to what is essentially a legally-minded process. We will also examine the substantial and increasing role of neutral experts.

A list of Collaborative Lawyers from Sudbury can be found at www.oclf.ca, a province wide federation of 18 collaborative law groups.

Jean Jacques Paquette

April 2013



COLLOQUIUM 2013

COLLOQUIUM 2013 will be held on October 17th and 18th, 2013 at the Holiday Inn in Sudbury. If you have not already done so, hold these dates on your calendar. As with each previous year, this program will be accredited by the LSUC.

The format for the 2013 conference will be similar to last year's conference although there will be some different sessions. As an organizing committee, our goal is to provide you with a dynamic conference that responds to needs of lawyers who practice in the Northeast region. There will be sessions running both on Thursday and Friday. We also will be having keynote speakers at lunch and dinner on Thursday. The dinner will be followed by a hospitality suite. For those of you who did not stay for the hospitality suite last year, you should plan to do so this year. It was an opportunity to speak with lawyers from throughout the region and a number of our guest speakers who also attended. (JM Bray did such a good job of selecting some fine wines and other refreshments and he may be called upon to do the same this year.)

In addition to the core sessions of criminal, family, civil litigation, real estate and estates we are also offering sessions this year in general advocacy, negotiations and practice management. Given

last year's successful program for younger lawyers, that program will be offered again on Friday afternoon to be followed by a cocktail reception. (Not so young lawyers are also invited to attend.)

The vision of the organizing committee has been that Colloquium be a program for all lawyers in the Northeast region. We are pleased to report that this year we have lawyers from North Bay, Timmins, and Sault Ste. Marie who are involved either on the organizing committee or as session leaders.

Dean Lee Stuesser, founding dean of Lakehead University Law School will be our guest speaker on Thursday afternoon. This will be a timely presentation as the faculty will be opening its doors and welcoming its first students in September 2013.

Mr. Justice Stephen Goudge from the Ontario Court of Appeal will be the key note speaker on Thursday evening. Mr. Justice Goudge headed the inquiry in 2007 and 2008 into Pediatric Forensic Pathology in Ontario following a number of wrongful convictions. He currently sits as a member of the Civil Rules committee and is a member of the Chief Justice's Advisory Committee on professional responsibility.

We have had some new faces join the organizing committee. This year's organ-

izing committee includes the following:

Lucille Shaw

Madame Justice Hennessy

Gerry Brouillette

Bridget Jokitalo

Ian Sinclair

Erin Cullin

James Ross

Sheena Alexander

Kathleen Stokes

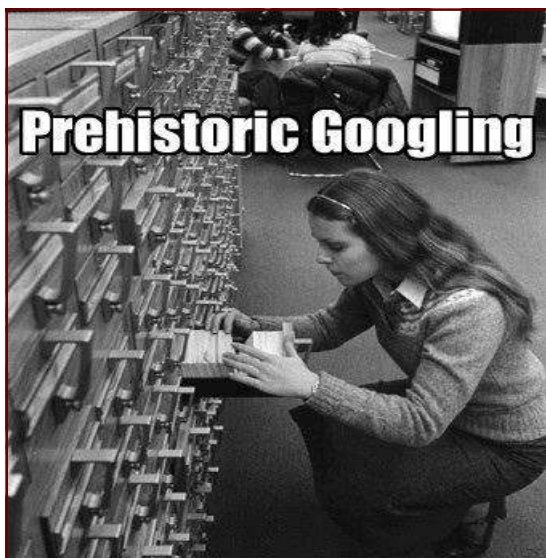
We have also hired Ms. Carrie Regenstreif who will be working with the committee to provide administrative and organizational support for the conference.

The organizing committee has been meeting regularly since January 2013 in order to ensure that we deliver a quality conference that delivers timely and relevant continuing professional development. We will provide you with ongoing updates.

Lucille Shaw

Organizing Committee

March 2013



Law Library Update

With the rising costs of loose leaf subscriptions it has become necessary to stand back and realistically view your loose leaf print collection with consideration to actual usage.

Currently we are updating loose leaf contents using the guidelines established by the Ontario Courthouse Library Association and LibraryCo (published on the LibraryCo website)...www.libraryco.ca

Group viewing of LSUC CPD programs can be arranged with law library staff. Group webcasts are a method of receiving CPD hours without having to travel further than your law library.

Your suggestions and comments are encouraged. You may make suggestions to the Chairperson of the Library Committee Jackie McGaughey-Ward wardj@millerlaki.com

Rannah

Volume 6 #1 April 2013

MESSAGE FROM THE SDLA PRESIDENT

**“IF YOU COME TO A FORK IN THE ROAD,
TAKE IT!” - Yogi Berra**

The words of the greatest modern day philosopher and legendary catcher of the New York Yankees continue to resonate loudly across our Association.

Over the past few years, it has often been the belief that our organization was doomed to choose between often opposing and contradictory directions—high-tech vs. traditional, isolationist vs. communitarian, educational vs. social.

However thanks to the incredible energy, commitment and determination of our members, I am proud to say that we have been able to have it all!

The Association continues to be a leader across the North-east in continuing legal education. This is of course due in large part to the fall *Colloquium*. We certainly owe a debt of gratitude to Justice Hennessy, Lucille Shaw as well as to the entire organizing committee and session leaders for their continued efforts in building an event that started out as being local in nature but has rapidly transformed itself into a provincial attraction. In addition, other special presentations from the *OBA and the Advocates' Society Courthouse Series* have also contributed to our rich educational environment over the past few months.

Notwithstanding our commitment to education, the Association also remains a social hub for lawyers across the north. Our annual law ball was once again a success last November thanks to Edmond Paquette, who kept everything rolling—sharply and smoothly. I would also like to acknowledge the wonderful contribution from the *SDLA Young Lawyers Association*, who organized several gatherings over the past year in order to welcome both young lawyers and articling students and to make them feel right at home. Finally, I must not forget to thank Michael O'Hara for his perpetual (albeit often frustrating) efforts in ensuring our sporting activities, most notably golf and hockey, are wholesome and well-attended.

It has become more apparent than ever before that the practice of law is reliant on outside interaction with other professionals and trades. In other words, it is no longer possible to simply keep to ourselves.

Continued....

The Association has recognized this. Over the past few years, various events have been coordinated with a particular focus on bringing lawyers together with other learned groups, particularly in the accounting and financial fields. Going forward, the Association is committed to exploring and cultivating relationships with other professional groups in order to maximize networking opportunities for our members.

The Association has also taken important steps in modernizing our library services and means of communication with our membership. Recently, the creation of the SDLA website along with the decision to promote e-mail communication have increased efficiency and have made our members more aware and current as to the ongoing activities of the Association. Notwithstanding our investment in new technology, we have also ensured that traditional means of research and literature continue to be available throughout the library.

Friends' on behalf of the Association and the entire Executive, we pledge to continue moving forward in these endeavours with our main objective in mind — that our organization continues to be the educational, social and cultural centre of our profession here in Sudbury and across the North.

John Michael J. Bray

President

2013 SDLA EXECUTIVE

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RENTAL SPACE AVAILABLE

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ENOUGH SPACE FOR TWO LAW-
YERS

CALL TO VIEW
MON.—THURSDAY
705-675-1227

Family Law/Trusts and Estates Law: Meet Lucy McSweeney, Office of the Children's Lawyer [Sudbury Location] Apr. 25, 2013 Sudbury ON LIVE IN PERSON

To register for this program please click on the "REGISTER NOW" button.

Program Details

Date: Thursday, April 25, 2013

Agenda: 11:30 am Registration and lunch | 12:00 pm Program | 1:30 pm - 2:00 pm
Dessert and networking

Location: Holiday Inn | Howard Johnson Plaza Sudbury | 50 Brady Street | Sudbury,
ON | P3E 1C8

Meet the Ontario Children's Lawyer, Lucy McSweeney and hear about the work of The Office of the Children's Lawyer. Hear from members of the bench and bar on dealing with children in estates and family law matters. The Office of the Children's Lawyer, in conjunction with the Family Law Section and the Trusts and Estates Section of the Ontario Bar Association will be visiting several cities across Ontario. Don't miss this unique and timely program designed for lawyers who practise family, trusts and estates law.

Lucy McSweeney was appointed Children's Lawyer for Ontario on September 18, 2010. Called to the Bar in 1995 after clerking with the Court of Appeal for Ontario, she has practiced in both the private and public sectors, in the areas of civil litigation, human rights, constitutional and labour law, and has appeared in all levels of court including the Supreme Court of Canada.

Speakers:

Lucy McSweeney, The Children's Lawyer, Office of the Children's Lawyer

The Honourable Robbie D. Gordon, Superior Court of Justice

Steven Benmor, Benmor Family Law Group

Melanie A. Yach, Aird & Berlis LLP

Program Chair: Steven Benmor, Benmor Family Law Group

Cost

CBA Member: **\$30***

Sudbury Law Assoc. Member: **\$30***

CBA Student Member: **\$20***

Non-Member: **\$40***

***plus applicable taxes**

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This program has been accredited by the Law Society for 1 hour professionalism.

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