

Marshall A. Swadron

Swadron Associates
Barristers & Solicitors
115 Berkeley Street
Toronto, Ontario
M5A 2W8

Phone: (416) 362-1234 ext. 231

Fax: (416) 362-1232

Email: mas@swadron.com

Website: www.swadron.com

Education

1988-1989 30th Bar Admission Course – Called to Ontario Bar March 31, 1989

1984-1987 Osgoode Hall Law School – LL.B. conferred June 1987

1982-1984 Faculty of Arts and Science, University College, University of Toronto

Professional Experience

1989-present Private Practice, Swadron Associates, Toronto, Canada

Trial and appellate advocacy at every level of Ontario court, the Federal Court and the Supreme Court of Canada as well as at tribunals and inquests. Has served as *amicus curiae* in the Superior Court of Justice and the Court of Appeal for Ontario.

Reported decisions include:

Watson v. Javid, 2022 ONSC 1416 (Div. Ct.) (CanLII)

Javid v. Watson, 2021 ONSC 7626 (CanLII)

Saplys v Ontario Association of Architects, 2021 ONSC 2784 (Div. Ct.) (CanLII)

Ontario (Attorney General) v. G., 2020 SCC 38

Wawrzyniak v. Livingstone, 2019 ONSC 4900 (CanLII)

G. v. Ontario (Attorney General), 2019 SCC 36

Saplys v. Ontario Association of Architects, 2019 ONSC 1679 (Div. Ct.) (CanLII)

G. v. Ontario (Attorney General), 2019 ONCA 264 (CanLII)

Neger v. Neger, 2018 ONSC 6739 (CanLII)

MW (Re), 2018 CanLII 119685 (ON CCB)

G v. Attorney General for Ontario et al., 2017 ONSC 6713

Sandhu v. Regional Municipality of Peel (Police Services Board), 2017 HRTO 1221 (CanLII)

R. v Armstrong, 2017 ONSC 889 (CanLII)

Dickey v. Alexander, 2016 ONCA 961 (CanLII)

Thompson v. Ontario (Attorney General), 2016 ONCA 676 (CanLII)

Patrong v. Banks, 2016 ONSC 4200 (Div. Ct.) (CanLII), leave to appeal refused, January 10, 2017, (C.A.)

MH (Re), 2015 CanLII 52814 (ON CCB)

Ontario (Community Safety and Correctional Services) v De Lottinville, (2015), 125 O.R. (3d) 733 (Divisional Court)

MH (Re), 2015 CanLII 44148 (ON CCB)

Furfari et al. v. Furfari et al., 2015 ONSC 1157 (CanLII)

Thompson v. Ontario (Attorney General) 2013, 118 O.R. (3d) 34 (S.C.J.)

Cuthbertson v. Rasouli, [2013] 3 S.C.R. 341

Thompson and Empowerment Council v. Ontario (2013), 117 O.R. (3d) 578 (S.C.J.)

S.L. (Re), 2012 CanLII 35952 (ON C.C.B.)

Dryden v. Dryden, 2011 ONSC 7060 (CanLII)

Thompson v. Attorney General of Ontario (2011), 161 O.R. (3d) 176 (S.C.J.)

DeMichino v. DeMichino, 2011 CarswellOnt 742

Cavalier v. Ramshaw, 2010 ONSC 5402 (CanLII)

Belzowski v. Fruitman, 2010 ONSC 4634 (CanLII)

Bon Hillier v. Milojevic, 2010 ONSC 4514 (CanLII)

L. (Re), 2009 CanLII 47225 (ON C.C.B.)

P.S. v. Ontario, 2008 ONCA 550 (CanLII)

D.G. (Re), 2008 CanLII 27452 (ON C.C.B.)

M. (Re), 2008 CanLII 2972 (ON C.C.B.)

Giecewicz v. Hastings, [2007] O.J. No. 4969 (C.A.)

J.B. (Re), 2007 CanLII 20012 (ON C.C.B.)

Ontario (A.G.) v. Ontario (Human Rights Commission) (2007), 88 O.R. (3d) 455 (Div. Ct.)

Matton v. Yarlasky, [2007] O.J. No. 5014 (S.C.J.) and [2007] O.J. No. 5055 (costs)

John Doe v. Ontario, [2007] O.J. No. 3889 (S.C.J.) and [2007] O.J. No. 4537 (costs)

Brillinger v. Brillinger-Cain, 2007 CanLII 23331 (ON SC)

Bailey v. Bailey, [2007] O.J. No. 1842 (S.C.J.)

Aylin v. Davis, [2007] CanLII 8012 (ON S.C.J.)

C.K.C. (Re), 2007 CanLII 19995 (ON C.C.B.)

Addab v. Pappas, [2006] O.J. No. 4056 (S.C.J.)

Cole v. Alarie and Ontario Provincial Police, 2006 ONCPC 12

Braithwaite v. Ontario (Attorney General), 2006 HRTO 15 (CanLII)

D.M.M. v. Ontario (2006), 81 O.R. (3d) 172 (S.C.J.)

John Doe v. Canada (Attorney General), [2006] F.C.J. No. 241 (F.C.)

Braithwaite v. Ontario (Attorney General), 2005 HRTO 32 (CanLII)

L.S. (Re), 2005 CanLII 57796 (ON C.C.B.)

D.H. (Re), 2005 CanLII 57789 (ON C.C.B.)

R. v. Sturkenboom, 2005 CanLII 4268 (ON CA)

Conway v. Jacques, [2005] O.J. No. 400 (S.C.J.)

D'Almeida v. Gojer, [2005] O.J. No. 379 (C.A.)

H. (Re), 2005 CanLII 26824 (ON C.C.B.)

Pietrangelo v. Balachandra, [2004] O.J. No. 3349 (C.A.)

Neto v. Klukach, [2004] O.J. No. 394 (S.C.J.)

T.S. v. O’Dea, [2004] O.J. No. 36 (S.C.J.)

K.T. (Re), 2004 CanLII 57312 (ON C.C.B.)

M.D. (Re), 2004 CanLII 57260 (ON C.C.B.)

M.D. (Re), 2004 CanLII 57259 (ON C.C.B.)

K.T. (Re), 2004 CanLII 43054 (ON C.C.B.)

Starson v. Swayze, [2003] 1 S.C.R. 722

De Silva v. Toronto Police Association, [2003] O.J. No. 5150 (S.C.J.)

Williams v. Ontario (Civilian Commission on Police Services), [2003] O.J. No. 3770 (Div. Ct.)

I.H. (Re), 2003 CanLII 54955 (ON C.C.B.)

H.K. (Re), 2003 CanLII 54922 (ON C.C.B.)

L.L. (Re), 2003 CanLII 54916 (ON C.C.B.)

J.R. (Re), 2003 CanLII 54867 (ON C.C.B.)

A.B. (Re), 2003 CanLII 43532 (ON C.C.B.)

H.S.K. (Re), 2003 CanLII 28625 (ON C.C.B.)

S. G., Re, 2002 CanLII 20191 (ON C.C.B.)

Neill v. Pellolio, [2001] O.J. No. 4639 (C.A.)

Khalil v. Ontario College of Art, [2001] O.J. Nos. 1845 and 1846 (Div. Ct.)

Rossi v. Rossi, [2001] O.J. No. 1398 (S.C.J.)

Kasstan v. Ontario (Public Trustee), [2001] O.J. No. 1071 (C.A.)

M.L.R. v. G.R., [2001] O.J. No. 972 (S.C.J.)

M. P., Re, 2001 CanLII 5828 (ON C.C.B.)

Boudreau v. Benaiah (2000), 46 O.R. (3d) 737 (C.A.)

Ontario (Criminal Code Review Board) v. Doe (1999), 47 O.R. (3d) 201 (C.A.)

Willis v. Ontario, [1999] O.J. No. 3656 (S.C.J.)

Farrant v. Low, [1999] O.J. No. 1377 (S.C.J.)

Seddon v. Carrier, [1999] O.J. No. 220 (Gen. Div.) (trial) and [2000] O.J. 4803 (C.A.) (appeal)

Griffen v. Teplitsky, [1999] O.J. No. 1552 (S.C.J.)

Mosti v. Ontario Hydro, [1999] F.C.J. No. 482 (T.D.)

Farrant v. Low, [1998] O.J. No. 449 (Gen. Div.)

Krudwig v. Johnson, [1998] O.J. No. 5219 (Gen. Div.)

Ball Estate v. Ball, [1997] O.J. No.4375 (Div. Ct.)

John Witness v. Royal Canadian Mounted Police (Commissioner) (1997), 138 F.T.R. 176 (T.D.)

Vlahosotiros v. Total Credit Recovery Ltd., [1997] O.J. No. 4617 (Gen. Div.)

Richardson v. University of St. Michael's College, [1995] O.J. No. 4000 (Div. Ct.)

Hinde v. Skibinski, [1994] O.J. No. 1701 (Gen. Div.)

Rabinovitch v. Ontario, [1994] O.J. No. 212 (C.A.)

Adair et al. v. Health Disciplines Board (1993), 15 O.R. (3d) 705 (Div. Ct.)

Rayside v. Ontario (Commission on Election Finances) (1992), 90 D.L.R. (4th) 649 (Ont.Ct.Gen.Div.) (trial); (1991), 55 O.A.C. 300 (Div. Ct.) (stay motion) and (1992), 10 O.R. (3d) 287, 91 D.L.R. (4th) 609 (Div. Ct.) (appeal)

Mangano v. Moscoe (1991), 4 O.R. (3d) 469 (Gen. Div.)

Christensen v. Scarborough (City Clerk) (1991), 3 C.P.C. (3d) 16 (Div. Ct.)

1987-1988 Articles of clerkship, Lee Fireman Regan and Samis Blouin Dunn, Toronto, Canada

Motor vehicle, property liability and insurance defence law firms.

Reported decision:

Tawfik v. Constitution Insurance Co. of Canada (1988), 10 A.C.W.S. (3d) 38 (Ont. Prov. Ct.)

Publications

Swadron, Marshall and Jen Danch, “What Not to do to or as Section 3 Counsel” presented at Ontario Bar Association’s Your Comprehensive Guide to Section 3 Counsel under the *Substitute Decisions Act* program held October 26, 2020

Shakeel, Arooba and Marshall Swadron, “Avoiding Limitations-related Claims in Estate Administration” presented at Law Society of Ontario’s Practice Gems: Administration of Estates program held September 10, 2019

Swadron, Marshall, “Interpreting the Charter”, “Charter Procedure”, and “Proving a Charter Claim” in the Law Society of Ontario’s Lawyer Licensing Process Barrister’s Examination Reference Material, 2006, updated annually to 2021

Swadron, Marshall, “The Consent and Capacity Board” chapter in M. Jasmine Sweatman *et al.*, *Powers of Attorney and Capacity: Practice and Procedure*, 2014, Canada Law Book

Swadron, Marshall and Karen A. Steward, “Keeping Substitute Decision-Makers in Line: State Oversight over Treatment Decisions” presented at the B’nai Brith CLE for Lawyers & Accountants program held June 2, 2014

Abramson, Neil and Marshall Swadron, “Judicial Review and Appeals from Administrative Decision Makers” presented at the 2014 Administrative Law Practice Basics program held on May 14, 2014

Swadron, Marshall, “Presenting the Client’s Evidence in Capacity Proceedings”, presented at the Canadian Bar Association National Elder Law Conference held on April 15 and 16, 2013

Swadron, Marshall, “Judicial Review and Appeals from Administrative Decision Makers” presented at the 2012 Administrative Law Practice Essentials program held on May 16, 2012

Swadron, Marshall, “Capacity Assessments in Contested Guardianship Proceedings” for Trusts and Estates Section of the Ontario Bar Association’s Annual Institute, February 9, 2012

Swadron, Marshall, “The Retainer” presented at the 2010 Special Lectures of the Law Society of Upper Canada: A Medical-Legal Approach to Estate Planning, Decision-Making, and Estate Dispute Resolution for the Older Client on April 14, 2010

Swadron, Marshall, “Surviving a Guardianship Application”, *The Lawyer’s Weekly*, April 9, 2010

Swadron, Marshall, “Representing the Incapable Client in Capacity Proceedings” Law Society of Upper Canada’s 12th Annual Estates and Trusts Summit, November 2009

Swadron, Marshall, “The Mental Health Legal Committee: An Honourable Collective” in *Honouring the Past, Shaping the Future: 25 Years of Progress in Mental Health*

Advocacy and Rights Protection published by the Psychiatric Patient Advocate Office, 2008

Swadron, Marshall, “Overlapping Jurisdiction of the Consent and Capacity Board and the Ontario Superior Court of Justice in Capacity Matters” for Trusts and Estates Section of the Ontario Bar Association’s Annual Institute, 2007

Swadron, Marshall, “Representing the Alleged Incapable Client Before the Consent and Capacity Board”, Law Society of Upper Canada’s Capacity, Consent and Substitute Decisions – An Essential Update, 2004

Swadron, M.A., A Student’s Guide to Academic Petitions and Offences, published by Council of the York Student Federation and Community and Legal Aid Services Program, 1987

Teaching

| | |
|--------------|---|
| 2014 -2015 | Assessor, Law Practice Program, Ryerson University |
| 2012 | Instructor, Legal Aid Ontario video teaching resource for mental health lawyers |
| 2011 | Tutor, Law Society of Upper Canada Barristers Examination, Public Law and Professional Responsibility |
| 2006 to 2008 | Instructor, Law Society of Upper Canada Lawyer Licensing Process, Skills and Professional Responsibility Course |
| 2002 | Instructor, Law Society of Upper Canada Bar Admission Course E-Learning Project |
| 1996 to 2005 | Instructor, Law Society of Upper Canada Bar Admission Course, Public Law Section |

Lectures and Speaking Appearances

| | |
|------------------|---|
| October 26, 2021 | Panelist, People-Centered Access to Justice: Best Practices for Serving Clients with Mental Health Needs, TAG The Action Group for Access to Justice |
| March 16, 2021 | Guest lecturer, University of Calgary Faculty of Law Criminal Justice Clinical course, “Not Criminally Responsible and Sex Offender Reporting Requirements” |
| October 26, 2020 | Speaker at Ontario Bar Association’s program Your Comprehensive Guide to Section 3 Counsel under the <i>Substitute Decisions Act</i> |

- September 10, 2019 Panelist on “Avoiding Claims” at Law Society of Ontario’s program Practice Gems: Administration of Estates 2019
- March 26, 2018 Guest lecturer, University of Toronto Factor-Inwentash Faculty of Social Work, Law and Aging course “Mental Health Law and Older Adults”
- March 7, 2018 Panelist at Osgoode Hall Law School’s Mental Health Law Society career day
- February 6, 2018 Panelist on “Achieving Consistency in Adjudicative Decision Making” at the Ontario Bar Association’s program “Ten Years Later: Coherence and Consistency in Administrative Practice Post-Dunsmuir” OBA Annual Institute
- January 31, 2018 Presenter, with Clare Burns, at Osgoode Professional Development Certificate Program on Elder Law “Professionalism, Ethics and Older Clients”
- May 23, 2017 Panelist: B’nai Brith CLE for Lawyers & Accountants program “Protection of Vulnerable Adults in Predatory Relationships”
- May 16, 2017 Program co-chair, presenter and panel moderator, Law Society of Upper Canada Administrative Law Practice Basics Program, “Appeals and Judicial Review” and “Frontiers of Administrative Law Panel”
- April 26, 2017 Presenter, with Dr. Nadia Incardona, at Osgoode Professional Development Certificate Program on Elder Law “Dealing with Complex Ethical Situations – End of Life and Advance Care Planning”
- March 27, 2017 Guest lecturer, University of Toronto Factor-Inwentash Faculty of Social Work, Law and Aging course “Mental Health Law and Older Adults”
- February 24, 2017 The Annotated Powers of Attorney for Property and Personal Care, Law Society of Upper Canada
- February 9, 2017 Ontario Bar Association Annual Institute, Estates and Trusts Section, Death and Aging: Key Strategies and Updates for Planning, Administration and Litigation Counsel, Panelist: “What is the Role of Section 3 Counsel”

- May 26, 2016 “Physician Assisted Suicide, Implications of *Carter*, one year later”, Speaker at NICE (National Initiative for the Care of the Elderly) Knowledge Exchange, Toronto
- May 6, 2016 Program co-chair and panel moderator, Law Society of Upper Canada Administrative Law Practice Basics Program, “Law Society Tribunal Panel”
- April 12, 2016 “Dealing with Complex Ethical Situations – End of Life and Advance Care Planning”, Speaker and panelist, Osgoode Professional Development Certificate Program on Elder Law
- April 4, 2016 “The *Mental Health Act* and related statutes”, Guest lecture, University of Toronto Faculty of Social Work, The Law and Aging Course
- February 8, 2016 “Community Treatment Orders and the *Thompson Appeal*”, Guest lecture, Public Health Law Course at University of Toronto Faculty of Law and Dalla Lana School of Public Health
- November 25, 2015 Submission to Standing Committee on General Government, Legislature of Ontario, respecting Bill 122, *Mental Health Statute Law Amendment Act, 2015*
- November 4, 2015 Panelist: “Serving the Elderly Client: Best Practices and Practical Tips” Advising the Elderly Client, Osgoode Professional Development
- June 3, 2015 Program co-chair: Practice before the Consent and Capacity Board, Law Society of Upper Canada
- May 8, 2015 Program co-chair and panel moderator, Law Society of Upper Canada Administrative Law Practice Basics Program, “Practice before Human Rights Tribunals”
- April 24, 2015 Panelist, The Supreme Court of Canada's decision in *Carter v. Canada (Attorney General)*, Osgoode Professional Development
- March 31, 2015 Speaker and panelist: Dealing with Complex Ethical Situations – End of Life and Advance Care Planning, Osgoode Professional Development Certificate Program on Elder Law
- June 2, 2014 Speaker and panelist: “*Rasouli* – Doctors’ Powers and Patients’ Rights” B’nai Brith CLE for Lawyers & Accountants program

- May 21, 2014 Panelist: “Law and Aging – The *Rasouli* Case at the Supreme Court: Now Who Gets to Decide End of Life?” National Initiative for the Care of the Elderly Knowledge Exchange 2014, Hart House, University of Toronto
- May 14, 2014 Program co-chair and panel moderator: “Municipal Law and the Ontario Municipal Board” Law Society of Upper Canada Administrative Law Practice Basics Program
- February 25, 2014 Speaker: Consent and Capacity Board, Trusts and Estates Section Ontario Bar Association
- February 19, 2014 Panelist: “Serving the Elderly Client: Best Practices and Practical Tips” Advising the Elderly Client, Osgoode Professional Development
- February 3, 2014 Guest Lecturer, University of Toronto Faculty of Social Work, Special Issues in Gerontological Social Work Course, *Rasouli* and the Consent and Capacity Board
- October 26, 2013 Panelist: Civil Actions against the Police, Osgoode Hall Law School
- May 16, 2013 Program co-chair and speaker: “From Retainer to Appeal” Law Society of Upper Canada Administrative Law Practice Essentials Program
- May 14, 2013 Panelist: Law Society of Upper Canada Program on Access to Justice for Persons with Disabilities
- April 16, 2013 Speaker: Canadian Bar Association National Elder Law Conference, Sheraton Centre, Toronto
- March 1, 2013 Panel Member: Mental Health and Access to Justice, Public Interest Day, Osgoode Hall Law School
- February 4, 2013 Guest Lecturer: University of Toronto Faculty of Social Work, Special Issues in Gerontological Social Work Course, *Rasouli* and End of Life Decisions
- May 16, 2012 Co-chair and speaker: Law Society of Upper Canada Administrative Law Practice Essentials Program
- February 9, 2012 Panelist: Capacity Assessments, Trusts and Estates Section of the Ontario Bar Association’s Annual Institute

- May 25, 2011 Co-Chair and speaker: Law Society of Upper Canada New Lawyer Practice Series program on Administrative Law
- April 13, 2011 Speaker: Capacity Assessments in Litigation, Ontario Bar Association Estates and Trusts Section Lunch and Learn Meeting
- April 14, 2010 Lecturer: Law Society of Upper Canada Special Lectures: A Medical-Legal Approach to Estate Planning, Decision-Making, and Estate Dispute Resolution for the Older Client
- December 13, 2010 Speaker: Decision Making under the *Health Care Consent Act, 1996*, ARCH Disability Law 30th Anniversary Symposium
- October 30, 2010 Speaker: *Amicus Curiae* and Section 3 Representation, Canadian Conference on Elder Law
- March 23, 2010 Presenter and facilitator: Judging and Social Inclusion: Disability, National Judicial Institute
- September 23, 2009 Presenter: Select Committee on Mental Health and Addictions of the Ontario Legislature
- March 4, 2009 Presenter and moderator: Advanced Roundtable on Mental Health Law 2009, Law Society of Upper Canada
- May 13, 2008 Panelist: Representing Clients with Disabilities Webcast Program, Canadian Bar Association
- January 29, 2008 Panelist: Representing Minors and Persons with Mental Health Issues or Mental Disability in Immigration and Refugee Law, Legal Aid Ontario
- March 29, 2007 Presenter: Conduct of Hearings, Bumps Along the Road, Consent and Capacity Board Greater Toronto Area and Penetanguishene Annual Meeting
- February 6, 2007 Speaker: 2007 Institute, Trusts and Estates Section entitled *Splitting Heirs*, Ontario Bar Association
- May 13, 2005 Speaker: Canadian Bar Association National Elder Law Conference, Planning For Later Life: Legal, Financial And Social Challenges of Aging
- February 4, 2005 Panelist and mock hearing participant: What Not To Do as an Estate Solicitor, 2005 Institute, Trusts and Estates Section entitled *Gone But Not Forgotten*, Ontario Bar Association

- 1992 Trying the Solicitor's Negligence Claim, 43rd Annual Advocacy Institute, University of Michigan
- 1991 The Crown and Other Litigants, Canadian Bar Association Institute
- 1989 Program on Mental Health Law, Law Society of Upper Canada

Positions Held

- 2011-present Member, Legal Aid Ontario Mental Health Law Advisory Committee
- 2010-present Member, Toronto Superior Court of Justice Estates List Users Committee
- 2009-present Chair, Mental Health Legal Committee
- 2009-present Member, Alliance for Sustainable Legal Aid
- 2000-present Member, Public Guardian and Trustee Client Counsel Panel
- 2000-present Member, O'Connor/Mills Panel, Legal Aid Ontario
- 1991-present Honorary Counsel, Museum of Mental Health Services (Toronto) Inc.
- 1991-present Member, Advocates' Society
- 1989-present Member, Consent and Capacity Panel, Legal Aid Ontario
- 1989-present Member, Toronto Lawyers Association
- 2007-2010, 2016-2017 Member, Board and Bar Committee of the Consent and Capacity Board
- 2007 Member, Legal Aid Mental Health Panel Standards Committee
- 2006-2009 Acting Chair, Mental Health Legal Committee
- 2005-2013 Public Law Item Writing for Barrister's Examination, Law Society of Upper Canada Lawyer Licensing Process
- 1988-1995 Member, Canadian Bar Association Ontario
- 1986-1987 Board Member, Community and Legal Aid Services Program of Osgoode Hall Law School (CLASP), York University

Current to April 2022