



The Institute
of Law Clerks
of Ontario

LAW CLERKS' REVIEW

This issue:

Page 3
Message from
President

Page 4 to 9
ILCO's 22nd Annual
Conference

Page 10, 11, 14
Communication
Strategies

Page 12, 13
Case Study
Da Silva Moore v. Publicis Groupe

Page 14
ILCO Picnic 2012

Page 16
Ontario Superior
Court Practice
2012 Edition

Seeing the Forest Through the Trees 22nd Annual ILCO Conference

ILCO's 22nd annual conference was held in London, Ontario.

We were fortunate to have his Honour Joe Fontana, the Mayor of London, open our conference with words of encouragement for our profession and thanking ILCO for bringing the conference to the City of London.

This year, we had many speakers from various areas of law, along with three keynote speakers. I want to thank all of our speakers for their presentations and the

time they took out of their busy schedules to prepare and speak at the conference.

For many attendees, the educational sessions and keynote speakers were the reason they attended the conference but the opportunity to reconnect with colleagues and to make new connections was an added bonus for all.

I want to thank all of our sponsors and exhibitors. Their continued support of the ILCO



2012 Conference Committee, back row (left to right): Jeanette Bronson, Dayna Wolfe, Nancy Johnstone, Debbie Miller, Maddie Lepore; front row: Rose Kottis, Lana Kocins, Lisa Matchim, Anna Traer

conference each year benefits all ILCO members and conference attendees.

Thank you all for attending this year's conference. For those that were not able to attend this year's conference, mark your calendar to attend next year's conference at Blue Mountain in Collingwood, Ontario.

Lisa Matchim
Conference Committee Chair

22nd Annual ILCO Conference
continued on pages 4 to 9

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MESSAGE FROM PRESIDENT



Our 22nd Annual Conference was a great success. If you missed this year's conference, you missed an excellent program of workshops and outstanding keynote speakers.

Our Opening keynote speaker Sunjay Nath taught us about Perception Busters. Through participation in hands-on group activities and discussions, he

taught us ways to go beyond traditional approaches to achieve our goals.

Dr. Elaine Dembe, helped us work out our "kinks" and feel better, both physically and mentally. Her humour and high energy performance was very inspiring and motivating.

Kate Davis rounded out our keynote speakers by teaching us ways to defuse frustrations in the home and workplace. Her comedy club style was very entertaining and offered unique ways to find humour in any situation.

In addition to the keynote speakers, all 27 workshops were exceptional and provided tremendous educational value to attendees.

Congratulations to the 2012 Conference Committee for a job well done. Mark your calendars for the 2013 Conference at Blue Mountain Resort, Collingwood, May 8 to 11, 2013.

A sincere thank you to our sponsors and exhibitors for their continued support.

Rose Kottis
ILCO President

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ILCO OPENS ITS DOORS TO THE LEGAL COMMUNITY

As a recent graduate, I know how challenging it is for new students entering the workforce to find the right fit for their lifestyle and goals. Whether it be finding meaningful employment, working in a particular area of law that interests them, or finding the right work environment that showcases their abilities, there is sometimes a challenge to find that "perfect" job.

That is why every year at the Institute of Law Clerks of Ontario's ("ILCO") Open Door Session, there is an opportunity to learn of the benefits of ILCO and speak with fellow law clerks and learn about the various areas of law and work environments available in the marketplace. Having an interest in Personal Injury Law, I was able to listen to and share with other law clerks our collective experiences, challenges and new ideas.

This year's event, held on June 14, 2012 at the ILCO head office location, featured a key-note presentation by Kris Borg-Olivier, lawyer at Paliare Roland Barristers LLP. In his experience, Kris frequently depends on the services of law clerks to locate, retrieve and produce relevant electronic data to help him make sense of his cases in the litigation process. If you were ever interested in working in litigation, that would have been an opportune time to ask questions and find out more for yourself.

The event also featured presentations made by members of the ILCO Board of Directors, including Rose Kottis, Elsie Karulas, Jacqueline Cummins, and Suzanne VanSlightenhorst, regarding the membership services available for new ILCO members. The various benefits, which are too many to list here, can be found on the ILCO website at www.ilco.on.ca.

As a member of ILCO, not only do you have special membership pricing for Continuing Legal Education programs, but you also have a unique opportunity – and I would emphasize – an obligation, to offer suggestions to the CLE Committee about which CLE Programs are in demand and will benefit you, an ILCO member. In addition, there are many Fellowship courses that may be of interest and a benefit to you. The Education Committee just wrapped up Fellowship courses in Intellectual Property and e-Discovery, and is ready to offer the Associate level courses September, Part II e-Discovery Course in the fall, and many other courses, including some via webcast.

I look forward to meeting you at the next ILCO event or CLE program where we will continue to share our experiences and grow as law clerks together.

Ouran Li
Education Committee Member
Law Clerk, Pappas Romero Law Firm PC

ILCO'S 22ND ANNUAL CONFERENCE

2012 – 2013 BOARD OF DIRECTORS



(from left to right): Elsie Karulas, Vice President & Registrar; Michele Mendes, Co-chair Education; Suzanne VanSligtenhorst, Co-Chair Special Certification; Krystal Moore, Co-Chair CLE, GTA Division; Rose Kottis, President; Lidia D'Amata, Treasurer & Co-chair Newsletter; Jacqueline Cummins, Co-chair Education; Wendy Finlay, Chair of CLE & Co-chair Certification; Maddie Lepore, Chair Public Relations (absent: Monique Jacobs, Secretary; Anna Traer, Co-chair Newsletter)

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Sunjay Nath
Perception Busters



Dr. Elaine Dembe
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Kate Davis
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ILCO'S 22ND ANNUAL CONFERENCE

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Moving From Conflict To A Win/Win Outcome

by Clive Murphy

Conflict comes about when two or more people hold different views, and one or more have to be right or get their own way. The result is often heated arguments, with someone saying things they may later regret. Conflict is going to arise in your life, whether you like or not. If you'd like to avoid conflict - and achieve a win/win outcome - it's important to develop the skills needed to negotiate this.

The destructive power of arguments

While most people hate arguing, it's something everyone does. The problem is, they often become heated and can have devastating results.

Voices are raised and bad things are said. There can be name-calling and degrading the other person - both of which are later regretted or remembered for life. The ones who say they don't argue are the ones who hate arguing or will do anything to avoid conflict. They suffer in silence.

So, if arguments are so destructive ...

Why do people argue?

Arguments occur when two or more people hold different opinions and they both hold the belief they are right and the other person is wrong. Let's go back a step. When you have a different opinion with another, there are four possible outcomes:

- 1. Win/Win** - You both win. You are both happy. You do things for yourself and for others.
- 2. Win/Lose** - You win and the other person loses. You are happy and they aren't. You do things for yourself only and care little about others (even though you may say you do).
- 3. Lose/Win** - You lose and the other person wins. They are happy and you're not. You do things for others and don't consider yourself.
- 4. Lose/Lose** - You are both unhappy. Nothing happens for you or the other person.

Obviously, the best outcome is Win/Win.

When you argue, you are doing three things:

- 1. Defending what you know** - While you are doing this you are not listening to what the other person is saying.
- 2. Trying to prove you are right** - And the other person is wrong.
- 3. Being selfish** - First, you are saying you are right and the other person is wrong (Win/Lose). Second, you are trying to change the other person into believing what you believe. You are not allowing them to have their own beliefs and this is selfish and produces a Win/Lose.

When you argue, you are hoping for a Win/Win (provided they agree with you) yet are selecting a Win/Lose when they fail to agree with you.

One of the biggest needs people have is the need to be right. When you are right, not only do you feel good, you unconsciously think others will also feel good about you.

The whole function of arguing is to convince another person to agree with you. What can often begin as a disagreement can lead to raised voices, which, if a result is not found, often leads to yelling and can even lead to verbal abuse and physical violence.

Throw in some stubbornness and this really generates some heat.

When two stubborn people argue, it's often "a battle to the death" as neither will give in. Stubborn people have to be right at all costs so are selfish when in an argument.

Sometimes one is stubborn and the other not. The person who isn't stubborn will give in (producing a Lose/Win) as "it's not worth arguing" and will feel resentful they are not being heard.

Which begs the question ...

Who wins an argument?

The answer is "no-one" or "the strongest" - with the most common outcome being a Lose/Lose.

Think of times when you argue. What is the result? And what effect does this have on either yourself or the person you are arguing with?

You may be a person that has to win at all costs or a person who hates confrontation and refuses to argue. You may give in to keep the peace and hold resentment because your thoughts are not valued. All of these produce a detrimental result.

So, what is the solution?

When two people hold different opinions, who is right?

They both are. You only have to ask them. Each will say they are right for what they believe and the reasons why.

Attempting to convince them to change may not work (as they think they are right).

How to achieve a win/win

1. Understand - they are right

When someone holds a different point of view to you, they are right. You simply have to ask them. Attempting to prove you are right and they are wrong is only going to fuel the conflict.

They are right for them. They are right for the knowledge they have. That doesn't mean they are going to be right for you.

2. Identify why the other person thinks the way they do and ask questions to discover why this is so

Questions like "Why do you think this would work better than that?" and "That's a good point. Can I ask what caused you to come to that conclusion?"

Here's some points to keep in mind:

- Place a positive statement before the enquiry

"That's a good point. Can I ask ...", "I can partially see how that can work. Can you please explain to me..." and "I can see the need for ...".

This helps validate what the other person is saying. It helps get them on side.

- Ask questions with an enquiring tone

Most ask, especially if they are trying to win the argument, in a sarcastic or degrading tone. For example, ask out loud “Why would that work?” in a degrading way, emphasising the “why” and “that”. What’s it sound like?

Now ask in an enquiring way: “That’s a good point. Can I please ask why you think that would work?”

The second one is more likely to gain a good response. If you listen to the way people respond to your question, it often gives you feedback on the way you have asked it.

- You are attempting to get the other person to enter into conversation so the nicer you are, the more likely they are to reciprocate

Attempting to convince them to change may not work (as they think they are right). To get them to see another perspective, ask questions like “Do you think ... (this) ... could work or is a possibility?”. By asking the right questions, you get them to discover there could be another possibility.

When people come up with the answer (as against you telling them), they feel good.

3. Be willing to move on

If you ask the question “Could something different work?” and they emphatically say “No”, there is a good possibility they are stuck with what they think and are not prepared to look beyond that (stubborn). Accept this and:

- Be prepared to move on by changing the topic of conversation

Trying to convince them they are wrong may only lead to more arguing.

- Know that you have some valid points

If they fail to agree, it does not mean you are wrong. You have not lost the argument. Keep yourself worth up by knowing you can help, you do have something to contribute.

- Ask “If your way fails to work, would you be happy to look at my way?”

Nearly everyone will say “Yes”.

4. Brainstorm possible solutions

This is particularly so when you are looking for a solution that is best for your relationship, group or business.

What’s right for the relationship, group or business is more important than what is right for you.

(Continued on page 14.)

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Da Silva Moore appellate ruling puts predictive coding on par with human review

As most e-Discovery practitioners and observers are aware, Magistrate Judge Andrew Peck's decision in *Da Silva Moore v. Publicis Groupe*, approving the use of predictive coding software in connection with ESI review and production, was upheld on appeal in April by U.S. District Judge Andrew L. Carter.

The plaintiffs' primary objections to Judge Peck's order had to do with the effectiveness and reliability of the software. They also complained, however, that Judge Peck had mischaracterized their position by finding that they had consented to the use

of predictive coding. In addition, plaintiffs' counsel, obviously not happy with the fact that Judge Peck, one of the most active and visible judicial proponents of technology-assisted review, had been assigned to their case, went so far as to file a formal motion seeking Peck's recusal for an appearance of bias (it was denied).

On appeal, Judge Carter described the "highly deferential standard of review" applicable to non-dispositive orders of magistrate judges, such as Judge Peck's. The magistrate

(Continued on next page.)



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judge has broad discretion over the issues and his decision can be reversed only for an abuse of that discretion or if it is clearly erroneous or contrary to law. As there was no evidence or authority to support any of those grounds, Judge Carter adopted Judge Peck's rulings, holding that "they are well reasoned and they consider the potential advantages and pitfalls of the predictive coding software."

Judge Carter ruled that the plaintiffs' arguments were premature not just because the plaintiffs had not yet tried the software at issue but because it is "difficult to ascertain that the predictive software is less reliable than the traditional keyword search." He found that the plaintiffs were amply protected by the ESI protocols developed by the defendants, which contained standards for measuring reliability and ensured participation by the plaintiffs, including in the crafting of search methods and implementation of quality assurance controls. He also noted that if the review method appeared to be unreliable as discovery continued the parties retained the right to dispute its effectiveness.

Judge Carter concluded that "[t]here simply is no review tool that guarantees perfection." While human linear review using keyword searches may be appropriate in certain circumstances, it is costly and "prone to human error and marred with inconsistencies." In short, "the use of the predictive coding software [in Da Silva Moore]...is more appropriate than keyword searching."

While a seemingly straightforward affirmation, the significance of Judge Carter's decision should not be underestimated. He essentially says that until proven otherwise, predictive coding is just as reliable and effective as human linear

review. Thus, if the right protocols are in place, providing for input and implementation by both parties and appropriate safeguards and judicial recourse if the process or methods are inadequate, there should be no basis on which a party – or court – should reject predictive coding as a primary review technique.

Although it may be too early to see the influence of Da Silva Moore, it is not long in coming. Indeed, in *Global Aerospace Inc. v. Landow Aviation LP* (Loudoun County (Va.) Cir. Ct, April 23, 2012), a Virginia Circuit Judge approved the use of predictive coding over the plaintiff's objections without providing any reasoning, although the defendant in its submissions supporting the technology relied heavily on Judge Peck's Da Silva Moore rationale.

Everybody agrees there is no silver bullet that will resolve completely the need for speed, accuracy and cost containment in connection with e-Discovery review and production. Yet, judicially-mandated use of predictive coding – which is what we essentially have in Da Silva Moore, as Judge Carter found irrelevant the plaintiffs' claim that they did not consent to the use of the technology – is almost the same thing, at least to its advocates. Until human linear review, with all its warts, is proven to be a better method, predictive coding, with all its warts, has been deemed just as good. Software vendors everywhere are rejoicing.

Sam Hill is Managing Director of CounselQuest, a Toronto-based company that staffs and manages document collection and review projects and provides related services in connection with e-discovery and due diligence.



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ILCO'S 8th Annual Picnic took place on Sunday, July 22 at Centreville on Toronto's Centre Island

ILCO members and their families made the most of the great weather at Centreville at this year's annual summer picnic.

Nestled in over 600 acres of parkland just a ferry ride away from the Toronto city centre, members and their families enjoyed a delicious BBQ lunch (sponsored by Do Process Software and Stewart Title Guaranty Company) with ice cream for dessert (sponsored by Cartel Inc.). Members and their families were then able to enjoy Centreville amusement park and the over 30 rides it offers (sponsored by Do Process Software).

Families also took the opportunity to walk around the island, play frisbee or just relax in the sun. Once again the picnic was a great success.

We would like to thank our sponsors – Do Process Software, Stewart Title Guaranty Company and Cartel Inc. – for their generous support. In addition, we would like to thank the staff at Centreville for helping make this picnic a success. And lastly, we want to thank YOU, our members, for coming out with your families to enjoy a fun afternoon.

We look forward to seeing you again next year!



(COMMUNICATION STRATEGIES: Continued from page 11.)

For example, in a relationship, if you want to be right all the time, your partner will hold resentment towards you. If you have to always be right, go live all by yourself, because then you can do whatever you like, whenever you like, for as long as you like to whoever you like and no-one cares. You only have to consider yourself.

Once you bring another person on board, you now have to consider them. Failure to do so will often mean they won't be around for long.

To brainstorm, ask questions like "What are all the possibilities here?"

Write them down and pick one that best suits the relationship, group or business. Leave your ego out of it. It's the part that says you have to be right (selfish).

I'm amazed at how many businesses I consult with who do what's best for them personally rather than identify what is best for the business. After all, if the business succeeds, so does the individual. If the relationship succeeds, so does the individual.

Author Credits

Clive is the Principal of the Clive Murphy Self Empowerment Centre, a product, coaching and seminar business that empowers people to achieve their life potential. He is the author of four books relating to confidence, self-esteem, relationships, motivation to lose weight and controlling how you feel. Visit the website: www.clivemurphy.com.

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Civil Practice made perfect with the Ontario Superior Court Practice, 2013 Edition!

ILCO is pleased to announce its continued endorsement of Ontario Superior Court Practice, 2013 Edition (with Forms Volume & e-book included), published by LexisNexis Canada Inc. The book is authored by the Hon. Mr. Justice Todd Archibald of the Superior Court of Justice, the Hon. Gordon Killeen (former Judge of the Superior Court of Justice), and James C. Morton of the firm of Steinberg, Morton, Hope & Israel LLP.

The Ontario Rules of Civil Procedure are the bedrock of civil practice in Ontario. With several products on the market, it can be difficult to determine the best fit for your needs as a law clerk. Unlike competitive works, the Ontario Superior Court Practice (the "OSCP") provides readers with more than a simple collection of case digests. The OSCP takes a commentary-focused approach, offering readers analysis and principle-based guidance, with examples of application and footnoted references to leading decisions. The OSCP also includes Tables on Causes of Action and Limitation Periods for quick and convenient reference.

The 2013 Edition of the OSCP includes a number of enhancements based on user feedback. The new edition

features an improved index for ease of reference, and new commentary on evolving areas of law (e.g. - e-discovery and Rule 21 motions) and the Superior Courts of Justice Practice Directions.

In addition to the print version, the complimentary e-book format gives readers access to the OSCP on the go. LexisNexis® e-books are built for the iPad®, but are also compatible with iPhone®, PlayBook™, BlackBerry®, Android™ devices and other mobile devices and e-readers. For the first time, the 2013 Edition e-book also offers links to all of the full-text case law, without the requirement of an underlying Quicklaw® subscription.

Until September 30th, 2012, a special pricing promotion is available on the Ontario Superior Court Practice, 2013 Edition. Place an order by calling 1-800-668-6481 ext. 872 or visit <http://lexisnexis.ca/store/ca> and receive your copy for \$58 instead of the regular price of \$79. This is 40% less than the regular price of Ontario Civil Practice, 2012 Edition (Watson & McGowan). If you haven't already, it's time to make the switch!



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NITA CROSNER IN LOVING MEMORY

Nita Crosner (nee Khurana) joined the Institute of Law Clerks of Ontario (ILCO) in 1999 and was a member until her sudden and tragic death at age 39 on September 9, 2008 of viral encephalitis.

She was born on November 29, 1968 at Liverpool, England, where she graduated from Gatacre High School, after completing some of her elementary education in Punjab, India. She spoke fluent English, Punjabi and Urdu.

Upon immigrating to Canada in 1991, she began to work for a lawyer, Howard Crosner, in the Beaches area of Toronto, with the support of a federal training program.

She graduated with First Class Honors from the Legal Office Assistant and Law Clerk's programs at George Brown College

in Toronto and began a Bachelor's degree at York University.

In 1995, she was married to Howard Crosner and worked exclusively with her husband, doing litigation, estates, family law and, mostly, real estate, except for about two years, when she worked at the Toronto law firm of Thompson Rogers in the accident benefits department.

On September 12, 2001, she gave birth to a son, Daniel Elan Depak Crosner, who is now 10. Nita was a beautiful, devoted, intelligent and much-loved wife, mother and colleague, who is dearly missed by her many family, friends and co-workers.



CALENDAR OF EVENTS

DATE	EVENT
Commences week of September 3, 2012	Litigation Associate Course
Commences week of September 3, 2012	Real Estate Associate Course
Fall 2012	Family Law Fellowship Course
September 17, 2012	Securities Fellowship Course
September 25, 2012	Intellectual Property Fellowship Course
October 12, 2012	Provincial Estates Exam Registration Deadline
October 17, 2012	Real Estate Law Full Day Seminar
October 17, 2012	e-Discovery Technology Primer Fellowship Course
October 19, 2012	Provincial Corporate Exam Registration Deadline
November 3, 2012	Provincial Estates Exam
November 10, 2012	Provincial Corporate Exam

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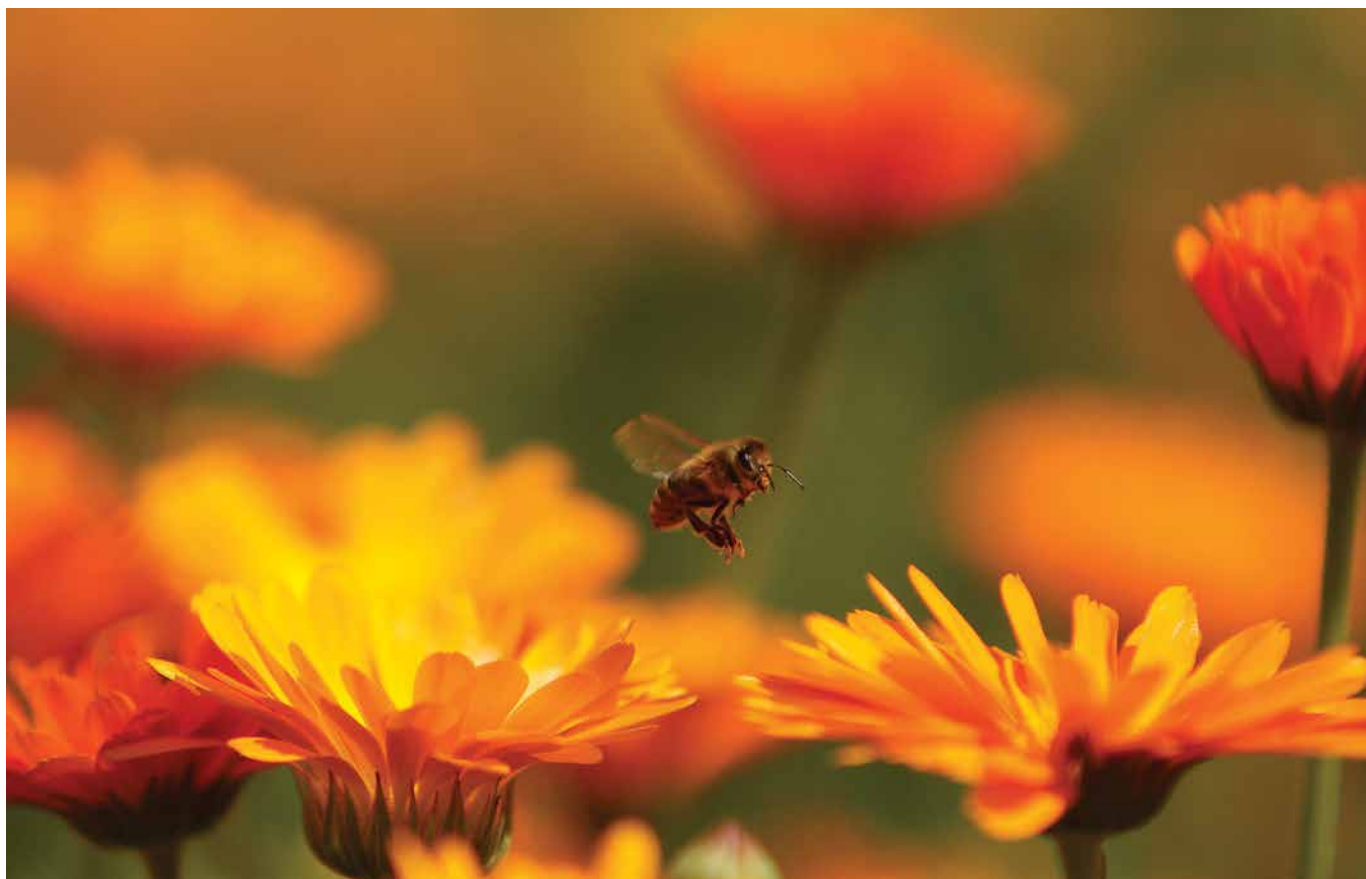


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