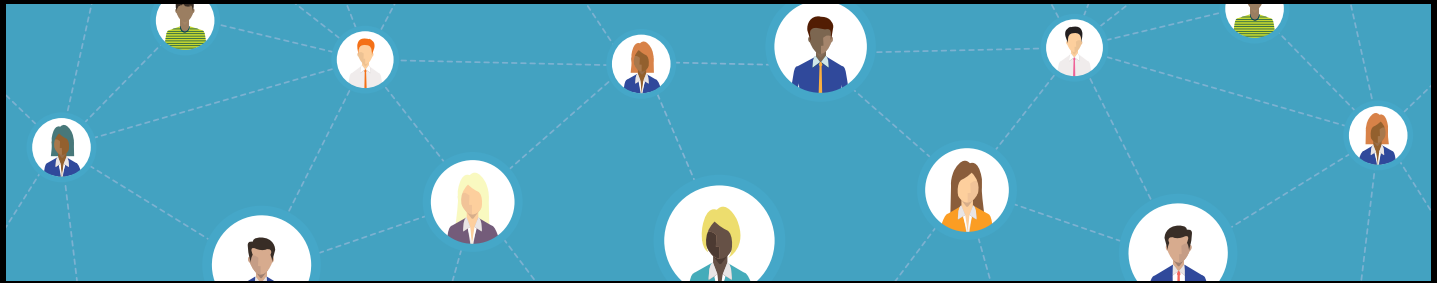




Keeping Tabs

News from The Young Advocates' Standing Committee

Chair Chat | TAS Report (Ottawa) | Construction Law | The Future Of Advocacy
#Tasproud | In The News | Interview | YASC Photo Gallery



CHAIR CHAT

Victoria Creighton, Osler, Hoskin & Harcourt LLP



As we prepare to say farewell to the warm days of summer, YASC is busy planning for another fall term of community building, networking and mentoring events across Canada. This summer, we expanded our popular Big Mingle event for students to three cities—Montreal, Calgary and Toronto, and we will also be

hosting a Big Mingle in Windsor on Oct. 10. This fall we look forward to re-engaging with young advocates at Pub Nights (Toronto Sept. 6), Trivia Challenges (Sudbury Sept. 12 and Calgary Sept. 27) and Fireside Chats with leading advocates (Toronto Oct. 4 and Ottawa Oct. 15). And, young advocates from across Canada will also be able to connect at our much anticipated Fall Forum in Blue Mountain on October 19-20. If you haven't booked your spot yet, I encourage you to do so!

In recent years, the Young Advocates' Standing Committee ("YASC"), encouraged by the Society's Board of Directors, has become integral to all aspects of the Society. As part of this work, YASC members represent the voice of young advocates on the Society's Standing

Committees. YASC members sit on the following Committees: Advocacy & Practice; Collegiality, Mentoring & Membership; Education; Practice Groups; and National. Standing Committees of the Board are the engines behind the Society's work. While the Standing Committees may not require additional help at all times, there are interesting projects and task forces where young advocate members can become involved. Additionally, if you have thoughts or feedback involving the work of the Standing Committees, please reach out to me or any member of YASC. Our role on these Standing Committees is to ensure the voice of young advocates is heard, so we are always interested in hearing from you.

In this edition of Keeping Tabs, Malik Martin describes the Society's new virtual training, Heather Michel explains the transition to Ontario's new *Construction Act*, we interview Dave Sundin, a partner at McTague's in Windsor, Julie Mouris reports on the Ottawa Trivia Challenge and TAS Tweeters share their top tips for students.

YASC is always looking for member contributions for the Keeping Tabs newsletter. If you have something to say about a case, your life as an advocate or a great experience at a TAS event, please get in touch with the new Editor, Caroline Youdan, at cyoudan@fasken.com. If you're looking to get involved more generally, join our Volunteer Roster by contacting Alexandra Shelley at ashelley@torys.com. 📌

Editor: Caroline Youdan, *Fasken* | cyoudan@fasken.com

The Young Advocates' Standing Committee ("YASC") is a standing committee of The Advocates' Society with a mandate to be a voice for young advocates (advocates who are ten years of call or fewer) within the Society and within the profession. We do this through networking/mentoring events, by publishing articles by and for young advocates, and by raising issues of concern to young advocates as we work with the Society's Board of Directors.

The opinions expressed by individual authors are their own and do not necessarily reflect the policies of The Advocates' Society.





TAS REPORT (OTTAWA)

YASC Hosts the First Annual Ottawa Trivia Night

Julie Mouris, *Conway Baxter Wilson LLP*



On a balmy summer evening, teams of young advocates gathered into the cool basement of the Glebe's Clocktower Brew Pub for the Ottawa Trivia Challenge, hosted by the Young Advocates' in Ottawa. The Battle of the Brains pitted teams with punny names like "Beyond a Reasonable Stout", "Trivial and Vexatious" and "Torts Illustrated" against one another.

Entertaining host Duncan Ault of Borden Ladner Gervais LLP seemed to have walked out of a TV game show and successfully hurled rounds of questions at the teams throughout the evening. Each round involved law in pop culture—from movies (*My Cousin Vinny*), books (*To Kill a Mockingbird*), and song names ("I Fought the Law"; "I Shot the Sheriff") to pictures of famous judges (Judge Dredd). There were also trickier, more obscure questions. For instance, we learned that after Elvis Presley died, one of his fans sued his estate for "faking his death and depriving the fan of Elvis's music" (while perhaps not the strongest case, the plaintiff certainly gets

points for creativity).

In the end, team "Section 10(b)" edged out team "Game of Knowns" by winning the tie-breaking question: "How many original episodes of *Law & Order* (the original) aired before the show ended in 2010? (closest without going over)". Answer? 456.

The evening's proceeds went to the registered charity Barristers for a Better Bytown, which aims to support charitable causes in the Ottawa area with projects and initiatives that help at-risk children and youth, homeless or vulnerable persons and others in need in our community. Director and Treasurer Solomon Friedman (part of the winning team!) encouraged young advocates to get involved in the organization, which is made up of lawyers and judges in Ottawa. He highlighted that in the last year, Barristers for a Better Bytown's overhead costs had come to a whopping \$20; the funds it receives truly go directly to the initiatives it supports. A donation of \$750 will be made to Barristers for a Better Bytown.

Although only one team could take home the trivia trophy, the evening was a hit, and we hope that it will be the first of many trivia nights to come. ▀



Fall Forum 2018- Registration is Now Open

October 19 - 20 2018 | The Westin Trillium House, Blue Mountain



CONSTRUCTION LAW

Transitioning to Ontario's New *Construction Act*

Heather Michel, *Glaholt LLP*



While you were enjoying your Canada Day long weekend, Ontario's *Construction Lien Act* (the "CLA") became the *Construction Act* (the "Act"), and the first of two phases of amendments came into force. The first phase introduces certain Regulations, and lien and holdback modernization provisions. The second

phase, scheduled to come into force on October 1, 2019, will implement a mandatory adjudication regime and prompt payment provisions.

Which Act Applies to Liens Registered after July 1, 2018?

Careful consideration must be given to the transition provisions under section 87.3 of the *Act* in order to determine which act applies to liens registered after July 1, 2018. The *Act* provides for a gradual transition, and the amendments will not apply if:

- the contract for the improvement was entered into before the amendments came into effect on July 1, 2018, even if a subcontract was entered into after July 1, 2018;
- the procurement process for the improvement was commenced by the owner before July 1, 2018; or
- the premises are subject to a leasehold interest and the lease was first entered into before July 1, 2018.

Therefore, prior to registering a lien, be sure to obtain a copy of the prime contract if your client is a subcontractor; consider if the contract was procured as part of

a tendering process; and determine whether or not the improvement was to a premises that is subject to a leasehold interest. If the subcontract does not incorporate the terms of the prime contract by reference, the easiest way to obtain the information is to make a request under section 39 of the *Act* for information from the owner.

Given the importance of the transition provisions, the Toronto Construction Lien Masters have issued a notice advising that the Court will require evidence on all motions and proceedings where the provisions are relevant, and in particular motions under section 44 (to vacate a lien by payment into court without notice); section 45 (to obtain a declaration that a preserved lien has expired); and section 47 (to discharge a lien).

Calculating the Lien Period

If the *Act* applies pursuant to section 87.3, the time period for contractors and subcontractors to preserve their lien rights is increased from 45 days to 60 days, calculated from the earlier of a number of triggering events. Termination of contract is a new triggering event that has been added under the *Act*. Pursuant to subsection 31(6) of the *Act*, an owner, contractor, or other person whose lien is subject to expiry must publish a notice of termination in a construction trade newspaper.

The *Act* also increases the time period to perfect the lien from 45 days to 90 days from the last day under section 31 on which the lien could have been preserved. As a practical matter, lawyers should take a cautious approach

to the application of the Act. When in doubt, apply the shorter timelines!

Release of Holdback

The Act introduces three changes to the holdback provisions. First, release of holdback under the Act is mandatory once the lien period expires, subject to the owner publishing a notice of non-payment as stipulated in the Regulations. Second, the obligation to maintain holdback can now be satisfied by a letter of credit, repayment bond, or other form as prescribed by the Regulations. Third, the Act allows for the annual or phased release of holdback where the construction schedule is longer than one year, the contract price is for \$10,000,000 or

greater (not applicable if holdback is only being released for the design phase), and no liens remain on title.

Vacating Liens


Under the CLA, a lien could be vacated from title by posting the value of the registered lien plus the lesser of \$50,000 or 25 percent of the lien amount into court as security for costs. Under the Act, the cost to vacate a lien has increased to the amount of the registered lien plus the lesser of \$250,000 or 25 percent of the lien amount.

Other Notable Changes

Many other notable changes came into force on July 1st, including changes

to the definitions of "improvement" and "price"; an amended formula for the calculation of substantial performance; and the ability to join lien and trust claims in the same action.

These changes to the CLA were the result of many months of consultations with a broad range of industry stakeholders. The modernization amendments which are now in force address some of the major developments that have occurred in the construction realm over the last three decades. Parties should review the new Act, including the transition provisions, so that they remain cognizant of these updates.

[Click here to read submissions from The Advocates' Society](#) 

UPCOMING EVENTS



Eighth Annual Securities Symposium

September 5, 2018
Toronto

[Click here to register](#)

Pub Night

September 6, 2018
Toronto

[Click here to register](#)

Trivia Challenge

September 12, 2018
Sudbury

[Click here to register](#)

Breakfast With Tiffany's
September 13, 2018
London
[Click here to register](#)

1er Gala Annuel de La Société Des Plaideurs
September 20, 2018
Montreal
[Click here to register](#)

The Appeal
September 22, 2018
Stratford Festival
[Click here to register](#)

Equality, Diversity and Inclusion: Leading By Example
September 25, 2018
Toronto
[Click here to register](#)

Trivia Challenge
September 27, 2018
Calgary
Save the date

Fireside Chat
October 4, 2018
Toronto
[Click here to register](#)

Breakfast Near Tiffany's VII
October 10, 2018
Toronto
[Click here to register](#)

Windsor Big Mingle
October 10, 2018
Windsor
[Click here to register](#)

Fireside Chat
October 15, 2018
Ottawa
[Click here to register](#)

Retirement Reception in Honour of Master Carol Albert
October 18, 2018
Toronto
[Click here to register](#)

Fall Forum
October 19-20, 2018
Blue Mountain
[Click here to register](#)





THE FUTURE OF ADVOCACY

The Future of CPD: The Advocates' Society Introduces Virtual Advocacy Training in Canada

Malik Martin, *Rueters LLP*



Technological innovation is changing legal education in many of the ways that it has transformed the practice of law. High-speed internet, smartphones, and videoconferencing have made our clients, cases and colleagues accessible anywhere and anytime. Educational technology is slowly starting to catch up, as more

of us come to expect the same accessibility, mobility, and interactivity from our professional education options.

Virtual training is the latest innovation to try to meet that expectation. Computer-based learning through downloadable content or live webcasts has been available for years, but what distinguishes virtual training from earlier technologies is the interactivity and the use of multiple content-delivery methods. In virtual training, the user actually interacts with the program's simulated characters and environments where the content is delivered through a combination of direct instruction and gaming.

The Advocates' Society recently created Canada's first virtual advocacy training course called "Preparing for Examination-in-Chief." In this award-winning course, an animated avatar named "Tas" guides you through a fictional case. Through a combination of sleek animation, live video, and interactive gaming, "Tas" covers the basics

of examination-in-chief—developing a theory of the case, structuring leading and open-ended questions, storytelling, tendering exhibits, and ethics—while providing practical and trial-proven techniques.

I completed the course in about one hour on my tablet and found it a refreshingly accessible and surprisingly comprehensive approach to the fundamentals of examination-in-chief. If you can't spare an hour for a single sitting, access to the course is available for up to six months, allowing you to work your way through it at your convenience. So, whether you are interested in a fun yet thorough introduction to examination-in-chief, need to review fundamentals during a sleepless night before trial, or are looking for a little extra CPD during the December rush, this course should appeal to you.

The Advocates' Society has long been known for its live advocacy skills training programs, which are designed and taught by Canada's leading advocates. With this great new addition, TAS is now at the forefront of the future of continuing legal education. Although nothing can replace the experience of being in the classroom and engaging directly with TAS faculty, as technology advances and our practices change, virtual training will become an increasingly common complement to live training and an important part of the learning lawyer's toolkit. ■

#TASPROUD

#TASstudenttips: Advocates' Society Members Share Their Top Tips for Students



Last month, we took to Twitter to pose the following question: "What do you know now that you wish you knew then?" Members of The Advocates' Society across Canada were only too happy to share their top tips for students who are just starting out in their legal careers. Here are some of KT's favourite from the TAS Twitterverse:

"Articling is a game of time management: break down assignments into their constituent tasks, estimate how long each task will take (and add some extra time as a buffer), and schedule accordingly. If you can't meet a deadline, let the lawyer know ASAP."

-Alex Redinger (@alexredinger)

"Take care of your mental/emotional health; it is a personal and a professional duty. See a therapist for regular checkups—more if required. Maintaining good mental/emotional health is essential to being the best lawyer you can be."

-Derek Anderson, Barr Picard Knisely Barrister & Solicitors (@Derekrmlaw)

"Don't assume because a partner/associate/client said it, that it is true. Legally, factually, and/or procedurally, confirm that assumptions you've been given hold up."

-Joe Thorne, Stewart McKelvey Law (@joethorneYYT)

"Articles are short so Aim High! Wring every minute out of the year and: Watch, Listen, Ask Qs, Say yes to every chance to gain experience, Introduce yourself to every lawyer you meet, Work hard, Have fun!"

-Tom Curry, Lenczner Slaght Royce Smith Griffin LLP (@jthomascurry)

"Don't compare your insides to other people's outsides. Instead, create your own definition of success based not only on what you want to get out of work but also on your unique vision of a beautiful life. That vision will be your anchor in times of storm."

- Annamaria Enenajor, Ruby, Shiller & Enenajor, Barristers (@AEnenajor)

"Focus on one very specific thing and become really, really good at it. No matter how obscure the area of law may be, if you are the best at it (or the only person who can do it) your success is certain. (Even better if you love it.)"

-Sean Robichaud, Robichaud's Criminal Defence Litigation (@SeanRobichaud)

"[L]awyers are endlessly grateful if your writing is clear, concise, precise, and carefully edited. It will come with practice. In the meantime, follow [@cjmandell](#), read her whole twitter feed, and do what she says."

-Jen Dagsvik, Matthews Dagsvik Lawyers (@jendagsvik)

"Ask! If you don't know how to do something, ask someone. If you want to shadow someone to learn from them, ask to do so. If you want a particular type of work, ask for it. Better to ask than to wonder if you could have learned more or better."- **Annie Tayyab, Affleck Greene McMurtry LLP (@AnnieTayyab)**

"Remember that you work at a professional SERVICE firm. Then think about who your customer is—be that the client or senior counsel—and how you can make their life easier. Sometimes that can be as simple as enjoying your work. Fun & enthusiasm are contagious."

-Morgan Sim, Pinto Wray James LLP (@morganmsim)

"Learn how a wide variety of lawyers organize their practice (especially for mundane but important things like tickler systems, email management, notes/memos to file, etc.). There's no one way, and you can get ideas for what might work for you."

-Tamryn Jacobson, Goodmans LLP (@tamrynjacobson)

"Pay attention to or ask how your articling tasks fit into the big picture of a file. Knowing the ultimate purpose of your work helps you discern what's important and write for your audience."

-Brooke MacKenzie, MacKenzie Barristers (@mackenzb)

"Find support from a junior associate or a fellow student: someone you can bounce ideas with, who can answer some of your questions, and who in a pinch can edit a memo you wrote while in a sleep deprived haze (and for the last bit, thank you [@mackenzb](#))."

-Atrisha Lewis, McCarthy Tétrault LLP (@atrishalewis)

"Be fearless. Volunteer to do that contested motion. Offer to meet with the client on your own. Take a Small Claims file. Soon enough you'll be a lawyer and have to do all this anyway—what better time to try it out, while you still have direct guidance?"

-Malini Vijaykumar, Stevenson Whelton MacDonald & Swan LLP (@malinivikumar)

"Maintain reasonable hours as much as you can, even when your colleagues are bragging about their all-nighters. I was always striving for a sustainable pace so I could maintain a high calibre of work, balance work with the rest of my life, and not burn out."

-Jennifer Taylor, Stewart McKelvey Law (@jennlmtaylor)

"Legal reasoning isn't the whole story. Pay close attention to the facts & the context in which a LEGAL problem arises, and remember that your job is ultimately to help your client solve a REAL WORLD problem about which the law has something to say."

-Debra M Haak, Teaching Fellow and PhD Candidate, Queen's University (@DebraMHaak)

#TASstudenttips



IN THE NEWS

Young Advocates in the News


In this feature, we will highlight TAS young advocate members in the news. All of the lawyers profiled have been called to the bar in the last ten years.

If you or a fellow young advocate has had a recent brush with the media about your/their work on a case, please forward the news story link to:

Andrew Eckart, andrew@eckartmediation.com; or

Thomas Milne, tmilne@nncfirm.ca

[Kapoor v. Kuzmanovski, 2018 ONSC 4770](#). Jacob Damstra of Lerner's LLP was co-counsel for TAS which intervened on a motion to dismiss jurors in an MVA case. RSJ Daley adopted TAS' position and thanked "counsel for the intervenors for their most valuable assistance". [Click here to read The Advocates' Society's media release.](#)



Your Next Challenge Is Here

The Advocates' Society Career Board is the only legal job board created just for the litigation bar. Access notices for litigation, ADR and judicial vacancies that are exclusively listed for advocates across Canada.

To find your next position click here.
www.advocates.ca



Interview with David Sundin, Partner *McTague Law Firm LLP, Windsor, Ontario*

Compiled by Andrew Eckart, *Eckart Mediation*

1. **Q. Why did you become a litigator or advocate?**
A. Growing up I enjoyed debating and advocating for what I believed in. I knew from a young age that I wanted to be a lawyer. But it was the few advocacy courses I took in law school and my experiences while articling that pushed me to become a litigator as opposed to pursuing another area of law.

2. **Q. What is your year of call?**
A. 2011

3. **Q. Which talent would you most like to have?**
A. To be more organized than I am now. It would be nice to get more done in less time.

4. **Q. What is your greatest extravagance in your everyday life?**
A. Coffee. I really enjoy good coffee and lots of it.

5. **Q. How would your colleagues describe you?**
A. I would hope that they would describe me as a straightforward and honest professional who is a pleasure to work with. Unfortunately, this is a profession where we praise one another much less than we should, so it's hard to say.

6. **Q. What would you consider your greatest achievement?**
A. Being a father who has, at least to date, managed to juggle a busy practice with spending time at home with my toddler.

7. **Q. Which word do you prefer: litigator or advocate?**
A. I prefer advocate, which more accurately reflects what we do. For me, the term "litigator" seems to hold the connotation that you will fight to the bitter end, no matter what the consequences. Meanwhile, I see an advocate as someone who will speak strongly for their client, but recognize when settlement, with the appropriate terms, serves the client better.

8. **Q. Who or what is the greatest love of your life?**
A. My family.

9. **Q. What is the latest non-legal book you've read?**
A. I've just picked up *Warlight* by Michael Ondaatje. I haven't had a chance to crack it open yet, but I will find a weekend soon to do so.

10. **Q. If you weren't a lawyer what would you be?**
A. Later in life, I'd like to be a university instructor in the liberal arts. But for the time being, I am quite content to keep working as a lawyer.

Continued on page 10



11. Q. What is your favorite case?

A. There is a special satisfaction in advocating for those who cannot advocate for themselves and obtaining a good result for them, which you never get from a standard commercial dispute. Two cases that stand out for me is an elder abuse case and a case where a young woman had been duped by a used car dealer.

12. Q. Favourite drink?

A. Any Canadian small-batch whiskey. Thankfully, there are a few local distilleries to choose from as well.

13. Q. What is your greatest fear in practice?

A. Being unprepared.

14. Q. What do you like most about your practice?

A. The colleagues that I am able to work with on a regular basis, both among my fellow advocates and the bench. The collegiality in our relatively small bar is impressive and of benefit to the clients. I believe the collegiality that has been fostered in Windsor-Essex results in matters being resolved more efficiently than in jurisdictions with larger bars.

15. Q. Which living lawyer do you most admire?

A. There are a number of senior counsel throughout Windsor-Essex that I admire and look up to, both within my firm and outside. There is not one among that group I would rank above the others. In the interests of not accidentally leaving anyone out, I'll keep that list to myself.

16. Q. From whom have you learned the most about the practice of law?

A. The senior counsel at my firm. Roger Skinner and Alex Szalkai have each been practicing for in excess of 50 years and are a wealth of knowledge and always willing to provide advice and guidance. Plus, I have three great partners in the litigation department, Mike Coughlin, Josephine Stark, and Tom Serafimovski, who have taught me everything law school can't teach you about the practice of law.

17. Q. What unique knowledge have you gleaned in your practice that you can share with other young advocates?

A. Be collegial even when your opponent is not. It pays off in droves down the line and helps build your reputation as someone who is a pleasure to work with. If your fellow lawyers and the judges hearing your matters like working with you, you are more likely to get better results for your clients.

18. Q. What is your most distinctive characteristic?

A. Since becoming an advocate who sits at a desk all day? A growing waistline and a receding hairline.

19. Q. What should people know about the life of a litigator in Canada's Deep South (Windsor-Essex County)?

A. That it is one of the best places to practise. There are too few litigators in the area. The result is plenty of work to go around with the ability to gain practical experience very early on in your career. ▀



YASC PHOTO GALLERY

