



# Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

Trump & Immigration | Cannabis Legalization | Interview | Upcoming Events

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.

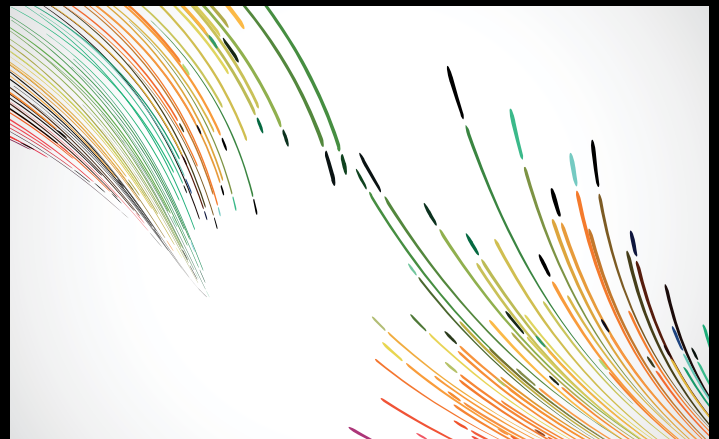
## CHAIR CHAT



BY: DANIEL NAYMARK,  
NAYMARK LAW

2017 has already seen its fair share of ups and downs. (You can stop now, 2017!) While the winter winds blow, it is important to do what we can to fortify ourselves. And if we want our loved ones to look at us the way Ivanka looks at Justin, we need to do what we can to stoke our inner fires.

As the bear hibernates in his cave, and roots dig into the warmth of the earth, so can we young advocates take the remaining weeks of winter to nourish ourselves and prepare to emerge professionally renewed for spring. As always, YASC was ready to help, creating opportunities for young advocates to socialize with the bench and bar over wine and cheese (Kingston - Feb 2) or a refreshing (well, freezing!) skate with the judges on the Rideau Canal (Ottawa, February 9), or with some good, old fashioned mentoring over dinner (Toronto, February 16). Coming this March, Barrie will host a sold-out Wine and Cheese with the Bench (March 1), Windsor advocates will connect at a local Pub Night



(March 9), and battles for the much coveted Trivia Challenge trophy are taking place in Toronto (March 23) and Kingston (March 27).

One more important March date: if you are interested in joining YASC for the 2017/2018 term, the deadline to apply is March 31. Click [here](#) for more information.

In this issue, read Lauren Ray's take on cannabis legislation, Chris Horkins' list of advocacy opportunities for those looking to respond to Trump's Executive Order, and an interview with Neil Wilson of Stevenson Whelton MacDonald & Swan LLP. ■

*Daniel*

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## Canadian Young Advocates Take Action In Response to Trump's Executive Order on Immigration

BY: CHRIS HORKINS,  
CASSELS BROCK &  
BLACKWELL LLP



Late in the afternoon on Friday January 27, 2017, newly-sworn in United States President Donald J. Trump signed an Executive Order on Immigration that quickly became his most controversial act as President thus far. The Executive Order banned entry to the U.S. for individuals from seven predominantly Muslim countries (Iran, Iraq, Syria, Libya, Yemen, Sudan and Somalia) for 90 days, suspended all admissions of refugees to the U.S. for 120 days and indefinitely suspended the admission of refugees from war-torn Syria.

For those, like me, who were glued to the news coverage and Twitter, the immediate result of the Executive Order appeared to be sheer chaos, as students, visitors and green-card holding permanent residents from the affected countries were blocked and detained at airports across the US and abroad and protests amassed in the airports and public squares. One bright spot in the fallout from the Executive Order, however, (especially for those of us in the legal community) has been the response of the legal community. On the small end of the spectrum, young lawyers and law students flooded U.S. airports in the immediate wake of the Executive Order to provide *pro bono* assistance to travelers who were denied entry or detained. Meanwhile, lawyers for human rights advocacy groups including the ACLU, fought the ban in court and quickly piled up a number of federal court rulings in multiple

states either restricting or staying the effect of the Executive Order.

These efforts culminated on February 3rd, with the granting of a temporary restraining order by Judge James Robart of the U.S. District Court for the Western District of Washington which effectively stayed the effect of the Executive Order nationwide. This prompted the President to lash out on Twitter, calling U.S. District Judge Robart a “so-called judge” in comments that many legal organizations, including The Advocates’ Society, condemned as a threat to judicial independence. The [Advocates’ Society’s statement](#) called the President’s comments “improper, disrespectful and a threat to judicial independence and authority,” and made clear: “The Advocates’ Society stands firmly with those colleagues, and with people everywhere who have expressly and unequivocally condemned the President’s statements directed at Judge Robart.” Reading this statement made me proud to call myself a member of this organization!

The inspiring advocacy efforts of lawyers and the legal community in response to the Executive Order were not limited to the United States. Here in Canada, many lawyers, including young advocates, have taken action.

In the days following the Executive Order, an *ad-hoc* group of young lawyers across Canada came together to provide similar assistance to US-bound travelers in Canadian airports. The group, now branded as the Canadian Cross-Border Legal Coalition (“CCBLC”), grew spontaneously after lawyers in Vancouver and Toronto had independently begun organizing shifts of airport monitors with the assistance of attorneys in Boston already involved with the American litigation. Soon after, these *ad-hoc* groups in Toronto and Vancouver joined forces with several large human rights advocacy organizations in Canada, including the Canadian Civil Liberties Association, the Refugee Hub and the Canadian Association of Refugee Lawyers, to form the CCBLC. CCBLC has since been involved in coordinating volunteer lawyers to assist and provide information to travelers at international airports in Toronto, Vancouver, Montreal and Ottawa.

Corey Shefman, an associate at Olthuis Kleer Townshend LLP in Toronto, is one of the main organizers of CCBLC’s efforts in Toronto. “Working with the over 350 Toronto lawyers and law students who have volunteered with the airport monitoring group and the CCBLC has been inspiring,” says



## TRUMP & IMMIGRATION

Shefman, who believes the response “has shown Toronto the true character of the legal community. We’ve had lawyers from every type and size of law firm and every area of practice. A handful of organizers put out a call, and the Toronto bar responded in force.” Although the CCBLC’s airport monitoring efforts have demobilized for the time being thanks to the 9th Circuit’s ruling that upheld the national stay of the Executive Order, the CCBLC is continuing to spread awareness and look for ways to assist those in Canada who have been affected.

Students at 22 Canadian law schools have also pitched in by participating in a mass “research-a-thon” looking at the impact of the Safe Third Country

Agreement between Canada and the United States, which requires a person seeking refugee status in either country to make their claim in the first country where they arrive. Following the Executive Order, over 200 law professors have signed a petition spearheaded by immigration law experts at Osgoode, U of T, UVic, UBC and Queen’s law faculties calling for the immediate suspension of the bilateral agreement which prevents refugees who land in the U.S. from seeking asylum in Canada. The law students involved in the “research-a-thon” hunkered down for hours on February 4th (a Saturday) to plug away on co-ordinated research topics selected by the Canadian Council for Refugees to assist with efforts to lobby for change in the wake of the Executive Order.

The legal community’s response is ongoing. For those young advocates interested in how they can join this

inspiring resistance to the Executive Order, here are a few suggestions:

- Sign up at the CCBLC’s website [www.ccblc.org](http://www.ccblc.org) to receive updates on future action and how to get involved.
- Review relevant materials at the CCLA’s website: <https://ccla.org/information-legal-volunteers-helping-people-affected-executive-order-travel-ban/>.
- Write to your MP—the CCLA has a great precedent letter to use as a start: <https://ccla.org/contact-your-mp-re-us-travel-ban/>.
- Donate to support the efforts of any of the advocacy groups fighting the travel ban. Many are identified above. ■

## Wine & Cheese with The Bench

March 1, 2017  
Michael & Marion’s  
Barrie, ON  
&

April 6, 2017  
Campbell House  
Toronto, ON



◀ Click here for registration

## YASC Trivia Challenge

Thursday, March 23, 2017 | 6:00 - 8:30 p.m.

The Hot House Restaurant & Bar  
Toronto, ON.

&

Monday, March 27, 2017 | 5:30 - 8:00 p.m.

The Alibi  
Kingston, ON.

Click here for more info & to register your team ▶



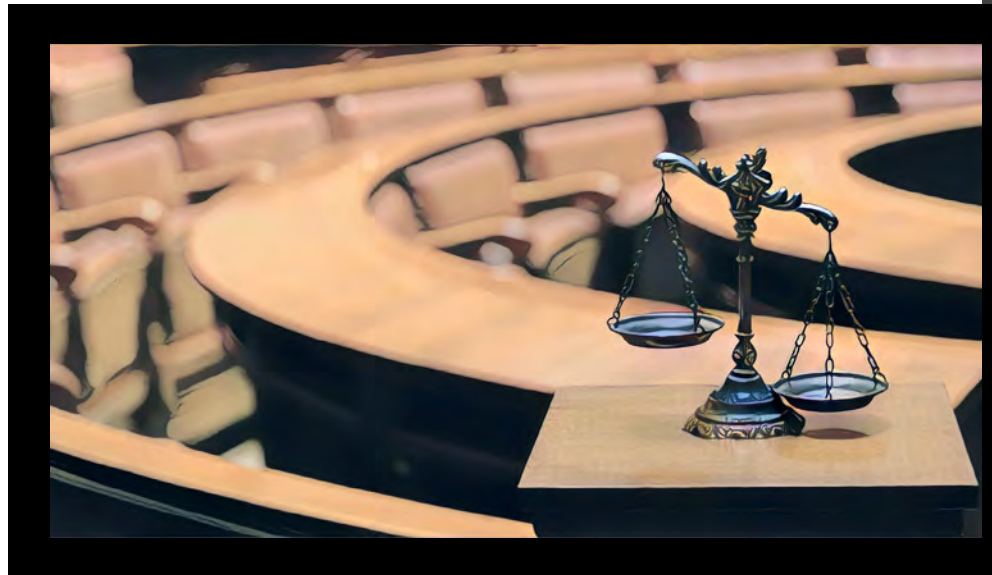


### In Contemplation of Litigation: Reviewing the Recommendations of the Final Report of the Task Force on Cannabis Legalization and Regulation

BY: LAUREN RAY,  
MCMILLAN LLP



As Lord Denning once said: “Be you ever so high, the law is above you.”<sup>1</sup> Although this statement was made to address the misuse of public office, it is a potent message to initiate discussion of a contentious topic on the precipice of legalization: recreational cannabis. Political and personal leanings aside, members of the legal profession should prepare for the legalization and regulation of recreational cannabis expected to occur this year. The federal government established a Task Force on Cannabis Legalization and Regulation (the “Task Force”) to engage with the public on this issue. The Task Force obtained input from stakeholders and citizens in order to inform the recommendations of their final report released prior to the new year: *A Framework For The Legalization And Regulation Of Cannabis In Canada* (“Report”). The Report spoke frankly about the scope of the Task Force’s work: “[the Task Force has] discovered that the regulation of cannabis will touch every aspect of our society”.<sup>2</sup> In addition to the Report’s immediate impact on the price of publicly traded stocks of Canadian cannabis companies,<sup>3</sup> all advocates may benefit from contemplating the more remote impact of this topic on the varied interests of their clients at each stage of the potential supply chain, including production, distribution, and retail.



#### PRODUCTION

The Task Force found existing public support for the commercial production of cannabis by the private sector.<sup>4</sup> The Report recommended that producers be regulated and licensed by the Canadian government in order to control the competitive production of cannabis and derivative products.<sup>5</sup> Select practices established through the existing licensing and production models for medicinal cannabis (“Medical Regime”)<sup>6</sup> were identified as potentially transferable to a competitive market place model (“Recreational Regime”).<sup>7</sup> The importation of practices from the Medical Regime to the Recreational Regime may indeed double the market for companies tied to these practices, such as companies dealing in approved pesticides.<sup>8</sup> Proactive advocates should consider whether their clients could incur unanticipated legal exposure relating to competition law, intellectual property, etc.

#### DISTRIBUTION

The Report’s discussion of potential distribution models drew parallels between the distribution of cannabis and alcohol. This culminated with a recommendation in favour of a government monopoly over the wholesale distribution of cannabis, regulated by the provinces and territories.<sup>9</sup> If the regulation of these

products continues to share some resemblance in the future, advocates may seek to anticipate and identify jurisdictional concerns, among other things, facing clients who wish to participate in the Recreational Regime’s distribution chain. As recently as last year, a provision of New Brunswick’s *Liquor Control Act*<sup>10</sup> was found to constitute a trade barrier in violation of s. 121 of the *Constitution Act, 1867*, and was therefore of no force or effect.<sup>11</sup> As the intersection between federal and provincial jurisdiction over the distribution of alcohol continues to be litigated in our courts, it is probable that there will also be litigation over constitutional questions related to the distribution of cannabis.

#### RETAIL

In contrast to the recommended provincial monopoly over distribution—and the musings of some provincial Premiers—the Report specifically recommended against the co-location of retail outlets of alcohol or tobacco with cannabis.<sup>12</sup> Although the advantages of both private and public retail models were considered, the Report did not endorse a specific model.<sup>13</sup> The Report noted that during the consultation stage the public had expressed to the Task Force a preference for a mixed public-private system. This mixed system would blend direct government involvement

## CANNABIS LEGALIZATION

with private licensed retailing through retail outlets such as dispensaries.<sup>14</sup>

The Report provides insight as to what the Recreational Regime may look like when cannabis is legalized: production of cannabis may remain with licensed private companies; distribution of cannabis may be under the control of provincial and territorial governments, and; retailing of cannabis may present profitable opportunities for single-purpose private companies. Advocates should reflect on how

their expertise may aid clients in the navigation of this potential supply chain. New law necessitates new legal work: commercial real estate clients may need to obtain municipal zoning approvals; manufacturers of equipment used in the cultivation of cannabis may need to seek patent protection; corporations involved in the production, distribution and marketing of foods may consider expanding their business into edible cannabis products; *etc.* To borrow from comments expressed in the Report, legalization will touch every aspect of our profession. Though the rules of engagement are not yet

established, advocates can gain an edge by anticipating for their clients both opportunities for profit as well as liability. By engaging litigators who actively contemplate emerging areas of litigation risk, corporate lawyers can also enhance their own client service. Advocates will want to work with clients to set the stage for decisive action aligned with their interests, including taking precautions to ensure that existing contracts, such as insurance policies, remain comprehensive. ■

1. *Gouriet v. Union of Post Office Wkrs.*, [1977] Q.B. 729, [1977] 2 W.L.R. 310, [1977] 1 All E.R. 696 (quoting Thomas Fuller).  
2. Task Force on Cannabis Legalization and Regulation, "A Framework For The Legalization And Regulation Of Cannabis In Canada" online: Health Canada <<http://healthycanadians.gc.ca/task-force-marijuana-groupe-etude/framework-cadre/alt/framework-cadre-eng.pdf>> ("Report").  
3. The price of publically traded stocks of Canadian cannabis companies increased by upwards of twelve percent following the release of the Task Force's Report: "Shares of Marijuana Companies rise with Release of Recreational Use Recommendations" *CBC News, Business* (13 December 2016), online: CBC News <<http://www.cbc.ca/news/business/pot-stocks-report-1.3894179>>.

4. Report at 30.  
5. *Ibid* at 33.  
6. Comprising of regulations including *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230; and the former licensing regime under the recently repealed *Marihuana for Medical Purposes Regulations*, SOR/2013-119.  
7. Report at 30, 32.  
8. *Ibid* at 32.  
9. *Ibid* at 33.  
10. *Liquor Control Act*, RSNB 1973, c. L-10.  
11. *R. v. Comeau*, 2016 NBPC 3 at para. 193.  
12. Report at 34-35.  
13. *Ibid* at 34.  
14. Report at 93-94.

## Congratulations to all Arnup Cup Participants!

The team from Osgoode Hall Law School took home the 2017 trophy on February 11, and Queens University Law School were the runners up. Both teams will be competing at the Sopinka Cup in Ottawa on March 17, 2017. Good Luck!



The team from Osgoode Hall Law School.

(L to R) The Honourable Associate Chief Justice Alexandra Hoy, Justice Clayton J. Conlan, Bessmah Hamed, Rachel Devon, Bradley E. Berg



The team from Queens University Law School.

(L to R) The Honourable Associate Chief Justice Alexandra Hoy, Hamish Mills-McEwan, Jordan Kirlik, Justice Clayton J. Conlan, Joseph Darh, Bradley E. Berg

## Interview with Neil Wilson, Stevenson Whelton MacDonald & Swan LLP

BY: SHANNON BEDDOE,  
MARTHA MCCARTHY & COMPANY



1

**Q: Why did you become a litigator or advocate?**

A: A friend was writing the LSAT and convinced me to do it with him. I've always liked arguing and writing so it seemed like a natural fit—and a natural progression from a history degree.

2

**Q: Which word do you prefer: litigator or advocate?**

A: Litigator. If I told people I'm an advocate I don't think they would know what I do!

3

**Q: What is your year of call?**

A: 2011.

4

**Q: What do you like most about the practice of law?**

A: The diversity of constantly learning about new things you may never have thought about before. I find that as litigators our cases frequently require us to become experts in new subject matters, from an accounting practice to a medical procedure to a line of business.

7

**Q: What is your greatest extravagance in your everyday life?**

A: Travel, the occasional nice meal and taking time to sit back and relax with some Netflix.

8

**Q: What would you consider your greatest achievement?**

A: Being featured in *Keeping Tabs*.

5

**Q: What is your greatest fear in practice?**

A: Becoming jaded and unempathetic.

9

**Q: What is the latest non-legal book you've read?**

A: Right now I'm reading *Maximum City* by Suketu Mehta. It's a book about Mumbai that follows a series of meetings between the author and residents of Mumbai of all stripes including politicians, architects, crime bosses and police officers (no lawyers yet).

6

**Q: Which living lawyer do you most admire?**

A: Joseph Arvay—one of Canada's top constitutional litigators who has argued many of the biggest cases in the country since I became a lawyer, including *Insite* (safe injections), *Carter* (assisted dying) and *Henry* (Charter damages and Crown liability).

10

**Q: How would your colleagues describe you?**

A: Glass half full guy.

11

**Q: Who or what is the greatest love of your life?**

A: Family. I don't play favourites but our two-year old daughter is pretty close to the top of my list right now.



12

**Q: What is your favourite case?**

**A:** *The Hearing Clinic (Niagara Falls) Inc. v. 866073 Ontario Limited*—I’ve had more laughs reading this decision than any other. A small sample:

Fridriksson has taken everyone on a hideously time-consuming and obscenely expensive journey down his private yellow brick road to the outskirts of the Emerald City where, it appears, he has a residence. It was not a worthwhile adventure.

[Editor’s note: This case is *amazing*. Thank you Neil.]

13

**Q: Which talent would you most like to have?**

**A:** Unlimited patience.

14

**Q: What is your most distinctive characteristic?**

**A:** Red hair.

15

**Q: What is your favourite drink?**

**A:** Beer, preferably on tap. During the summer a Paulaner and during the winter a nice Mill Street Cobblestone Stout.

16

**Q: From whom have you learned the most about the practice of law?**

**A:** Maureen Whelton. She is a force to be reckoned with in court and in a negotiation, and manages to do it all with empathy and a healthy sense of humour. More generally, lawyers I see in court, both from my firm and opposing counsel. Seeing a range of styles and habits has been key to working out what works for me and what doesn’t.

17

**Q: If you weren’t a lawyer, what would you be?**

**A:** Journalist—probably as a foreign correspondent in some far-flung and hopefully warm location.

18

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

**A:** Never underestimate yourself. If someone trusts you with litigation (or a piece of it) it is because you can do it and do it well. ♣

## Upcoming Events



**Wine & Cheese with  
The Bench  
(Barrie)**  
March 1, 2017



**YASC Pub Night  
(Windsor)**  
March 9, 2017



**Trivia Challenge  
for Charity  
(Toronto)**  
March 23, 2017



**Trivia Challenge  
(Kingston)**  
March 27, 2017



**Wine & Cheese with  
The Bench  
(Toronto)**  
April 6, 2017