Keeping Tabs

News from The Young Advocates' Standing Committee

CHAIR CHAT

Victoria Creighton, *Osler, Hoskin & Harcourt LLP*

Welcome to the 2018–2019 term! Thank you to everyone who came to End of Term to wind down the past legal year in style.

Last year saw more expansion, with events from coast to coast, including our first event in Montreal, la première édition du pub night organisé par le Comité de la Société des Jeunes Plaideurs. A huge thank you to our outgoing YASC committee members: Shannon Beddoe, Max Binnie, Gavin Cosgrove, Tara DiBenedetto, Emily Graham, Brent Kettles, Brian Kolenda, Doug McLeod, Larissa Moscu, Penny Ng, Megan Savard, Chloe Snider, and Miranda Spence. Your thoughtful insights and unflagging enthusiasm were always appreciated. And a final thanks to Ben Kates, our outgoing Chair. For the past six years, Ben has worked on too many initiatives to name and has led the expansion of opportunities and events for young advocates across the country. It has a been a true pleasure working with you and you will be missed.

In the next year, we will be running new and favourite programs and I want to highlight all the cities where we can now be found: Barrie, Calgary, Edmonton, Halifax, Kingston, London, Mississauga, Montreal, Orillia/Rama, Ottawa, Sudbury, Toronto, Thunder Bay, Vancouver, Waterloo, and Windsor. There will be great events in each city, so stay tuned and we hope to see you out at an event soon.

In this edition of *Keeping Tabs*, Thomas Milne examines the Crown's *ad hoc* fiduciary obligation regarding culturally-appropriate child welfare services and Sean Petrou and Bronwyn Martin provide us with 12 steps to avoid LawPRO claims. We also have an interview with North Bay advocate, Ashlee Barber of Williams Litigation Lawyers, reflections on becoming an effective advocate from Regional Senior Justice, The Honourable Bruce Thomas, a YASC report from Vancouver, members in the news, and a lesson in trial advocacy.

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—cyoudan@fasken.com. If you're looking to get involved more generally, join our Volunteer Roster by contacting Alexandra Shelley—ashelley@torys.com.

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

ADVOCACY SKILLS

12 Steps to Avoiding a LAWPRO Claim

Sean C. Petrou and Bronwyn M. Martin, *Moodie Mair Walker Lawyers*

There are common errors that lead to LAWPRO claims. With some basic organization and communication, these pitfalls can be avoided. While navigating your files and keeping your clients happy can be hard, avoiding a LAWPRO claim doesn't have to be.

1. RETAINER LETTERS

Always get a signed, written retainer. It should set out your obligations and your client's expectations. Many disputes can be avoided if you have a retainer that is clear, detailed, and dated. Clarify what you are retained for and what you are not retained for. Clients should be provided with a copy of the signed and dated retainer. The Law Society of Ontario website offers sample retainer letters.

2. NON-RETAINER LETTERS

If you meet with a prospective client and are not retained, send a follow-up letter confirming:

1. that you have not been retained;
2. the claim is subject to a limitation period (and, if applicable, a notice period) and that it is imperative that any lawsuit be commenced prior to the expiry of the limitation period;
3. that you are not in a position to advise as to when the limitation period expires;
4. the person should consult with alternative counsel without delay if they are still interested in pursuing litigation; and
5. if applicable, that the person was provided with a verbal warning regarding the limitation period.

A non-retainer letter should also be sent if you are only retained for one aspect of a case. For example, a non-retainer letter should be sent if you agree to handle an accident benefits ("AB") claim, but not a tort claim.

3. COMMUNICATION

Many claims arise from miscommunication or non-communication. Regularly update your clients. Aggrieved clients who bring claims for communication-based errors often seek reimbursement of their legal fees in addition to damages. Claims for reimbursement of legal fees are not covered by the LAWPRO policy.

You should: (1) warn of the probability of success on a motion, trial, or appeal; (2) warn of adverse costs orders if litigation is lost; (3) address any misunderstandings regarding the scope of retainer; (4) seek and follow client instructions; and (5) warn of applicable limitation periods.

4. WRITTEN INSTRUCTIONS

It cannot be overstated: confirm your instructions in

writing. Whether bringing a motion, making, rejecting, or accepting a settlement offer, or any other litigation event, you must obtain your instructions in writing. If your client disagrees with an approach you have recommended, then receive those instructions in writing.

5. REPORTING LETTERS
In addition to retainer letters, opinions and reporting letters are a case's roadmap. Address as many issues as you can in your opinion, even if they are simple. This way, your client can see what you have considered. If a specific topic is mentioned, then memorialise that in your next report. It is often alleged that something was requested that is later denied to have been requested.

6. PAPER YOUR FILES
Memos to file are invaluable. Even if you are not reporting to a client, you should write memos to your file about tasks, concerns, discussions, and calls. A memo to file can shut down a claim against a lawyer.

7. DOCKET
Your dockets are invaluable. Even if you are retained on a contingency fee basis, you must docket! Dockets are evidence. Dockets that show entries for meetings or phone calls and even have a brief description of the topic you spoke about are contemporaneous evidence that will support your side of the story.

8. TICKLER SYSTEM (LIMITATION PERIODS)
Missed limitation periods are the basis for many a LAWPRO claim. A strong tickler system is fundamental to a litigator's practice. Have a system that works, is easy to use, and foolproof. It should start at the opening of your file. You should review upcoming limitations periodically to see if anything needs to be done in advance of a limitation. Do not rely on your assistant for this. Ultimately, it is your responsibility.

9. NAME JANE/JOHN DOE DEFENDANTS
If you are facing a limitation period or have not developed the information required, you should issue a claim using Jane/John Doe Defendants. By naming Jane/John Doe, you can often avoid limitation period problems by substituting the Jane/John Doe Defendant with the correct Defendant upon learning of its correct identity. A successful misnomer motion requires specificity in the Statement of Claim, so be sure to provide sufficient facts in the claim.

10. DUE DILIGENCE
Have proper intake forms that set out the information received and the follow-up information required. Adequately investigate the facts. Clients are often unreliable, especially with respect to dates. In most cases, readily available documents contain facts that are inconsistent with the information provided by a client. A lawyer can be exposed to liability if it can be shown that the lawyer should have been able to obtain the correct factual information from documents or other sources.

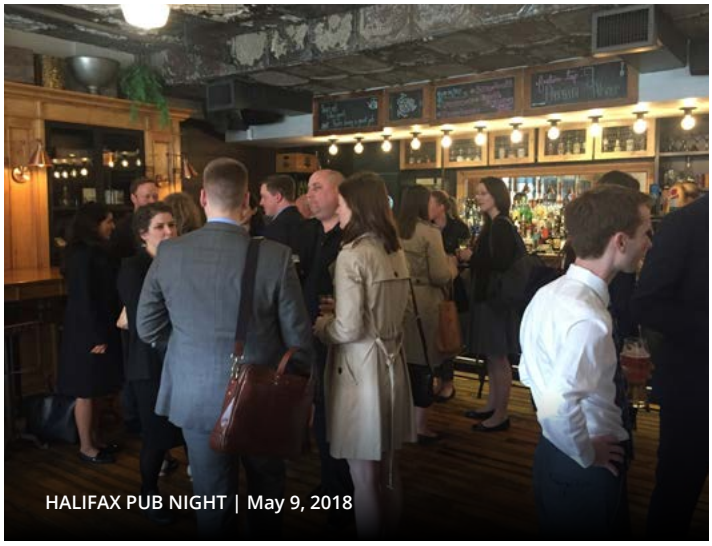
11. SELF-REPRESENTED PARTIES
When dealing with a self-represented litigant, there is a greater potential for a malpractice claim. As a lawyer, it is difficult to ascertain what duties you owe to whom. First, you owe a duty to your client. Second, you must take care to see that the unrepresented person understands you act exclusively in the interests of your client. The following paragraph has been recommended for use by LAWPRO claims counsel when dealing with a self-represented litigant:

> Please be informed that I do not represent you in any way and am not protecting your interests. You should therefore seek legal advice prior to signing these documents. I act exclusively for _____ and any comments that I have made may be partisan. Again, we strongly suggest and recommend that you review these documents with a lawyer of your own choosing and obtain independent legal advice before signing them. We trust that this is perfectly clear and remain ...

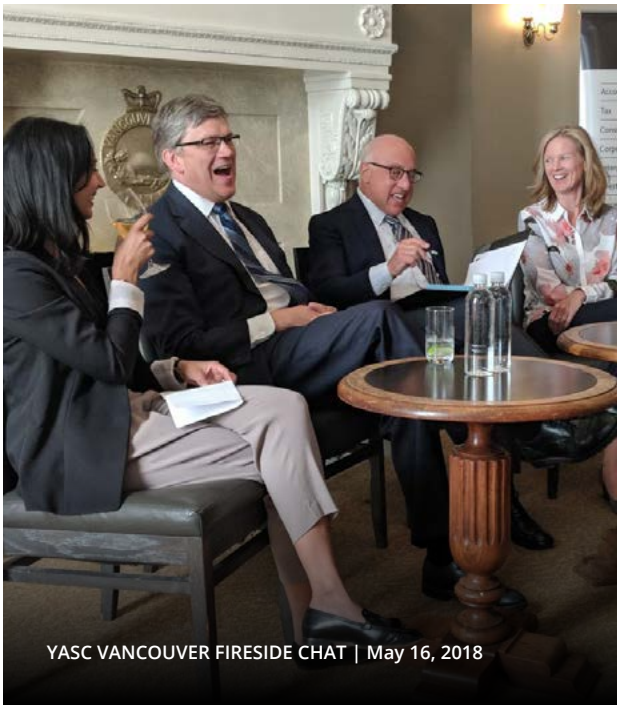
12. BUILD YOUR FILES
Building a case is crucial. Make sure to retain the proper experts and relevant documentation. You have a duty to your client to build their case as needed. Do not let the file sit and simply pass through the stages of litigation.

No practice is perfect, but a commitment to the above 12 steps will go a long way to avoiding a LAWPRO claim. The practicePRO and Law Society of Ontario websites have articles, tools, and resources to help lawyers and firms identify and address practice risks.

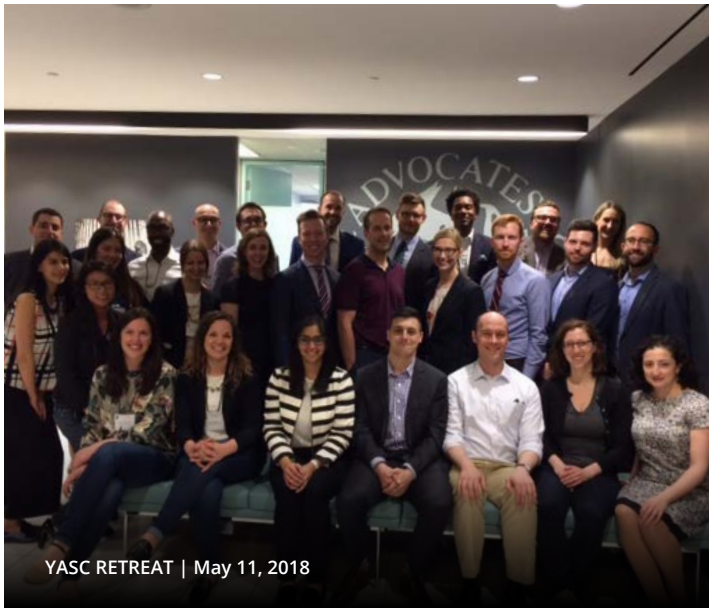
YASC PHOTO GALLERY



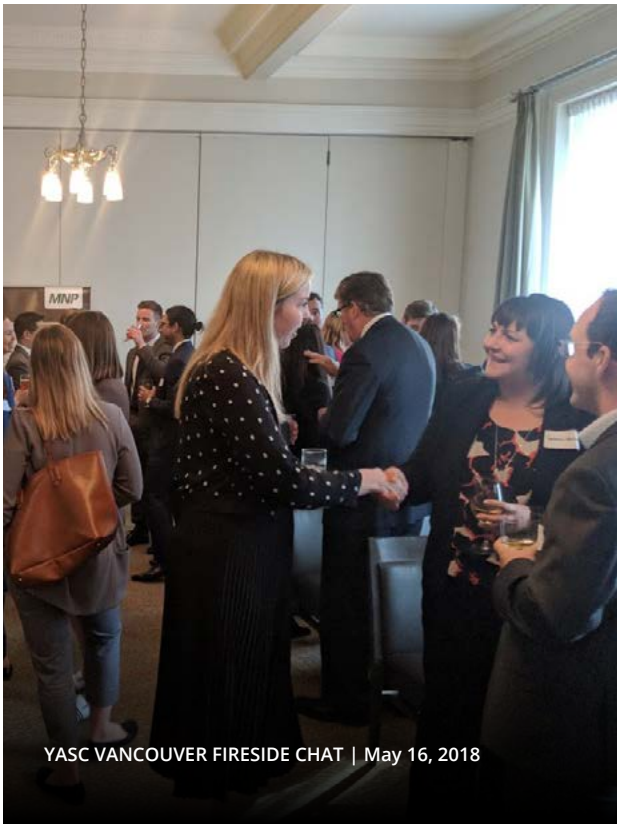
HALIFAX PUB NIGHT | May 9, 2018



YASC VANCOUVER FIRESIDE CHAT | May 16, 2018

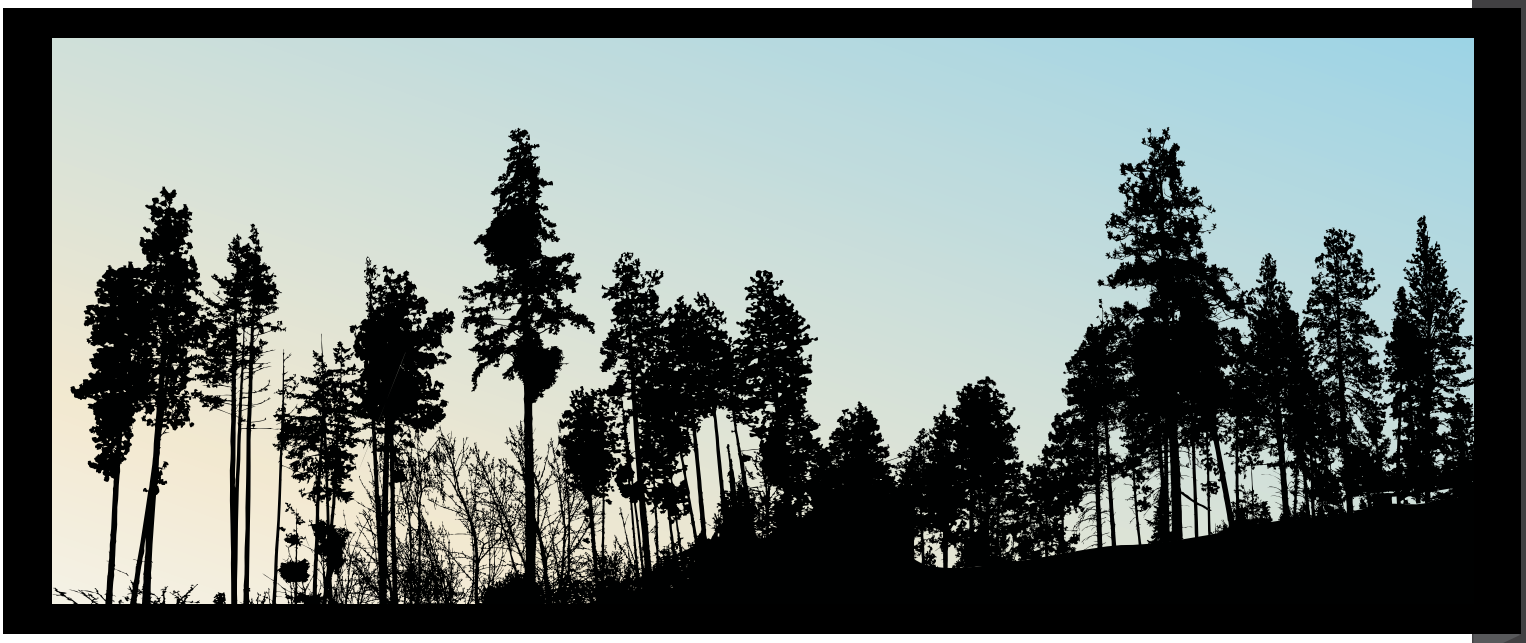


YASC RETREAT | May 11, 2018



YASC VANCOUVER FIRESIDE CHAT | May 16, 2018

YOUR PROFESSION YOUR FUTURE
A PANEL DISCUSSION ON MENTAL HEALTH | May 24, 2018



CASE STUDY

The Crown's Ad Hoc Fiduciary Obligation Regarding Culturally-Appropriate Child Welfare Services

Thomas Milne, *Nahwegahbow, Corbiere Genoodmagejig / Barristers & Solicitors*

Introduction

On January 26, 2016, the Canadian Human Rights Tribunal issued a landmark decision[1] that found First Nations children and families living on-reserve and in the Yukon are denied equal child and family services and/or differentiated adversely in the provision of child and family services contrary to the *Canadian Human Rights Act*.

Summary

In the Tribunal's analysis of whether the respondent, Aboriginal Affairs and Northern Development Canada, provided a "service" under s. 5 of the *CHRA*, the Tribunal incorporated the Crown's fiduciary relationship with Aboriginal peoples in its assessment. Specifically, the Tribunal assessed whether the Crown owes a fiduciary obligation in its provision of culturally-appropriate child welfare services. To summarize, the Tribunal did not make a determination of whether or not a fiduciary obligation exists in this regard, but rather provided a view that, in consideration of fiduciary duties existing between the Crown and Aboriginal peoples elsewhere, particularly in relation to land, a fiduciary obligation could be found to exist in this case because the Crown undertook to provide (*i.e.*, fund) culturally-appropriate child welfare services.

The Tribunal's Findings

The Tribunal acknowledged that fiduciary obligations have yet to be recognized by the Supreme Court of Canada in relation to Aboriginal interests other than land outside the framework of s. 35(1) of the *Constitution Act, 1982*, however, this does not preclude extending the fiduciary obligation between the Crown and Aboriginal peoples to apply to human and personal interests, especially where a fiduciary relationship has already been found to exist between the Crown and Aboriginal peoples elsewhere.[2]

Ad Hoc Fiduciary Obligation

In assessing whether a fiduciary obligation could extend to human and personal interests, the Tribunal adopted a case-by-case approach[3] and found an *ad hoc* fiduciary obligation may arise from the Crown's undertaking *vis-à-vis* its administration of the *First Nations Child and Family Services Program—i.e.*, the impugned government program at the centre of the complaint.[4] The Tribunal rested this finding on the three criteria as set out in *Elder Advocates*,[5] also found in *Manitoba Metis*.[6]

The point made by the Tribunal is that an *ad hoc* fiduciary obligation may arise from the Crown's undertaking to provide culturally-appropriate child welfare services based on the evidence and the legal principles relating to the special relationship between the Crown and Aboriginal peoples, such as the Honour of the Crown[7] and the

sui generis relationship between the Crown and Aboriginal peoples.[8] The Tribunal found the following:

1. *Undertaking*: The FNCFS Program was undertaken and controlled by the Crown, which was intended to be in the best interests of the First Nations beneficiaries and the "best interests of the child," and the safety and well-being of First Nations children, all of which are objectives of the FNCFS Program, and over which the Crown has discretionary control through policy and other administrative directives.[9]
2. *Vulnerability*: The FNCFS Program has a direct impact on a vulnerable category of people, namely, First Nations children and families in need of child and family support services on reserve.[10]
3. *Interest that stands to be adversely affected*: Specific Aboriginal interests stood to be adversely affected, namely, indigenous cultures and languages and their transmission from one generation to the other, which are protected by s. 35. The transmission of indigenous languages and cultures is an Aboriginal right possessed by all First Nations children and their families.[11]

The Tribunal's findings follow suit with Justice Belobaba's earlier decision in *Brown* v. *Canada (AG)*, 2013 ONSC 5637[12] that concerned a class action based on the operation of the child welfare system in Ontario. In that decision, a fiduciary obligation was found, and was based on the discretionary control of the Crown over Aboriginal interests in "culture and identity." However, in this case, the Tribunal agreed that "culture and language" were specific Aboriginal interests that could trigger a fiduciary obligation, particularly by virtue of these interests being protected by s. 35. Accordingly, where the government exercises its discretion in a way that disregards indigenous cultures and languages and hampers their transmission, it can breach its fiduciary obligation.

Conclusion

To conclude, the Tribunal expressed a view that AANDC's administration of the FNCFS Program would indicate an undertaking on the part of the Crown to act in the best interests of First Nations children and families to ensure the provision of adequate and culturally appropriate child welfare services on reserve and in the Yukon, such view being premised upon the fiduciary relationship between the Crown and Aboriginal peoples as a "general guiding principle" in an analysis of any government action concerning Aboriginal peoples.

Notes

1. *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2.
2. *Ibid*. at para. 99.
3. *Ibid*. at para. 100.
4. *Ibid*. at paras. 101–103.
5. *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 at para. 36.
6. *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14 at para. 50.
7. *Ibid*. at para. 89.
8. *Ibid*. at para. 89.
9. *Ibid*. at para. 105.
10. *Ibid*. at para. 105.
11. *Ibid*. at para. 106.
12. *Brown v. Canada (AG)*, 2013 ONSC 5637 at paras. 44, 48.

UPCOMING EVENTS

Barrie Wine & Cheese With the Bench
June 20, 2018
Barrie

Litigating Contract Disputes
June 21, 2018
Toronto

Ottawa Trivia Night
June 28, 2018
Ottawa

The Art of Communication and Persuasion
July 11, 2018
Toronto

The Resilient Litigator
July 19, 2018
Toronto

Big Mingle
August 15 , 2018
Toronto
Save The Date

Examination-in-Chief Skills Workshop
August 15, 2018
Toronto

THE ART OF ADVOCACY

Becoming an Effective Advocate: Reflections from RSJ Thomas

Jacob R.W. Damstra, *Lerners LLP*

I recently had the opportunity to hear The Honourable Bruce Thomas, Regional Senior Justice, Southwest Region, Ontario Superior Court of Justice address the following subject: "What I didn't learn in law school about becoming an effective advocate." I thought I might share some of the highlights from RSJ Thomas's remarks here, in hopes that others may find truth and wisdom in them, and benefit from this advice on being an effective advocate as well.[1]

The Regional Senior Justice's remarks were organized around a single, compelling theme: "If you want to become an effective advocate, then you have to take every opportunity you can to advocate." Whether through written submissions or oral advocacy, RSJ Thomas emphasized the importance for young advocates, especially, to test themselves and hone their craft in any forum in which they find themselves: settlement meetings, mediations, examinations for discovery, in Court on motions or at trial, at "learn by doing" CPD programs, in conferences, board meetings, or city council meetings—the opportunities for developing your advocacy skills are endless. With that in mind, RSJ Thomas provided the following tips and tricks for becoming an effective advocate.

On Oral Advocacy

· Remember Supreme Court of Canada Justice Suzanne Côté's "Three Fs" of excellent oral advocacy:

1. Fill—your mind with every intimate detail of your case. The more thoroughly you know the facts and the applicable law, the more persuasively you will be able to advocate.
2. Focus—on the crucial issues in the case. Your goal is to make a complex case simple, not the opposite. Refine your argument to the pertinent points; do not advance 10 arguments when three will suffice.
3. Flex—with the ebbs and flows of the hearing. Do not allow yourself to become so attached to a scripted argument that you are unable to adapt to the changing dynamics of a hearing or questioning from the Bench.

· Speaking of questioning from the Bench, it's important to actually listen to the questions posed by decision-makers. They are asking questions for specific reasons, primarily because they genuinely need help understanding a particular issue. So help them as much as you can and remember they are (mostly) not trying to trick or trap you.

· Engage with the difficult issues. This is where excellent advocates separate themselves from the crowd. It is on the difficult issues that cases, whether at a trial, a hearing, or a motion, are won and lost, but you won't win if you don't engage. To this end, watch the judge to make sure she is following, but also remember that you

are there to advance your client's position, regardless of whether the decision-maker ultimately agrees with it. Don't walk away from your argument just because it is difficult, but don't lose your point just to try and make the judge happy either.

· On this point, don't hesitate to ask the judge for time to consider a point that comes as a surprise. It is better to give the judge the right answer than to make something up on the spot or give no answer at all.

· Be engaged and enthusiastic. Find a way to get captured by the argument, and to capture the judge. You can't do this by simply reciting the materials. Remember the well-known aphorism of Justice John B. Laskin: "Forget the wind up and make the pitch!" Get to the point, make it punchy, and find the compelling theme of the argument to steer that pitch over the plate.

· That said, be mindful of the record. You need to make sure the record reflects your client's position on the point. If it becomes necessary to appeal, you want to have everything on the record that you need to support an appeal.

· Be aware of your pace, volume, and tone. Be mindful of physical and verbal ticks. Judges see everything, and it all impacts their perception of the advocate and of the persuasiveness of the argument.

· On that note, be selective about the passages from law or evidence that you read. If you do read, do so slowly and carefully. We tend to race through long passages, but judges want to fully grasp the argument. If it's worth reading, it's worth ensuring that the judge follows the point.

· Finally, learn to lose with grace. Don't cry, or get angry, or take it personally—all of these things happen; none of them help. You are a professional. You are an advocate. Appeal or move on.

On Written Advocacy

Although discussions of excellent advocacy conjure up images of the tenacious trial lawyer cross-examining a witness, or the professorial appellate advocate persuading a panel of judges to accept a difficult position, I've heard time and again that the importance of written advocacy cannot be overstated. RSJ Thomas reminded the audience that no matter how compelling your oral submissions, your written materials—factums in particular—are decision-makers' first introduction to your case and the last thing they read as they work on their decision. With that in mind, RSJ Thomas offered three simple observations regarding well-crafted written arguments.

· First, write in a point-first style. Not only is it great advocacy, it is also an art form to seamlessly and persuasively condense sometimes immense volumes of materials into four simple steps: (i) state the point you are making or your position on the issue; (ii) identify the rules, legal tests, and principles that govern the determination of that particular issue; (iii) apply the facts and evidence which satisfy those governing principles; and (iv) concisely conclude the point without belabouring it.

· Second, and related, make your materials tight and adopt a coherent and consistent structure. We've all heard many times how important a roadmap of the arguments is as an overview, but often this is overlooked or omitted. Set one out and follow it. And avoid the temptation to think, "if one case on point is good, five must be better." The same goes for exhibits attached to affidavits: even though judges read for a living, they don't get paid by the page, so don't include it if it's not necessary.

· Third, the real skill is in the editing. Edit and refine your materials to the key points and strongest arguments. And don't be careless with the presentation and polish—grammar and spelling are essential to the flow and persuasiveness of a written argument.

On Professionalism

I will also pass on a few short points on professionalism shared by RSJ Thomas.

· Meet your deadlines and be on time for court. Both of these habits reflect your commitment to your practice, your profession, and your reputation—which, as we've all heard so many times, is everything in this profession.

· Be nice to court staff. I could go on with horror stories about treatment of court staff by counsel that is tantamount to conduct unbecoming. But it doesn't have to rise to that level of mistreatment to tarnish your reputation with the Bench (or the Bar). Be nice. Not only is it good for your career, it's also the right thing to do.

· Do not embellish or mislead. No case and no client is worth sacrificing your reputation by trying to slide a known lie or half-truth past the court. Don't confuse being a zealous advocate with being rude or deceitful. It doesn't help you and it doesn't help your client. Judges talk, a lot. And they know who we are, so be careful with what you think you might get away with. They say a reputation takes a lifetime to build, but only a second to destroy.

· Each of the above points boils down to a simple admonition by RSJ Thomas: You are an officer of the court, don't lose sight of that.

And with that, RSJ Thomas pointed to a popular prayer for lawyers, and one of my favourites since I joined the profession, penned by St. Thomas More. It's called The Lawyers Prayer:

> Pray that for the greater glory of God and in pursuit of His justice, I may be able in argument, accurate in analysis, strict in study, correct in conclusion, candid with clients, honest with adversaries, faithful in all details to the faith. Sit with me at my desk and listen with me to my client's tales. Read with me in my library and stand beside me in court so that today I shall not, to win a point, lose my soul.

I'll close, then, by stating: employ each of these tips and tricks to the best of your abilities, but never lose your soul along the way.

Notes

1. Summarized and reproduced with permission of RSJ Thomas, March 22, 2018.

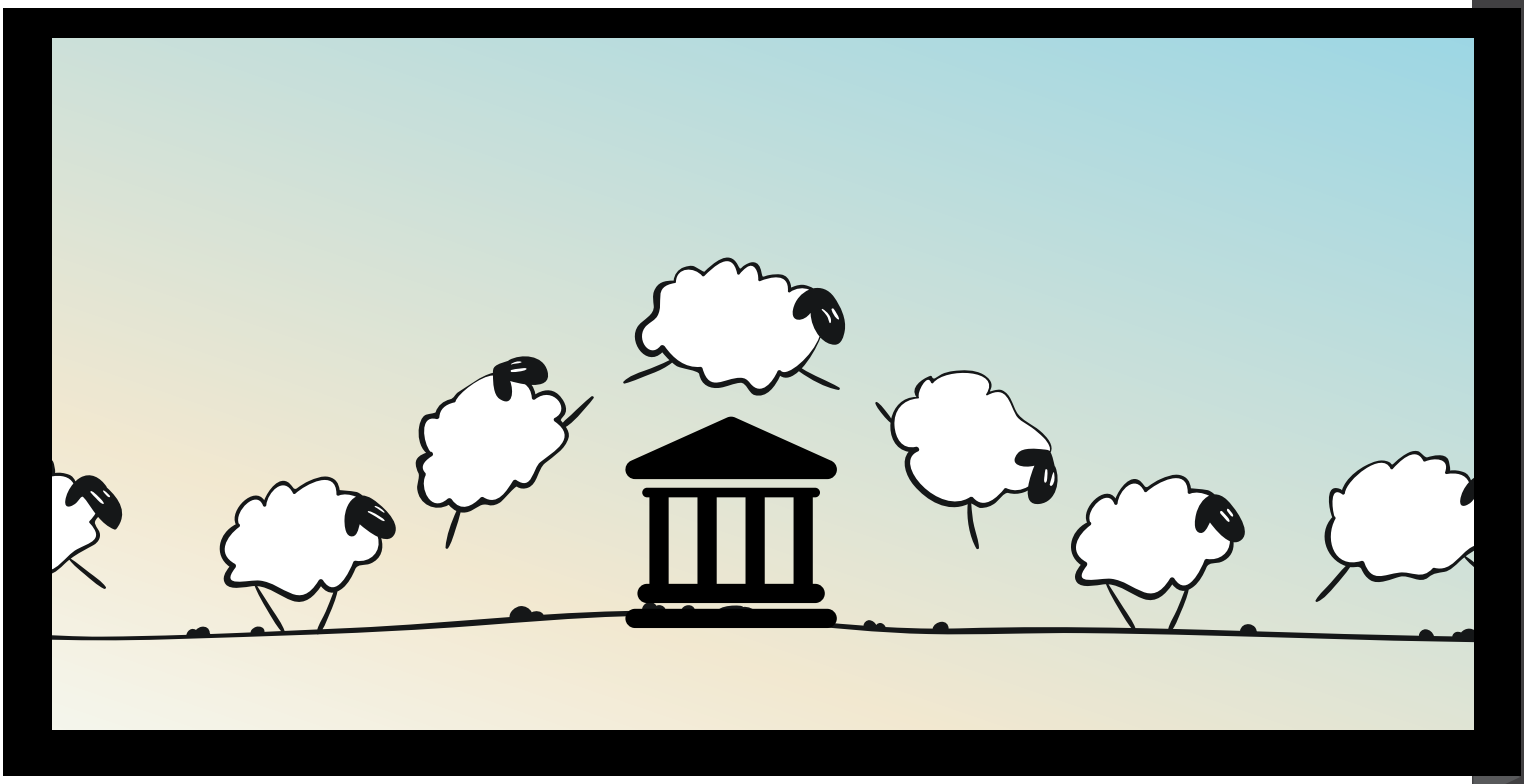
TAS REPORT (VANCOUVER)

Vancouver YASC Report

Jessica Lewis, *Cassels Brock & Blackwell LLP*

On May 16, 2018, young advocates from across Vancouver gathered together at the Vancouver Club to engage in a discussion with three Legends of the Bench and Bar: The Honourable Justice Janet Winteringham (Supreme Court of British Columbia), Geoffrey Cowper, Q.C. (Fasken), and Jeffrey Rose, Q.C. (Rose Family Law). The discussion was moderated by Mila Shah (Peck and Company Barristers) and attendees were treated to words of wisdom, anecdotes of professional highs and embarrassing lows, as well as a few impersonations and accents (well, the latter two were just from Mr. Cowper). There were common themes in the advice provided, including: take on pro bono files, get on your feet as often as you can, and go and watch great trial lawyers in action. However, the three speakers didn't always agree on the answers to the questions asked (such as at what stage of your career you should begin to specialize), proving that there isn't one way to be successful in law.

The legends were kind enough to assure the audience that they have each had many fails in their respective careers—including one botched re-enactment of a slip-and-fall in the Court of Appeal—but emphasized that there are real highs in the life of an advocate. And, as the Honourable Justice Janet Winteringham reminded, you shouldn't be afraid to crash and burn every now and then.



FROM THE KT TEAM

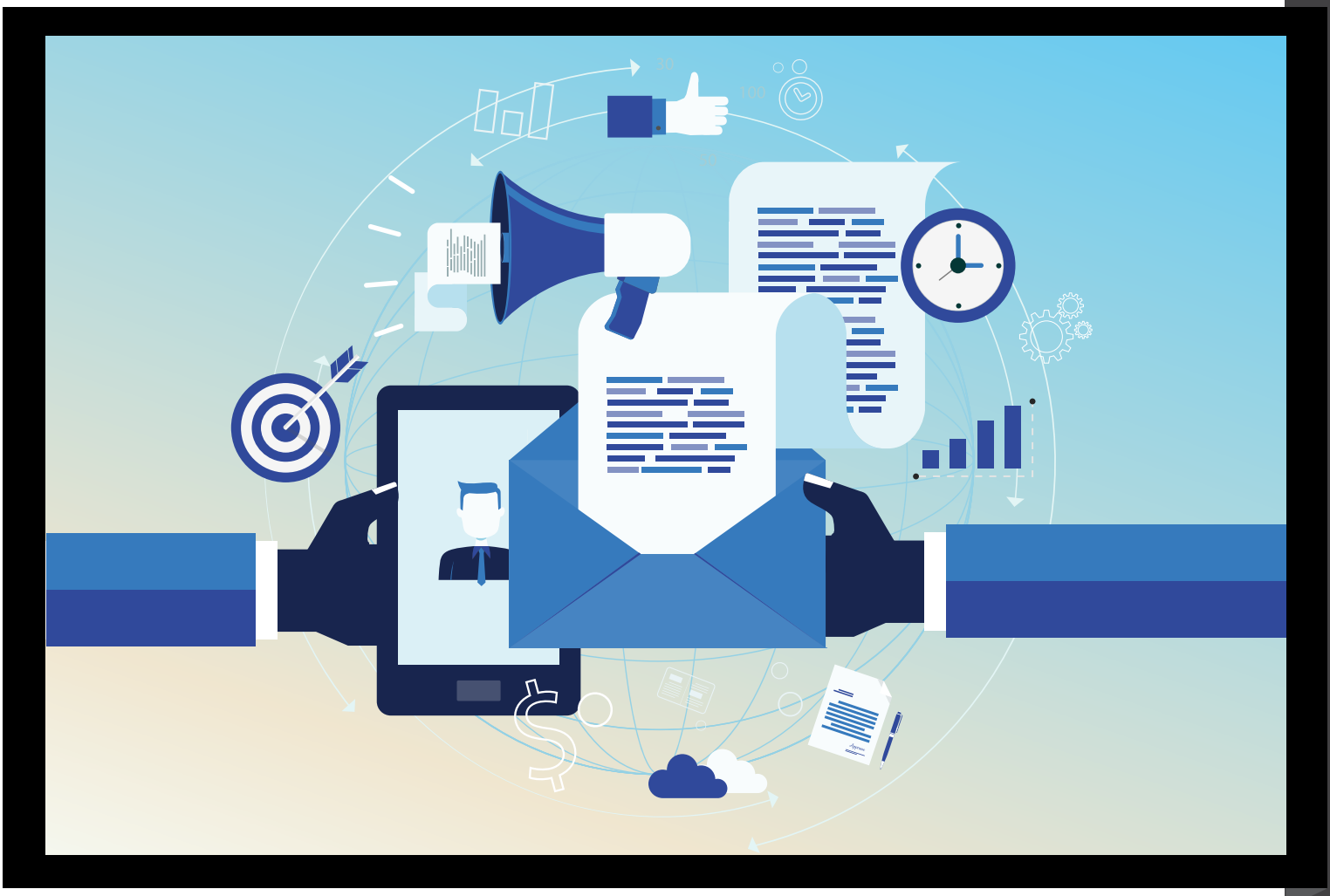
Pssst … You're Losing Them! A Lesson in Trial Advocacy

In 1970–1971, Vincent Bugliosi became one of America's most famous prosecutors when the Los Angeles District Attorney's Office assigned him to try Charles Manson and the Manson Family on first-degree murder charges. Bugliosi recounted the investigation and trial in his 1974 book, *Helter Skelter—The True Story of the Manson Murders* (with Curt Gentry). His account of the trial yields this lesson.

Irving Kanarek represented Charles Manson. In his closing argument, Kanarek's theme was that Manson's only sin was that he preached and practised love. At the end of Kanarek's *second* day of argument, Judge Charles Older warned Kanarek that the argument was putting the jury to sleep. Kanarek continued undeterred.

On his *fifth* day of argument, the jury sent a note to the bailiff requesting caffeine pills for themselves and sleeping pills for Kanarek. On his *sixth* day of argument, Judge Older *again* warned Kanarek. But Kanarek went another *full day* before ending with the declaration "Charles Manson is not guilty of any crime."

The jury convicted Manson of first-degree murder and sentenced him to death. The death sentence was later abolished in California.



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
Louis Century, lcentury@goldblattpartners.com

GoodLife Fitness settles unpaid wages class action. Toronto Star. April 9, 2018. The Toronto Star reported on the settlement of a class action against GoodLife Fitness for unpaid wages. TAS Member Christine Davies of Goldblatt Partners LLP, co-counsel for the plaintiff, discusses the settlement and the changes made by GoodLife since this class action was filed.

Ontario appeal court provides guidance on undue influence doctrines. Canadian Lawyer. April 26, 2018. TAS Member Lionel Tupman, a wills and estates lawyer at WEL Partners, was counsel to the successful respondent in *Seguin v. Pearson*, 2018 ONCA 355. The decision, which Tupman discusses, concerned the test for undue influence that applies to wills.

Supreme Court upholds law restricting interprovincial alcohol transport. Canadian Lawyer. April 19, 2018. In *R v Comeau*, 2018 SCC 15, the Supreme Court of Canada upheld a law restricting that restricted interprovincial trade in alcohol. TAS Member Ewa Krajewska of BLG was co-counsel to the Canadian Chamber of Commerce and Canadian Federation of Independent Business.

Judge clears way for unloved Markham cow statue to be removed Toronto Star. May 1, 2018. TAS member Ben Kates of Stockwoods LLP represented the City of Markham in a case regarding the removal of a cow statue donated by Romandale Farms Ltd.

Interview with Ashlee Barber, *Williams Litigation Lawyers, North Bay Office*

Compiled by Shannon Beddoe, *Martha McCarthy & Company*

1. **Q. Why did you become a litigator or advocate?**
A. I think it is probably because my parents tried to shelter me too much when I was growing up so I was always having to negotiate and argue to get more freedom. Somewhere along the way I must have developed a taste for advocacy.

2. **Q. Which word do you prefer: litigator or advocate?**
A. Advocate

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

4. **Q. What is the latest non-legal book you've read?**
A. *Llama Llama Red Pajama* to my kids every night.

5. **Q. What do you like most about the practice?**
A. It is engaging and I am almost never bored at work. The time flies when I am on my feet making submissions to the Court or when I am examining a witness at discoveries.

6. **Q. What is your greatest extravagance in your everyday life?**
A. Eating lunches out. Even if I pack a lunch I usually eat it all before 9 am. I am hungry all the time.

7. **Q. Which living lawyer do you most admire?**
A. Katie Black because she used her skills as a lawyer to change the world. She co-founded the Refugee Sponsorship Support Program which gives pro-bono legal services to the refugee sponsorship community and has over 1000 lawyers.

8. **Q. What would you consider your greatest achievement?**
A Finishing a half-marathon in minus 30-degree weather.

9. **Q. How would your colleagues describe you?**
A. I hope they would say I am skilled, hard-working, and someone they enjoy having lunch with.

10. **Q. What is your favorite case?**
A. *Mustapha* v. *Culligan*, the fly in the bottle case. It is a really well-reasoned decision and I think the line was drawn in the right place. That and the facts are so memorable. You couldn't make this stuff up.

Continued on page 13

INTERVIEW CONTINUED

11. **Q. From whom have you learned the most about the practice of law?**
A. Working closely with Eric Williams for years has been instrumental. I had the opportunity to junior and co-counsel on a number of trials and appeals with Eric. He never misses a teaching opportunity, even when things get hectic. I learned not only the "how" but the "why." Because of the skills I learned from Eric, I was well prepared to fly solo at my own trials, summary judgment motions, and appeals when the time came.

My favourite advice he gave me was that you can beat even the most seasoned opponent with enough effort.

12. **Q. If you weren't a lawyer what would you be?**
A. A sommelier. I have a diploma in Sommelier Fundamentals that I chipped away at over the years. I currently offer my services pro-bono and pride myself on being able to convert non-wine drinkers into oenophiles.

13. **Q. Who or what is the greatest love of your life?**
A. A three-way tie between my husband Mike, my daughter Avery and my son Miller.

14. **Q. What is your most distinctive characteristic?**
A. In terms of my practice, probably my even temper. In terms of my physical characteristics, definitely my clumsiness. In 8 years I still haven't mastered the art of walking while pulling a barrister bag. I can count the number of times on one hand that I've made it through the doors of my office without catching my bag on the doorframe.

15. **Q. What should people know about the life of a litigator in North Bay?**
A. To any young lawyer who was born and raised in the north and thinks that you have to move to a bigger city to get experience as a litigator, you are dead wrong. Young lawyers in the north have more opportunity to hone their litigation skills early on in their careers because the law firms are smaller and the courts are less backlogged. There is ample work for ambitious young litigators, whether it be at one of the many top caliber law firms, or as a sole practitioner. Another great perk about practising in North Bay is the ample parking.

WELCOME CAROLINE YOUDAN

It is with great joy that *Keeping Tabs* welcomes its new Editor, Caroline Youdan! Aside from being easygoing, kind, and approachable, Caroline is a partner at Fasken's Toronto office, having previously worked for a major international Manhattan-based firm *and* having clerked for Justice Abella at the Supreme Court of Canada.

Keeping Tabs is especially delighted because not only is Caroline an excellent and accomplished advocate, but she's also a former Associate Editor at *Toronto Life*, and was even a proofreader for a major publisher.

Please join us in a warm *Keeping Tabs* welcome for Caroline as its new Editor. Importantly, if you have any article ideas or submissions please contact her at cyoudan@fasken.com -DC

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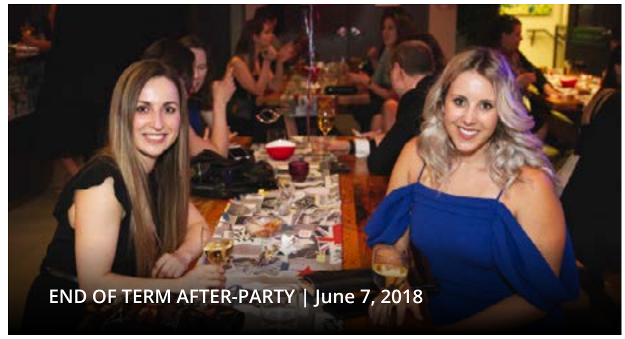

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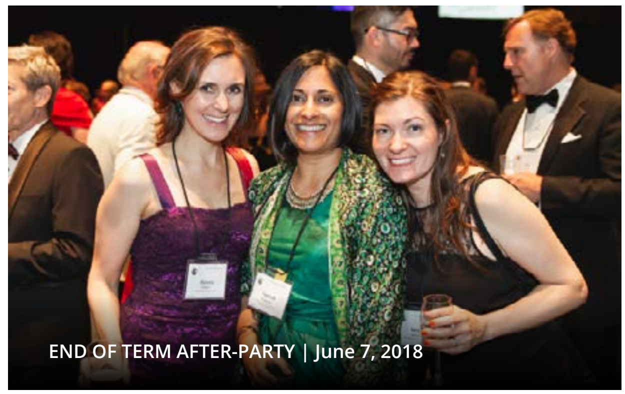

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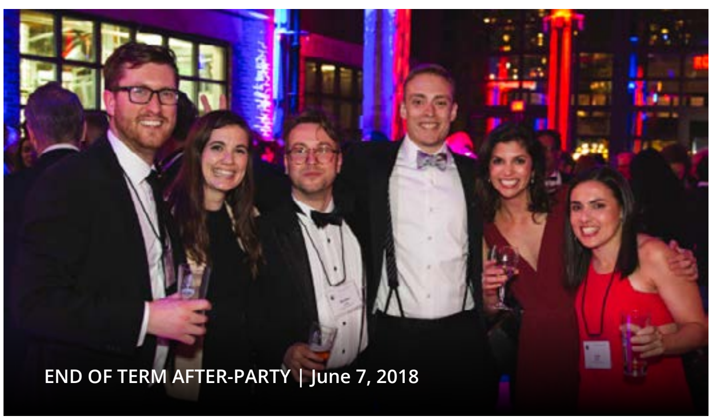

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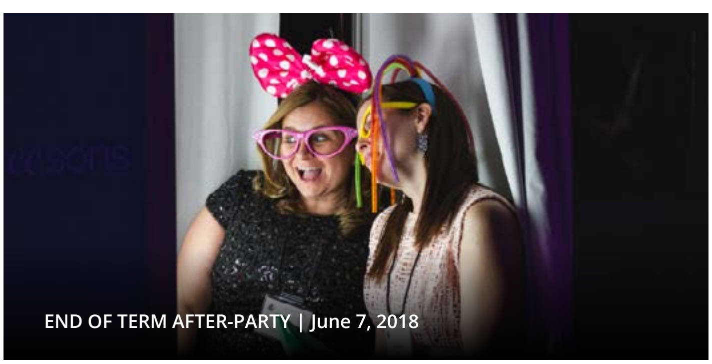

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