



Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

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CHAIR CHAT



BY: YASHODA RANGANATHAN

As YASC's Co-Chair Daniel Naymark mentioned last month, my son Madhava recently came into the world. As I commence a year long parental leave and as the holiday season approaches, I have many reasons to reflect—and more time to do so now, while holding a sleeping baby who refuses to be put in his bassinet, than in the recent past. I also have more time to monitor social media on my iPhone. (Feel free to ask me to do anything that can be done with one hand!).

I find myself thinking about how young advocates today likely view the relationship between family, leisure time and work differently than previous generations. Perhaps the view of young advocates today cannot be summed up by the term “work–life balance”. It is more nuanced, varied and will continue to evolve as young advocates find their way forward and workplaces evolve to accommodate this changing tide. It occurs to me that this is only one of the many aspects of practising law that might be re-envisioned by our generation.

If you are involved in or come across material of relevance to young advocates (advocates who are ten years of call or fewer) share them with our community of young advocates on social media with the #YoungAdvocates. If you include @Advocates_Soc, The Advocates' Society will retweet your post.



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.





BY: GEMMA HEALY-MURPHY,
ARTICLING STUDENT,
ROGERS PARTNERS LLP.

Being Santa Claus is a risky business. Shimmying down millions of chimneys can't be easy, even if only for one night a year. This has not escaped judicial notice. In 1925, the Ontario Supreme Court (now the Superior Court of Justice) first recognized the risks that Santa faces:

I cannot think of anyone who has so consistently and persistently followed a definite occupation, or for so long a time as Santa Claus; and he, as well as any one, may be taken to illustrate the distinction between occupational and non-occupational hazards within the meaning of an accident insurance policy. Now if, upon a Christmas Eve, as he heroically strives to bring gladness into every home, a chimney coping should give way, and, falling to the ground, Santa Claus is seriously disabled, or if he should have "a dreadful fall" in ascending or descending an ill-built chimney in some other home, or if, through the crass negligence of a thoughtless parent, the hearth fires are left burning on Christmas Eve, and the picturesque raiment of "the grand old man" is consumed, and his classically magnificent beard sizzled to the size and semblance of a mere goatee (all of which world-circling disasters may Heaven forbid!), these accidental happenings I would solemnly adjudge as hazards of Santa Claus' occupation, and exempted hazards within the meaning of an accident insurance policy framed as the policy here is.¹

So what would happen to Old St. Nick

if he were injured on the job? Suing for damages for perpetual loss of income and costs of future care will not be his only option!

We're also concerned that Santa's red nose suggests he shouldn't be operating a vehicle. And his flagrant breach of privacy laws is even more worrying. What if an elf strike gave him no end of labour and employment issues?

We're confident that if Santa was forced out of work for these reasons or others, he could avoid personal bankruptcy. Santa, never fear, your supply of milk and cookies won't end that quickly. If you don't know what you want to be when you grow up, here are our top tips.

A Jolly Judge

Santa already judges the entire world in one day, so think of what he could do with a year behind the bench! Surely deciding if billions of kids are naughty or nice more than qualifies him for the job. But Santa, you might need to order more coal—it's a big, bad world out there. At least one judge has been jealous of Santa's skills.

In the course of your submissions to me, you expressed the hope that I could be Santa Claus; I would sometimes dearly like to be Santa Claus but I have to remind myself that I am a judge for all of the people all of the time.²

A Plump Process Server

Are you fighting against the clock to serve those rush motion materials? You know who to call! With reindeer more rapid than eagles, Santa Claus and his sleigh move faster than the speed of sound. Maybe if this defendant had Santa's number, he might have been more successful before the court.

According to the affidavit of service, an attempt at personal service was made in respect of each of the 115 corporate defendants located at a wide variety of addresses in locations throughout Ontario over only three days. According to the affida-

vit, Mr. Frasko personally attended at 115 different addresses ranging from the Ottawa to Chatham, Hamilton to Niagara Falls; Scarborough to Burlington and numerous points in between. [...] While Santa Clause [*sic*] has perfected the art of visiting millions of homes in a single night, Mr. Frasko's affidavit of service makes no claim to having enlisted such assistance in effecting such a miracle of personal service.³

A Merry Mailman

By reputation alone, Santa Claus could possibly be the most over-qualified mailman there is. I would like to see a mailman who can fling a sack on his back better than Old St. Nick. Just remember Santa, use the letterbox, not the chimney! Perhaps this fellow might have had more luck if Santa had received this letter and delivered it to the correct address.

If the Applicant had sent the notice to the Respondent "c/o Santa's Workshop, North Pole" the conclusive deeming provision in paragraph 6 of the lease would be of no avail. That provision can possibly apply only if the notice is sent to the address agreed on. If the notice is sent to the wrong address the date of service must be when in fact the Respondent receives the notice.⁴

How would Santa survive if he were to get the sack (or the boot)? If nothing else, "Santa Claus is Comin' to Town" will show any prospective employer that Santa is detail-oriented (he makes a list and checks it twice), reliable (he's gonna find out who's naughty or nice) and generally omniscient (he sees you when you're sleeping, he knows when you're awake).

With skills such as these, Santa, you should easily bounce back from any potential litigation issues.

¹ *Graham v. London Guarantee & Accident Co.*, [1925] 2 D.L.R. 1037 at pg. 5 (Ont. Sup. Ct.).

² *R v. Tom*, [1993] O.J. No. 3222 at para. 19 (Ont. Gen. Div.).

³ *Frasko v. Saturn 121, Inc. et al.*, 2015 ONSC 1535 at para. 4.

⁴ *Murray Hill Developments Ltd. v. Gem Steel Edmonton Ltd.* (1985), 60 A.R. 354 at para. 74 (Q.B.).

YASC EVENTS



Young Advocates filled Pravda Vodka Bar for the last YASC Pub Night of 2015



The 1st Vancouver Pub Night was a success!



Toronto Pub Night



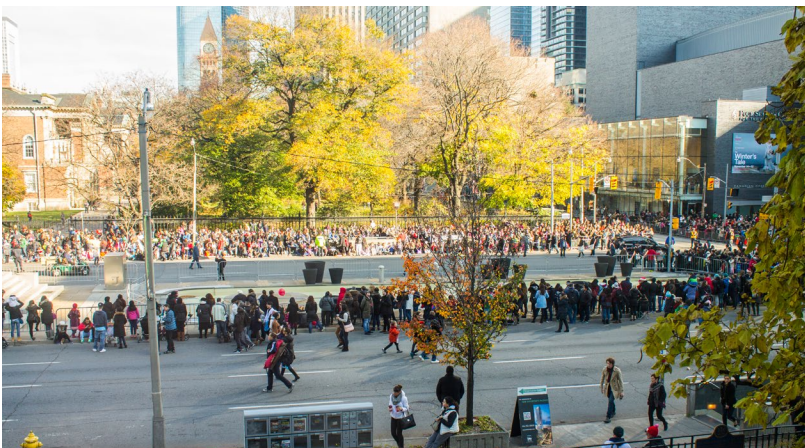
Toronto Pub Night



Toronto Pub Night



Advocates chat at Thunder Bay Pub Night



Great view of the Parade from the warmth of Campbell House @ YASC Santa Claus Parade Party



**Daniel Bach, Siskinds LLP
AKA Santa Claus, North Pole LLP**



What's YASC talking about?



Morgan Sim @morganmsim

Family selfie at the @Advocates_Soc 's #SantaClausParade party. Thanks @emilycslawrence for organizing! #TOSanta



Advocates' Society @Advocates_Soc

3rd annual mentoring session at SDLA Colloquium. #colloquium2015



Erin Durant @ErinDurant42

Two events, one night. Had a great time at the @Advocates_Soc pub night. See you all again at Tremblant!



Ben Kates @b_kates

Vancouver lawyers check out #YASC's first Pub Night in your city! What do you mean none of you are following me?



Chris Horkins @chorkins

Great time ringing in the holiday season with @Advocates_Soc at #YASCpubnight

Nisha Anand, Norton Rose Fulbright Canada LLP

BY: KATE MCGRANN,
Crawley MacKewn Brush LLP



1

WHY DID YOU BECOME A LITIGATOR OR ADVOCATE?

To be honest, I fell into this profession in much the same way as I have fallen into most other things—by happy accident. But once I realized I was going to be a lawyer, litigation/advocacy was the obvious choice.

I was born a zealous advocate for almost any cause I don't find offensive. I was always that kid in the playground who stood up for other kids, whether they liked it or not. I have also always enjoyed toying with the art of persuasion. I revel in being able to convince people of things, and the more absurd, the better! Besides, it's the only profession where a having big personality, strong opinions and the audacity to voice them, regardless of disinterest and/or disengagement, is actually an asset. You know what they say about playing to your strengths

WHICH WORDS OR PHRASES DO YOU MOST OVERUSE AND UNDERUSE?

2

What word do I overuse? Probably the word "great!" Note the exclamation mark—that's important. I use it without even thinking in response to the colleague who offers me a polite "how are you?" as we pass each other in the hall, leaving the poor person a little jarred at the over-enthusiasm and wondering what I have to be so great about. I use it when I receive work product from a fellow associate before I've even read it, because I love seeing (or imagining, if it's via e-mail) the proud smile that often results. The comments that follow may suggest otherwise, but what's the harm in offering someone a pat on the back for getting the job done, even if not particularly well? I use it a lot, and more than just with reference to great things.

3

WHICH TALENT WOULD YOU MOST LIKE TO HAVE?

Is the ability to become invisible a talent or a skill? If it's the former, that's my choice. If not, then I'd like to learn how to breathe fire. Then when I'm so mad I feel like I could spit fire, I can actually do it. Imagine the respect I'd garner amongst my colleagues!

IF TRADEMARK LAW WAS ONE OF THE GOLDEN GIRLS, WHICH ONE WOULD IT BE AND WHY?

4

Great question! Like any good lawyer faced with a challenge at a big, Bay St. firm, I went to one of our many articling students who are much smarter and wittier than me for the answer. I was not disappointed. She said, without hesitation, that it had to be Blanche—because Blanche is the best branded of the Golden Girls, hands down. While her Southern Belle "branding" is a little dated, I thought it was a really good answer. So, there it is. Big shout out to Jacqueline Byers for lending me her brain for such frivolity!

5

WHAT IS THE BEST ADVICE ANYONE EVER GAVE YOU?

Don't be a lawyer?

Nah, I'm kidding. I think the best advice anyone has ever given me is that I should choose to be happy, because happiness is a choice. I have, and it works! Now, if only I could remember who to credit for that great advice



**YOUNG ADVOCATES:
AVOID MALPRACTICE
CLAIMS!**

IAN HU, COUNSEL, CLAIMS PREVENTION
AND PRACTICEPRO @ LAWPRO

Young advocates face unique challenges. Many of you are in the midst of discovering your brand as a lawyer and perhaps your place in life. During this phase of your career you are working hard, developing meaningful relationships, and putting the bulk of your energy into mastering the art of law. Part of this is learning to avoid malpractice claims. Let's talk about some of the most common sources of claims.

Tickle, tickle, tickle

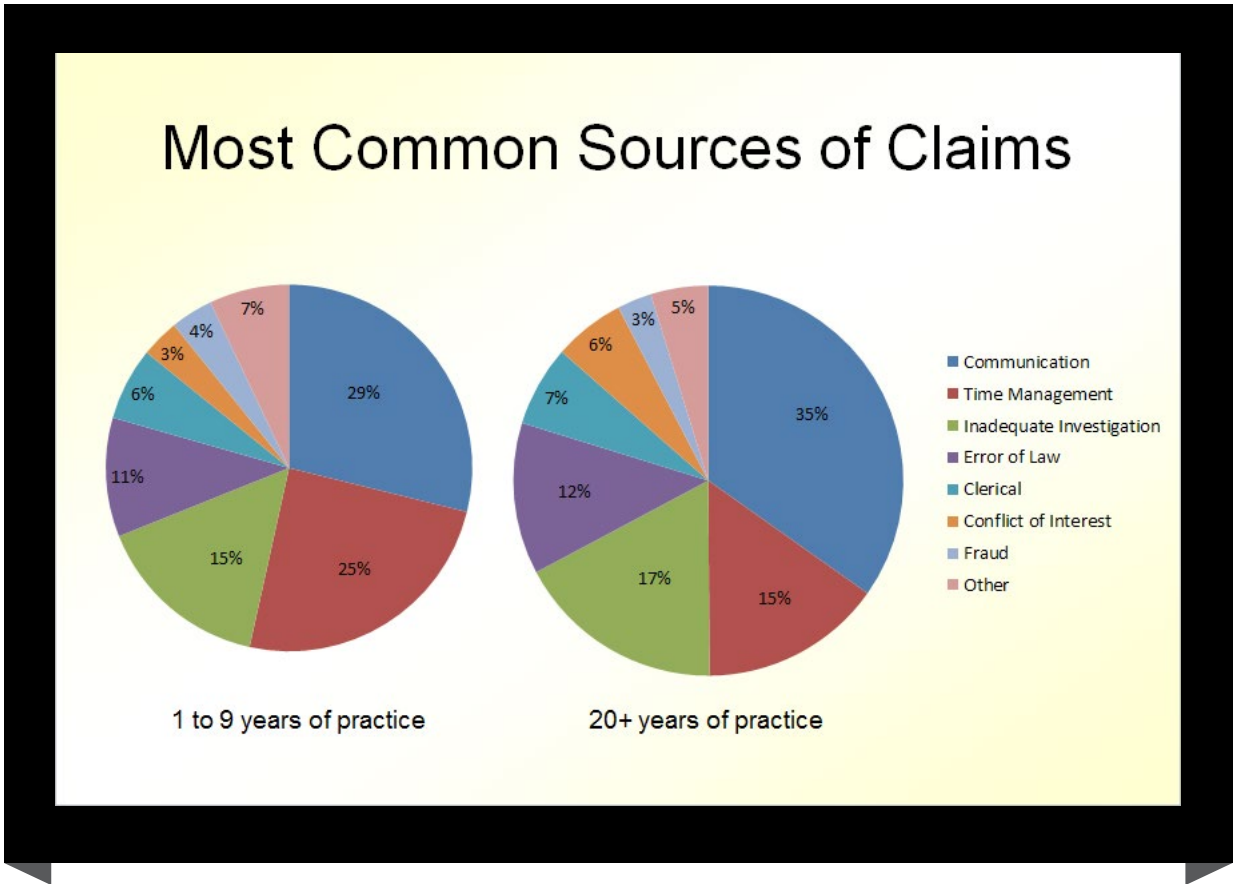
In contrast to experienced lawyers, young lawyers face a disproportionately large amount of claims related to time management (see pie chart). Such claims arise when limitation periods are not met, deadlines are missed, and cases are administratively dismissed due to delay under Rule 48.

Time and time again these preventable claims arise. An effective tickler system can help prevent limitation periods from slipping by. The tickler system should tickle both the lawyer involved with the file and the law clerk for redundancy. Deadlines are missed when litigation steps are not diarized. It helps to tickle not only the limitation date, but also the dates each of the litigation steps are expected to be done. Avoid "litigation by letters". If your discovery has not been arranged in 6 months because opposing counsel has not returned your letter, then that is not a good reason for delay. Diarize when you expect steps to be completed, and if they haven't been done in the expected time, take action with a phone call, another request letter, or, if need be, bring a motion.

LAWPRO has also designed the Rule 48 Transition Toolkit to help you prevent administrative dismissals, especially in light of the recent revised law. All new files will be dismissed within 5 years without notice. The best way to prevent this is to move your files along in a timely manner. Think about setting a matter down once discoveries are complete. I recommend LAWPRO's Rule 48 Transition Toolkit to you. It can be found at practicepro.ca/Rule48.

Know your file

Cases wind their way into the black hole of cases never-touched-until-it's-administratively-dismissed often because the lawyer has failed to assess the case properly.



Cases that are worth a minimal amount or have difficult liability or damages issues that are not dealt with can be put into the “do-this-later” pile, never to be found again. The duty to the client doesn’t stop just because a case is not worth much or the difficulties are hard to overcome.

Manage Your Workload

Overwhelmed by work? This is an opportunity to either manage your time properly and/or discuss with senior lawyers how you can be most effective. If you are losing sleep you are less effective; if you are stressed to the point of exhaustion you are less effective; if you are further isolated you are less effective. The solution may be to lessen your workload, find better ways to relax, or manage your practice better.

Communicate!

Communication errors are the primary source of claims for any lawyer of any vintage. Be careful when discussing the prospects of a case with your client. Throw out a number and that sets an anchor in the client’s mind. If you settle outside of the number, you risk upsetting your client which can in turn trigger a malpractice claim, regardless of the reason. Discuss the strengths and weakness of the case with confidence, but think twice before you give an estimate.

When you settle a claim make sure you communicate all the elements of the settlement to the client: what’s the exact amount of the fees? Disbursements? HST? Protected accounts? Exactly how much will the client receive in his or her pocket?

Good communication is about being honest with your cli-

ent and keeping your client apprised of the steps in a file. Give recommendations and take instructions, and document when you do both. Good documentation can make it easier to defend a malpractice claim.

Conclusion

There’s a lot on your plate. Cultivate your reputation like the hedges in Versailles. You’ll want to keep a clean record, maintain a good brand, and perhaps throw in some artistic flair. For more information on common sources of claims, check out the LAWPRO student magazine, and in particular this article: http://www.practicepro.ca/lawpromag/Common_Practice_Pitfalls.pdf. And if you don’t know about the hedges in Versailles—I recommend checking that out, too, in person.



Upcoming Events

TAS Members Only



President’s Festive Reception (Toronto)
December 10, 2015



Pub Night (Toronto)
January 13, 2016



Pub Night (Calgary)
January 14, 2016



President’s Festive Reception (Ottawa)
January 21, 2016



Mentoring Dinner (Toronto)
February 10, 2016