



# Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

CHAIR CHAT | ADVANCED DO A TRIAL | INTERVIEW | GHOST LAW



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## CHAIR CHAT

### CHAIR CHAT

BY: DANIEL NAYMARK  
NAYMARK LAW



I am guest-authoring this month's chair chat for a very happy reason: Yashoda Ranganathan, Chair of the Young Advocates Standing Committee, recently gave birth to a healthy baby boy, Madhava Henry. Congrats Yashoda!

Like Yashoda's family, YASC is expanding. Over 70 young advocates and students attended our first ever pub night in Calgary on October 1st, and we will be hosting our first Vancouver pub night at Relish Gastropub November 5th. Not to be outdone, YASCers in Thunder Bay and Ottawa have organized pub nights for November 4th and 12th, respectively.

I myself have been on the road, speaking about YASC with people at conferences in Frontenac County, which featured a TAS panel on examinations-in-chief, and Sudbury, where TAS held a mentoring session. I have been struck by the strong and growing interest in YASC programming in both centres.

Not that YASC activities have slowed in Toronto, with programming this fall for young advocates of every stripe. We held a great mentoring dinner on October 15th that focussed on career path alternatives, a subject close to my heart as a young advocate who set up my own practice earlier this fall. On November 15th, we are bringing back a popular family event we ran last year: crafts and cookies at Campbell House coinciding with the Santa Claus Parade. We are also hosting a pub night at Pravda on November 19th.

There is always something to look forward to. For more information on upcoming YASC events, click [here](#). ▀

*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.*



## ADVANCED DO A TRIAL

### ADVANCED DO A TRIAL COURSE: NOT SCARY AT ALL!

BY: AVRAHAM SHARABI  
CLYDE & CO CANADA LLP



Tell me if this has ever happened to you: You prepare for a trial with one of your colleagues. You both split the tasks. One of you opens, one of you closes. There are two witnesses on each side. Each of you conducts one examination-in-chief and one cross-examination. The trial lasts one day. At the end of the day, judgment is reserved. At this point, you and your partner are replaying the events of the day. *Did the opening statement set the tone adequately enough? What could we have done more effectively to get our client's position across during examinations-in-chief? Did we attack the weaknesses in their case enough on cross-examination? Did we hit all the salient points in closing arguments?* No matter how well you may have performed, it is human nature to ask "what if".

Now, imagine the same scenario, except the trial judge does not render a verdict or reserve judgment. Instead, he or she provides you with constructive criticism on your performance at trial, in open court. That is the essence of The Advocates' Society's Advanced Do a Trial course, which I took on September 26, 2015. It was a one-day trial based on a relatively straightforward fact scenario, with just enough balance on both sides not to make the outcome obvious.

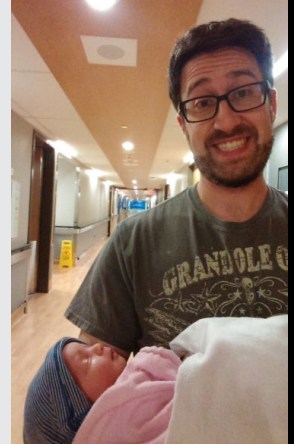
Although my September was busy, completing the course was not the least bit onerous. The documents were less than one inch thick. I didn't need more than a few days to prepare. My partner and I were assigned a mentor, a more senior lawyer, who met with us beforehand to help us with our trial preparation. We spent one day in court and received much-appreciated constructive feedback from a distinguished member of the bench. And, on top of it all, there was an opportunity to schmooze with our fellow advocates, as well as mentors, volunteer witnesses and judges at a relaxing cocktail reception following the program.

There were 16 participants, some of whom had several years of experience. I, myself, have been very lucky practising civil and commercial litigation at Clyde & Co, as I have gained a wealth of advocacy experience. However, after a trial, hearing, contested motion, etc., I have never had the benefit of receiving the trifier of fact's constructive criticism about my performance. I will emphasize the word 'constructive', as no one was looking to embarrass any of the participants. So long as you put the time and effort in, you can expect a fair and honest assessment of your strengths and weaknesses, which is all any of us could ask for.

Most impressive was all the support the program received from judges, other lawyers, law school students, students-at-law, expert witnesses, etc. There were 16 participants, but 32 volunteers. These people took time out of their (no doubt) busy schedules to participate in a program that was going to benefit the 16 participants far more than it would benefit themselves. I cannot stress how grateful I am for their time and efforts. All in all, the Advanced Do a Trial program was a great success and I highly recommend it! ■

### NEWSFLASH!

While dining in a cave in Sudbury (for the SDLA's annual Colloquium) YASC Vice Chair Daniel Naymark got the call - his wife was REALLY in labour and she was en route to the hospital back in Toronto. With no flights going out until 6am, Dan rented a car and 5 hours later Dan arrived at Mt Sinai. 1 hour after that, at 4am Oct 23, 2015, baby boy Naymark was born! Congratulations Dan!



# You laid down the law And chose us!



A big round of applause to... you!

Thanks to you we are a winner of Canadian Lawyer magazine's inaugural 2015 Readers' Choice Awards.

For more information:

Carolyn Seaquist, Partner  
cseaquist@collinsbarrow.com  
647.725.0219

Paul Mandel, Partner  
pmandel@collinsbarrow.com  
416.480.2498



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# Annamaria Enenajor, Ruby & Shiller Barristers

BY: KATE MCGRANN,  
Crawley MacKewn Brush LLP



1

## WHAT ADVICE WOULD YOU GIVE TO YOUNG ADVOCATES ABOUT STARTING AND MAINTAINING A PRO BONO ELEMENT TO THEIR PRACTICE?

*Pro bono* work presents an opportunity to develop skills that will be highly relevant to the rest of your practice. Taking on pro bono cases while at a large firm was how I got started. In that context, pro bono was not only an opportunity to work on issues I cared deeply about, but it also allowed me to take on responsibilities that would not have been available to me for years. My first solo appeal, deposition, judicial review and oral argument were all pro bono. If your pro bono practice accelerates your skill development, it's easier to make a business case for maintaining it long term.

2

## YOU'VE LIVED IN OTTAWA, MONTREAL AND NEW YORK (TO NAME A FEW)—WHAT IS YOUR FAVORITE THING ABOUT LIVING IN TORONTO?

Toronto is home. It's organically multicultural, wonderfully diverse and has incredible Chinese food. New York is also diverse, but to get good Chinese food, I had to go to Queens. And by the time I got there, my stomach had already digested itself.



4

## AS WE LEAVE SUMMER BEHIND (QUIET SOB), WHAT PART OF WINTER DO YOU LOOK FORWARD TO?

Christmas. For me it's the most wonderful time of the year, filled with magic and merriment and Chinese food!

3

## HOW HAS YOUR STUDY OF CIVIL AND COMMON LAW INFORMED YOUR PRACTICE?

Receiving a bi-juridical education has conditioned me to approach legal problems in creative ways. It showed me that there is more than one way to peel an orange. I remember as a first-year law student learning how important the concept of duty of care was to common law negligence and then a week later learning it had no equivalent in civil law. Yet somehow, liability for negligence still exists in civil law jurisdictions. They just found another way to get there. I love finding different ways of getting to where I need to be.

5

## WHAT ASPECT OF THE FEDERAL ELECTION CAUGHT AND HELD YOUR ATTENTION?

Nothing really except its date and the fact that it was called so far in advance. I knew who I was voting for fairly early on. I also have a policy of triaging my news, and many election-related stories either didn't meet the interest-plus-impact-on-vote threshold or merely confirmed my vote, so I gave them but a moment of my attention.

## YOU SUDDENLY FIND YOURSELF WITH THREE HOURS OF TOTALLY FREE TIME—HOW DO YOU SPEND IT??

I don't understand the question. Is my office locked for some reason? Why don't I have remote access to my files anymore? 🐼



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## Upcoming Events



Pub Night  
(Thunder Bay)  
November 4, 2015



Pub Night  
(Vancouver)  
November 5, 2015



Pub Night  
(Ottawa)  
November 12, 2015



Santa Claus Parade  
Party (Toronto)  
November 15, 2015



Pub Night  
(Toronto)  
November 19, 2015

## GHOST LAW

### THE SPIRIT OF THE LAW



GHOST-WRITTEN BY KEEPING TABS' EDITORIAL  
STAFF

For Halloween, we researched the law of ghosts, and found some ghoulish quotes from Canadian case law. Hopefully, you haven't received any decisions this month that started with something like "I have before me a motion to dismiss a motion in litigation that, like the monster in the movie 'Poltergeist', keeps coming back."<sup>1</sup> If you have, now's time for some Halloween fun.

This first one is out of context, because it's such a weird & wild quote:

Central to Mr. Mejia's claim was his assertion that he feared for his life and that of his family, as he had seen three individuals, one of whom was the Ghost, fleeing the scene of a murder. Although he himself had not actually seen who had shot the victim, Mr. Mejia testified before the Board that a security guard and other people in the neighbourhood had witnessed the actual shooting.

Mr. Mejia also stated that he did not approach the police with what he had seen out of fear for his safety, and that he had not testified in Court proceedings against the Ghost for the same reason.<sup>2</sup>

We learned that ghosts are not a latent defect in a home, so buyer beware!

The statement of claim states over and over again that the defect is the existence of a death and or murder at the subject property.

For the purposes of this hearing I have been advised by the solicitor for the defendant that I can read into the statement of claim that there is an allegation that there are ghosts in the building.

There was certainly no evidence presented by the plaintiff about anyone dying in the building whether or not that death was of natural causes or some criminal act.

In Mr. Kramer's affidavit and in his cross-examination he makes it clear that he has never seen a ghost, did not believe there was a ghost and that all conversations about the property being haunted were a joke and were not serious.<sup>3</sup>

You might gather that the defendant won that case.

We also learned that ghosts—especially unlicensed ghosts—are bad appellate counsel:

Three short paragraphs follow which indicate that the appellant in this case retained a "ghost consultant", indeed an "unlicensed ghost consultant", whatever that may be, "who might not follow the

## GHOST LAW cont.

rules to file the application within thirty days after they received the refusal letter." Thus, it is the "unlicensed ghost consultant's fault" that the Notice of Appeal was not properly filed and that nothing was done in response to the IAD's letter dated February 9, 2012.

...

If her "unlicensed ghost consultant" did not comply with the timelines as her present consultant professes, then the appellant was obligated to hire new counsel to take action immediately in the event that she did not wish to represent herself.<sup>4</sup>

That quote is also taken out of context in the Halloween spirit.

Even the Supreme Court of Canada has ghostly case law. *Manitoba Free Press Co. v. Nagy*, held that the following publication was defamatory:<sup>5</sup>

### A NORTH END GHOST.

There is a ghost in the north end of the city that is causing a lot of trouble to the

inhabitants. His chief haunt is in a vacant house on St. John Avenue, near to Main. He appears late at night and performs strange antics, so that timid people give the place a wide berth. A number of men have lately made a stand against ghosts in general, and at night they rendezvous in the basement and close around the haunted house to await his ghostship, but so far he still remains at large.<sup>6</sup>

The Supreme Court seems to have felt strongly about this: "No man possessed of right feelings towards his neighbours should have entertained for a moment any thought of its publication."<sup>7</sup> Yes, this case exists. So think twice about Halloween decorations and their monstrous consequences! ▀

1. *Apotex Fermentation Inc. v. Novopharm Ltd.*, 2001 MBQB 316 at para. 1.
2. *Mejia v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1086 at paras. 13–14.
3. *1784773 Ont. Inc. v. K-W Labour Association, et al.*, 2013 ONSC 5401 at paras. 7–10.
4. *Lam v. Canada (Citizenship and Immigration)*, 2012 CanLII 92727 (CA IRB) at paras. 4, 6.
5. *Manitoba Free Press Co. v. Nagy*, (1907) 39 S.C.R. 340.
6. *Ibid* at 341.
7. *Ibid* at 352–53.



### Call For Nominations

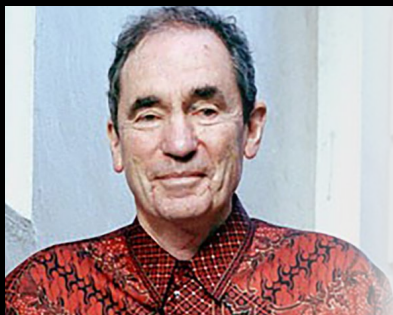


The Arlene Goss award will be presented to a deserving Young Advocate in June 2016.

Click [here](#) for information on candidate qualifications.



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## Dubin Lecture & Reception 2015

To be delivered by the Honourable Albie Sachs

Mr. Sachs is a South African freedom fighter, lawyer, author and professor, who was appointed to the South African Constitutional Court by Nelson Mandela.

Nov. 26, 2015 @ 5:30pm

Toronto

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