



Keeping Tabs

News from The Young Advocates' Standing Committee

Chair Chat | Insurance Law | Spooky Law | Interview | YASC Event Photos



CHAIR CHAT

Ben Kates, *Stockwoods LLP*



Image by @citycourtsTO

"I'm going to become a lawyer so I can be more popular," said no one, ever.

Long the butt of jokes invoking the bottom of the ocean and other unpleasantries, lawyers will never be the darlings of public perception. One of the themes emerging from this issue of *Keeping Tabs* is our professional obligation to take positions, fulfill roles and represent clients that

some will not like. Such is our lot as advocates—"likeability" is hardly a priority in the administration of justice. It's a necessary trade-off lamented by few in this profession.

In "Sweeping Changes Proposed to the Ontario Auto Insurance System," Heather Douglas reviews the Marshall Report, a critical assessment of the auto insurance industry commissioned by the Ontario government. Among Mr. Marshall's recommendations is a reduced role in Ontario's auto insurance system for lawyers. Earlier this fall, [The Advocates' Society provided its perspective on the Marshall Report](#) based on feedback from both plaintiff and defence counsel. In written submissions, the Society acknowledged that there were many issues and recommendations with which it agreed, but emphasized

that "disputes are not being driven by lawyers, but rather by legislation and regulations which have placed claimants in an adversarial process with their insurers." Like it or not, all parties' interests are protected when lawyers are interspersed in an adversarial relationship.

Who will speak for the witches and sorcerers? Our satirical "Toil and Trouble" examines the Criminal Code's soon-to-be eliminated witchcraft position. The Halloween-themed article reminds us that, at least until Bill C-51 passes, someone has to represent those accused practitioners of fraudulent enchantment, conjuration and "crafty science"—never a popular bunch.

Finally, we have *Keeping Tabs'* interview with Laura Scheim—our first interview with a member of the Quebec Bar. Laura is so eminently likeable that I can't help but wonder how many friends she would have if she'd chosen a different line of work.

It ain't easy being an advocate, which is why collegiality, civility and community are so important. Your Young Advocates' Standing Committee is hard at work creating occasions from coast to coast designed to make the Bar feel a little smaller. Our year is off to a busy start, having held pub nights in Toronto, Windsor and London and a trivia night in Sudbury. Stay tuned this fall for Fireside Chats in Calgary, Halifax, Toronto and Sudbury, a Pub Night in Kingston and our inaugural Musical Bingo event in Vancouver. Toronto will also host a Mentoring Dinner, a pub night and, for families, our annual Santa Claus Parade event. For details please check out our [calendar](#). 🍷

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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.





INSURANCE LAW

Sweeping Changes Proposed to the Ontario Auto Insurance System

Heather S. Douglas, *AMR LLP*



The Ontario motor vehicle insurance industry is poised to undergo systemic changes. These changes promise to reduce the cost of premiums—and to potentially reduce the role of lawyers.

In April 2017, the Ontario government released a report titled: “Fair Benefits Fairly Delivered: A review of the Auto Insurance System in Ontario” by David Marshall. The report focuses on the delivery of the tort and accident benefit systems, and envisions the largest overhaul to Ontario’s auto insurance system since 1989/1990.

Marshall contextualizes his analysis by comparing Ontario’s auto insurance system to the systems used in other provinces. Despite having the country’s lowest number of automobile accidents and fatalities per year, Ontario has the most expensive insurance premiums. Ontarians pay about fifty-five percent more than the Canadian average. This amounts to approximately ten billion dollars in insurance premiums each year.

Despite the high cost in premiums, 80% of accident benefit claims take more than a year to settle and incur

high medical costs. The Report states: “No one in the system is actively managing medical care for accident victims ... [Rather] a significant portion of the system has been diverted into a cash settlement system in lieu of care ... [A]bout \$7 billion over five years ... is being paid for competing expert opinions, lawyers’ fees and insurer costs to defend claims—instead of going to treatment of injured parties.”

Marshall attributes these problems to a flawed structure. The system does not promote a timely method of delivering benefits to accident victims. Rather, each key player contributes to the perversion of the automobile insurance system. Marshall states that lawyers working on contingency fees focus on boosting the value of claims rather than securing treatment for their clients. In turn, many accident victims focus on increasing their entitlement rather than addressing their needs.

To combat these structural issues, David Marshall outlines a five-part action plan. First, he recommends that an arms-length regulator be established. The regulator would be empowered to set broad policy goals for auto insurance in the province, and to simplify the regulations to make them easier to understand and apply. (Marshall notes that

this recommendation is already being implemented.)

The second recommendation is to change the way that catastrophically injured people are compensated. "Cash settlements are being drained by having to pay legal fees and, in any case, cash settlements often do not adequately meet the needs of catastrophically injured persons. They need lifetime care as their needs and available treatments will change over time."

The third recommendation is to adopt a care-not-cash approach. Marshall states that the focus needs to shift from the amount of the settlement to medical care. This would be facilitated by the creation of evidence-based programs. For example, investment needs to be made into research for the diagnosis and treatment of neurological injuries. These evidence-based programs would help circumvent disputes about what type

of care is appropriate in each case, allowing treatment to be delivered immediately to accident victims.

To accomplish this, Marshall recommends that a roster of hospital-based independent examination centres be set up to provide diagnoses and prescribe treatments to accident victims. In turn, insurers would be required to provide the treatments prescribed by the examination centres. "The advice given by the independent examination centres should be taken as mandatory in accident benefits and tort disputes and courts should afford these opinions a zone of deference in tort cases."

The fourth recommendation is for lawyers' contingency fees to be made more transparent. It is Marshall's position that lawyers need to be held accountable for the advertisements they make. Additionally, Marshall advocates for a simpler system that can be navigated without the help of lawyers.

The fifth recommendation is to

change the current regime of heavy regulations for the insurance industry. Marshall points to the changing insurance landscape. He notes that advances in technology have enabled new providers to come into the picture. In order to react to this new "threat", he states, insurers should be allowed to introduce innovative products and to compete more freely on price and service.

Marshall recommends that the government take an incremental approach to achieving the five goals outlined above. However, the plan he proposes would constitute the largest overhaul to Ontario's auto insurance system since 1989/1990—an overhaul that could see lawyers playing a significantly reduced role. ▀

The Advocates' Society has raised serious concerns with many of the recommendations in the Marshall Report. Read the submission of The Advocates' Society [here](#).

We know you are a member – but do THEY?

Build your profile and your network by letting your fellow TAS members know who you are and where you are. Take advantage of this new membership benefit by opting into The Advocates' Society membership directory today!

Click here to log on to your member profile to opt-in and voila! Don't forget to upload a photo. And while you are there, opt-in to be a mentor!

Need some help? Click here to give us your consent and we will opt you in.



SPOOKY LAW

Toil & Trouble—Fraudulent Witchcraft

The Editor

Keeping Tabs finds certain sections of the *Criminal Code* charming. Consequently, the editors curse Bill C-51,¹ which will banish s. 365's witchcraft provisions² into the darkest oblivion of Beelzebub's hateful realm to "lie [g]rovelling and prostate on yon Lake of Fire".

Section 365 protects law-abiding Canadians against fraudulent "witchcraft, sorcery, enchantment or conjuration" along with fortune telling and "crafty science".³

Granted, the practical utility of s. 365 fraudulent witchcraft prosecution has fallen to match 2017's eye-of-newt and toe-of-frog sales. Somehow it has escaped being burnt at the stake for over three decades ... or at least since its abolition was recommended in the Government of Canada's February 1987 *Report of The Canadian Sentencing Commission*.⁴ It has hidden at the back of the broom cupboard with other batty laws.⁵

What latter-day Cotton Mather was behind this provision in the first place is a terrible mystery known only unto the Weird Sisters. At least, that's who the Ministry of Magic referred us to. The Sisters' fall schedule has not allowed them to conjure this Hansard for our dear readers. It should, of course, be emphasized that *honest* witchcraft has never been illegal since the *Criminal Code* was introduced in 1892.

The creepy-crawly news is that this provision is not mere *hocus-pocus*, and that Crowns have wielded this wand. On

October 29, 1987, the Supreme Court of Canada released *R. v. Labrosse*, the leading case on fraudulent witchcraft—Halloween was on a Saturday that year. In that case, the accused "testified to the fact that she had enjoyed, since her childhood, special powers to the predict the future."⁶ She had been caught in a sting by Montreal police for accepting \$15 to tell a fortune. Both the Quebec Court of Appeal and the Supreme Court of Canada agreed that the *mens rea* requirement had not been proven.

Again: What possessed the Montreal police to run a sting on a fortune teller is beyond divination.

Even more bizarre is that western suburbs of Toronto have yielded 3 prosecutions in this area since 2010. News reports show that men in Brampton and Mississauga have been accused of being veritable Voldemorts:

"Brampton man arrested for allegedly practicing witchcraft"—*The National Post*, Sept. 15, 2010—"Police say Yogendra Pathak, 44 was 'putting it out there that he had the ability to practice magic and by doing that he could solve people's problems ... for money.'"⁷

"Man Charged with pretending to practice witchcraft"—*The Toronto Star*, Nov. 28, 2012—"The rituals were described as terrifying experiences, involving bloodstained eggs, worms and black coal.

"A 56-year-old Brampton woman says she was told she was under a 'curse' and these were the magical elixirs to heal her. The 'spiritual cure' cost her more than \$14,000 she didn't have."⁸

"Man charged with witchcraft pleads guilty to one count of fraud"—*The Toronto Star*, April 6, 2017—"A man who calls himself 'Master Raghav' has been charged with witchcraft, extortion and fraud after allegedly charging a Toronto man \$101,000 to remove an evil spirit."⁹

After agreeing to pay \$67,100 in restitution, Master Raghav left Canada with a promise not to return for 3 years.⁹

Master Raghav (aka Murali Muthyalu) advertised a "100% guarantee" on his ability to "remove black magic evil spirits." A 99% guarantee might have been more prudent. The Master's claim of being able to solve "court problems etc." through magic has us nearly spellbound with interest.

The suffering of the alleged complainants and the stress of criminal

charges is real enough. But the headline here is: Witchcraft in 21st century Canada is kind of a thing. The all-muggle editorial staff at *Keeping Tabs* is enchanted.

For an academic analysis of this provision, see "Modern Law, Modern Hammers: Canada's Witchcraft Provisions as an Image of Persecution" by N. Bakht and J. Palmer.¹⁰ ■

Notes

1. Canada, Department of Justice, *Bill C-51, An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act*, online: The Department of Justice <<http://www.justice.gc.ca/eng/csj-sjc/pl/cuol-mgnl/c51.html>>.
2. *Criminal Code*, R.S.C., 1985, c. C-46, s. 365.
3. *Ibid.*
4. Canada, The Canadian Sentencing Commission, "Report of The Canadian Sentencing Commission" (Ottawa: Minister of Supply and Services Canada, 1987) at 35.
5. See e.g., *Criminal Code*, R.S.C., 1985,

c. C-46, ss. 163(1)(b), 296.

6. *R. v. Labrosse*, [1987] 1 S.C.R. 310.
7. Johanna Ruocco, "Brampton man arrested for allegedly practicing witchcraft" *The National Post* (15 September 2010), online: <<http://nationalpost.com/posted-toronto/brampton-man-arrested-for-practicing-witchcraft>>.
8. Curtis Rush, "Man Charged with pretending to practice witchcraft" *The Toronto Star* (28 November 2012), online: <https://www.thestar.com/news/gta/2012/11/28/man_charged_with_pretending_to_practise_witchcraft.html>.
9. Hina Alam, "Man charged with witchcraft pleads guilty to one count of fraud" *The Toronto Star* (6 April 2017), online: <<https://www.thestar.com/news/gta/2017/04/06/man-charged-with-witchcraft-pleads-guilty-to-one-count-of-fraud.html>>.
10. Natasha Bakht and Jordan Palmer, "Modern Law, Modern Hammers: Canada's Witchcraft Provisions as an Image of Persecution" (2015) 35 *Windsor Review of Legal and Social Issues* 123 (Slaw).






Interview with Laura Scheim, Associate *Osler, Hoskin & Harcourt LLP*

1. **Q: Why did you become a litigator or advocate?**
A: I always felt that my destiny was to be an advocate. I spent my childhood fiercely debating my older siblings and parents on any topic imaginable.

 2. **Q: Which word do you prefer: litigator or advocate?**
A: I prefer the word "advocate". I think that it implies passionate representation of your client rather than a desire to quibble!

 4. **Q: What is your year of call?**
A: 2014.

 5. **Q: Which living lawyer do you most admire?**
A: Robert Raizenne, a senior tax practitioner I work with, who is also my mentor and a tax lecturer at my alma mater, McGill Law. He is brilliant and incredibly generous with his intellect. I hope to emulate him in developing law students and young practitioners as my experience develops.

 7. **Q: What is your greatest extravagance in your everyday life?**
A: My attempts to keep up with the ever-growing fantastic Montreal restaurant scene.

 8. **Q: What would you consider your greatest achievement?**
A: I am an extremely devoted aunt, sister, daughter, and wife, and take the most pride in my family and family relationships.

 9. **Q: What is the latest non-legal book you've read?**
A: *Americanah* by Chimamanda Ngozi Adichie.

 11. **Q: How would your colleagues describe you?**
A: A team player who always tries to keep the mood light by cracking a few jokes.

 12. **Q: Who or what is the greatest love of your life?**
A: My husband, Jordan, with whom I share the other love of my life, hockey.
3. **Q: What do you like most about the practice?**
A: I love the teamwork. Working at a big firm like Osler, nothing is ever completed alone. I like developing an idea and consulting with others to produce the most refined argument possible.

 6. **Q: What is your greatest fear in practice?**
A: Before a big court date or deadline, I always have nightmares of the metro breaking down or other forces beyond my control taking over and preventing me from meeting my deadline or getting to court. As a result, I try to do everything well ahead of schedule and you can always find me having a coffee at the courthouse a few hours early on the day of a hearing.

 10. **Q: What is your favourite case?**
A: *Syndicat Northcrest v. Amselem*, where the Supreme Court split 5-4 on a question of the state's power to regulate religious freedom. With religious freedom becoming an increasingly politicized issue, it is important to remember that this is a topic on which reasonable and educated people can and often do disagree.

Continued on page 5

13. Q: Which talent would you most like to have?

A: In a dream world, I would be fluent in every language under the sun, rather than only three! I am fascinated by languages and would love to enjoy literature in other languages, and to be able to travel all over the world and communicate with locals.

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

A: My father, who practiced for forty years and is now retired.

16. Q: If you weren't a lawyer, what would you be?

A: A CrossFit coach or an aspiring CrossFit competitor.

15. Q: What is your most distinctive characteristic?

A: My small stature. But as William Shakespeare wrote: "And though she be but little, she is fierce."

17. Q: What is your favourite drink?

A: Diet Coke, on ice. From a fountain, not the can! 🍷

UPCOMING EVENTS



Prosecutors' Network Networking Reception

November 2, 2017
Toronto



Gathering the Best Evidence for your Case

November 3, 2017
Toronto



Young Advocates' Pub Night

November 15, 2017
Toronto



Célébrons la plaidoirie / Celebrating Advocacy

November 16, 2017
Montreal



Fireside Chat on Advocacy (Halifax)

November 16, 2017
Halifax





KINGSTON PUB NIGHT- October 19, 2017



TORONTO PUB NIGHT- September 7, 2017



TORONTO PUB NIGHT- September 7, 2017



SUDBURY FIRESIDE CHAT- October 13, 2017
Speakers: The Hon. Justice M.J. Lucille Shaw and Susan Stothart



CALGARY FIRESIDE CHAT- October 24, 2017
Speakers: The Hon. Clifton D. O'Brien, Q.C.
& Anne Kirker, Q.C.



SUDBURY TRIVIA CHALLENGE - WINNERS "WEAVER SIMMONS 1"
September 14, 2017

