



Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

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CHAIR CHAT



MENTORING DINNERS: A UNIQUE OPPORTUNITY TO MINGLE WITH SENIOR ADVOCATES IN A LOW PRESSURE SETTING

BY: Yashoda Ranganathan

I became a Junior Member of The Advocates' Society when I was called to the bar in 2009. One of the first Society events I attended was a Mentoring Dinner that year. At the dinner, I was delighted to find that, not only did I share similar challenges and concerns with my peers, but that the mentors (all distinguished members of the advocacy community) remembered well the challenges they experienced as junior counsel, and generously and candidly shared their wisdom over a tapas style dinner in the cozy Campbell House Ballroom. I was hooked and became a regular

attendee at the Mentoring Dinners, which greatly expanded my professional network, improved my confidence, enriched my career as an advocate and my involvement with the Society.

If you are in your fourth year of practice or above and have never been to an Advocates' Society Mentoring Dinner (or even if you have) I recommend that you check out "The Next Episode" taking place at Campbell House on October 15, 2015. The focus of the dinner will be on the pressure cooker that starts to build when you are no longer a novice, but might not have determined what your path will be, or even given much thought to what you want it to be.

The dinner itself will be nothing like a pressure cooker. The atmosphere is informal and the mentors rotate around in pairs—like speed dating—which makes chatting with senior advocates and a small group of your peers low pressure, whether you are a born schmoozer or an introvert who finds every social interaction painful.

For more information, 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.



Upcoming Events



Pub Night
(Calgary)
October 1st, 2015



Mentoring Dinner
(Toronto)
October 15th, 2015



Pub Night
(Thunder Bay)
November 4th, 2015



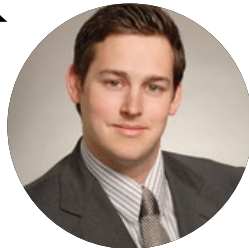
Pub Night
(Vancouver)
November 5th, 2015



Pub Night
(Ottawa)
November 12th, 2015

INVESTING IN YOUR CAREER

The Pursuit of Excellence in Advocacy



BY: MATTHEW SUTTON, *Laxton Glass LLP*

At the beginning of my career, when everything was new, the learning curve was steep. Any time I went to court I was excited to be there, happy to participate (even for motions on consent!). It was exciting just to get in front of a judge and don my robes.

As time went on, however, more and more files got put on my desk and my priorities became less about getting in front of a judge (the reason why we all become lawyers in the first place, right?), and more about meeting targets, making clients happy, and making partner (not there yet!). The focus, therefore, became less about how to hone and practice the skills required to be a successful trial lawyer.

How do you learn trial skills when civil trials are now so rare?

I realized that to best serve my clients I needed to improve my persuasion and advocacy skills. And experience was the only way to meet this goal.

As a frustrated 2007 call, and after settling on the eve of a 4-week jury trial in March 2015, I decided to participate in [The Advocates' Society Civil Litigation Skills Certificate Program](#). I was able to select 5 seminars/workshops

from a variety of options and, so long as I completed the 5 programs within 3 years, I would obtain a certificate recognizing my commitment to advocacy skills training.

I decided to sign up so I could practice and improve my trial skills. What I got was far better: I participated in mock trials, gave openings, examined witnesses in chief, cross examined witnesses, entered evidence, and gave closings (both as a plaintiff and as a defence lawyer). Even better, I did this in small groups in front of Canada's best trial lawyers and judges. I found out I had much to learn about what it takes to run an effective trial, and gained invaluable insight that would have really helped me on that 4-week jury trial had it gone ahead.

While the lessons I learned from participating in these programs are too numerous to list here. Let me provide you with the one golden nugget that stands out: I must continue to invest in my career by improving my trial skills, because learning never stops. Every instructor who taught me during those 5 programs admitted that they were participating as instructors for the opportunity to improve their own skills. They are still learning and still honing their craft, regardless of their many successful trials.

There is no doubt that you will be a better lawyer in your day-to-day practice outside of court when you have a solid understanding of what is needed to be a persuasive and effective advocate, if you do go to trial. I am now more confident in my role as an advocate, both in and out of court. ▀



YASC PUB NIGHT



Over 120 young advocates and students-at-law connected with their colleagues at CC Lounge & Whiskey Bar on September 9 in Toronto. With summer still on the mind, *Keeping Tabs* asked a few attendees to take a pause from their #LAWTALK and share their favourite summer reads with us.



Judy Kang, *Friendmans Law* (L) - *The Great Gatsby*
Ann Andrzejewska, *Friendmans Law* (R) - *IQ84*



Alexander Cooke, *Barrister & Solicitor* (L)
The Children Act
Mark Donald, *MF-Law* (R) - *The Civil War*



Mike Adams, *Riches, McKenzie & Herbert LLP* (L)
Posing for Random Photos 101 - By Derek Zoolander
Akhir Prasad, *CIBC* (R) - *The Intelligent Investor*



Annamaria Enenajor, *Ruby & Shiller* (L)
Go Set A Watchman
Dina Awad, *Pinto Wray James LLP* (C)
This is How You Lose Her
Chris Horkins, *Cassels Brock & Blackwell LLP* (R)
Keeping Tabs!



Kara Smith, *McCarthy Tetrault - Wild*
Cenobar Parker, Pinto Wray James LLP
Half of a Yellow Sun



David Campbell, *Rogers Partners LLP*
The Advocates' Journal



Shawn Richard, Lenkinski Family Law and Mediation

BY: KATE MCGRANN,
Crawley MacKewn Brush LLP

Shawn Richard is a University of Toronto graduate whose practice has included medical malpractice, corporate commercial, personal injury, professional negligence and employment litigation. Prior to focusing his practice on family law, estates and administrative law, Shawn acted as co-counsel for the Elliot Lake Mall Action Committee at the Elliot Lake inquiry. In his spare time, Shawn can generally be found with his wife and son, undertaking a daunting home improvement project. He will never say no to chocolate, unless the chocolate is covering raisins, which he will only accept if he is desperate and alone.



1

WHAT IS THE MOST EXCITING THING THAT HAS HAPPENED IN YOUR CAREER SO FAR?

The Elliot Lake Inquiry. It was non-stop fun on my feet doing what I love, grilling people for a good cause.

WHAT IS THE MOST CHALLENGING ASPECT OF PRACTISING IN A SMALL FIRM, AND WHAT IS THE MOST REWARDING?

2 Big personalities have few buffers. Getting a lot of experience in a very short period.

3

WHAT BACK TO SCHOOL HABIT OR RITUAL HAVE YOU KEPT TO DATE?

Nightmares about missing an exam. I really wish they would stop.

WHAT CURRENT CANADIAN LEGAL ISSUE OR ISSUES DO YOU THINK ARE THE MOST PRESSING?

1. The disproportionate number of Black children in care—I believe 41% of all children in Toronto CAS. I have yet to hear a good explanation for the over-representation.
2. Carding. The lack of uniformity in just the definition of what is “carding” is a bit terrifying. The Ministry of Community Safety and Correctional Services has described it as the police engaging and recording “interactions with individuals whose activities and/or presence within their broader context (e.g., location, time, behaviour, etc.) seem out of the ordinary.” The danger is deeply entrenched prejudices will inform whose activities and/or presence seem out of the ordinary.

4

5

HOW HAS YOUR LITIGATION CAREER PREPARED YOU FOR FATHERHOOD?

I see danger everywhere, which clearly isn’t healthy and drives my wife nuts, but it has saved my son on a couple of occasions.

6

PLEASE DESCRIBE THE PERFECT SANDWICH.

Rosemary focaccia
Pesto
Roasted red peppers
Goat cheese
Freshly ground pepper
Grilled chicken
Perfectish ■

THE 2015 CHANGES TO THE RULES OF CIVIL PROCEDURE

BY: CHRISTOPHER (KIT) SCOTCHMER,
Monaghan Reain Lui Taylor LLP



It was not in dispute that the situation was untenable, but where do recent changes to the Ontario *Rules of Civil Procedure* leave us now?

If you practiced in Ontario before January 1, 2015, you are likely familiar with administrative or Registrar's dismissals and notices. Even if you were lucky enough never to have received one, you likely saw a startlingly large number of motions to extend the deadline for a Registrar's dismissal or to set one aside while waiting for your matter to be heard.

The Pre-2015 Rules

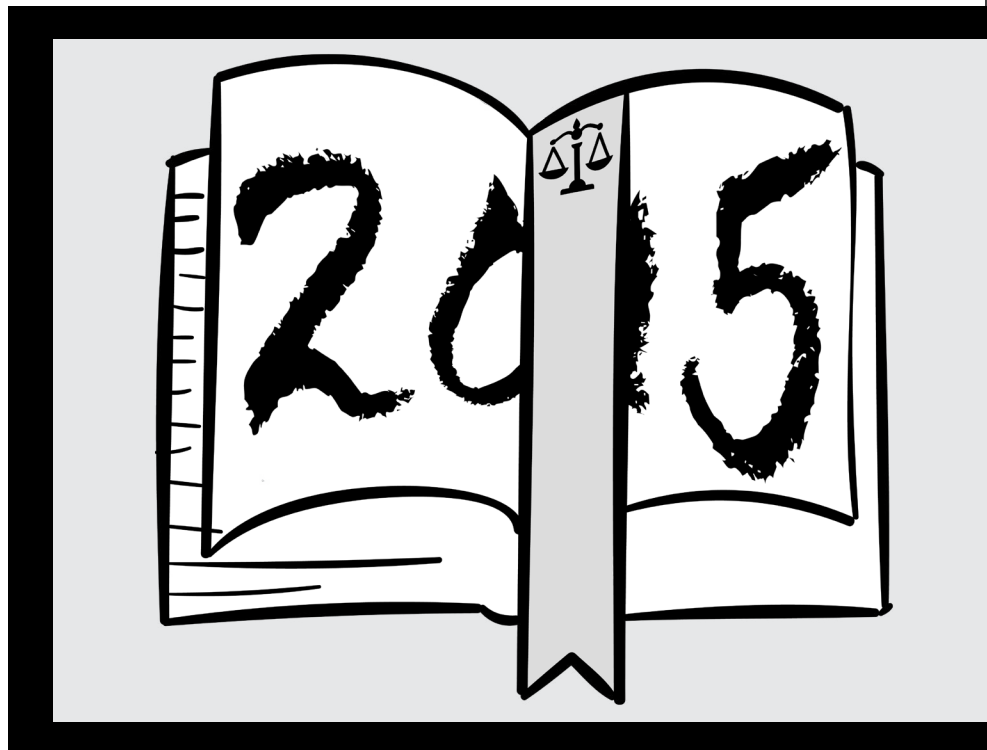
For the blissfully uninitiated, these notices and dismissals were a consequence of two timelines in the pre-2015 Rules 48.14 and 48.15: (i) that a statement of defence, notice of intent to defend, or a motion contesting jurisdiction be filed within six months of the issuance of an originating process; and (ii) that an action must be set down for trial within two years of its commencement. If either deadline was not met, the matter was automatically dismissed (with notice).

In theory, these deadlines ensured that litigation proceeded expeditiously. In practice, these deadlines spawned further litigation. Motions to extend timelines or set aside Registrar's dismissals might be contested¹, and if the moving party was unsuccessful, a further negligence claim against the lawyer was likely. The Lawyers' Professional Indemnity Company (LawPRO), the errors and omissions insurer for lawyers in Ontario, reported an increase in administrative dismissal-related claims, and noted that it had several hundred claims and almost \$10 million in claims costs

in three and a half years as of August 11, 2015.² In a letter to the Civil Rules Committee, The Advocates' Society noted that these deadlines resulted in (a) needless use of court resources (which are already in short supply and therefore prejudice parties who are trying to access those resources); and (b) needless expense to parties to deal with Rule 48 in cases where the litigation is, in fact, proceeding smoothly and expeditiously.³ Others were more pointed: the deadlines "became unworkable not only for lawyers facing dismissals but also for the courts, for master courts that have had to deal with the ramifications of those automatic dismissals."⁴

The 2015 Changes

So, on January 1, 2015, the *Rules of Civil Procedure* changed. The two deadlines above were replaced with a new deadline: proceedings that are not set down for trial or concluded within five years after their commencement (or January 1, 2017, whichever is later) will be automatically dismissed, without further notice. Other amendments included that such a dismissal order could be set aside under the general rule to set aside, vary, or amend an Order, rather than the former rule 48.15, which was particular to Registrar's dismissals, as well as a number of transitional provisions.



Will the court take a more hands-off approach to the pace of litigation, and allow the parties to take as long as necessary for each step, so long as the five-year requirement is met?

The Debate

Some have argued that these changes represent an abdication of responsibility for a timely resolution of disputes.⁵ Instead of the old two-year rule, five years allow plaintiffs and their counsel to leave actions dormant, and increase the length of time between the trial of a matter and the underlying event or transaction at issue in that trial. While there were problems with the old deadlines, the new hands-off approach is the equivalent of throwing the baby out with the bath water, and "justice delayed is justice denied".⁶

In contrast, I want to suggest that this new rule, together with other 2015 amendments, might mean the court could engage in more case management than it did previously. One of the less commented upon changes to the *Rules* was the addition of rule 50.13. This rule permits a judge at any time, on his or her own initiative or at a party's request, to order a case conference. The lawyers of record are obliged to attend with authority to determine which issues are and are not contested, resolve contested issues, agree to a schedule of

steps to be completed, establish or amend a timetable for the proceeding. The judge hearing the case conference has the power to make procedural orders, convening a pre-trial conference, give directions and grant interlocutory relief or convening a hearing on the merits.

Depending on whether, when and how this new rule is applied, the court may engage in much more case management than counsel anticipate, or the longer five-year deadline might suggest. Under the pre-2015 rules, a dismissal could be avoided by requesting a Status Hearing, at which a few procedural steps are set out that could be varied on consent. Most of these status hearings proceeded in writing, or unopposed. A case conference under the new *Rules* is a different animal. The parties and their counsel could face interlocutory orders (perhaps without a notice of motion for same), a strong judicial preference to resolve contested issues, or even the scheduling of a trial. I have been through one such case conference this year, which was very helpful in moving a matter forward.

It remains to be seen whether the new five-year deadline means that matters will be left to linger longer than they did previously. However, counsel and the court now have significant new tools with which to narrow the issues in dispute and move a matter forward. Together with the new approach to summary judgment motions—"from a means to weed out unmeritorious claims to a significant alternative model of adjudication"⁷—the new case conference powers

suggest not all contentious matters need to languish until listed for trial. The new five-year deadline to set a matter down does not necessarily imply that parties are powerless to ensure a timely hearing on the merits. Justice need not be delayed or denied—or at least, not simply because of this new rule. ■

¹ There are at least 397 reported Rule 48.14 and 48.15 cases between 2010 and 2015 on CanLII.

² LawPRO, "Report to Convocation", Law Society of Upper Canada (September 2014) 25; online: <https://www.lawpro.ca/news/pdf/2015LAWPRO-Final-Report-to-Convocation.pdf>; Tim Lemieux, "Rule 48 Transition Toolkit helps you avoid administrative dismissal claims", Practice Pro (August 11, 2015) online: < <http://avoidclaim.com/2015/rule-48-transition-toolkit-helps-you-avoid-administrative-dismissal-claims/>>.

³ Letter from Peter Griffin, President, Advocates' Society to John H. Kromkamp, Senior Legal Officer, Court of Appeal for Ontario and Secretary, Civil Rules Committee, (September 11, 2012) "Submissions Respecting Proposed Amendments to Rule 48 of the Rules of Civil Procedure", .

⁴ Andrew Murray, Lerner LLP, quoted in "Two-year Trial Deadline Repealed Under New Rule Change", Law Times, (January 26, 2015) online: <<http://www.lawtimesnews.com/201501264439/headline-news/two-year-trial-deadline-repealed-under-new-rule-change>>.

⁵ Stephen Simpson, "Ontario's New Rule 48.14: Have We Thrown The Baby Out With The Bath Water?" Toronto Law Journal, March 2015, online: <cymcdn.com/sites/tlaonline.siteym.com/resource/resmgr/Toronto_Law_Journal_2015/Ontario's_New_Rule_48.18.pdf>

⁶ Suzy Platt, ed., Respectfully Quoted: A Dictionary of Quotations Requested from the Congressional Research Service, Entry 954, William Ewart Gladstone (1809–98) (Washington D.C.: Library of Congress, 1989).

⁷ Hryniak v Mauldin, 2014 SCC 7 at para. 45.

We've Got Your Back!

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