



Chair Chat

YASC Interview

End of Term Photos

Don't Lawyer Me!

Pub Nights



Chair Chat

Brent Arnold

Only weeks from End of Term Dinner, The Advocates' Society is back in business, and so is the Young Advocates' Standing Committee. With members from all over the province, from big firms and small, and from as many areas of practice as we could fit in one room, YASC continues its mission to become the authoritative voice of young advocates within the legal profession. It's my privilege to chair YASC this year and to share with you, in this space, our plans for the coming year.

To begin, this year will see the return of some of your old favourites—pub nights and our blowout annual trivia night, Wine & Cheese with the Bench, and our Mentoring Dinner Series, to name a few—and the continuation of our groundbreaking seminar series focused on the impact of technology on the practice of litigation and on the administration of justice. We'll be looking to take some of our signature events on the road to centres outside Toronto and Ottawa, and for those parents among you, we'll be hosting our first family-friendly event, just in time for the holiday season. Dates are coming soon, so stay tuned.

We're also looking to launch exciting new initiatives, too new for me to tell you about yet (no spoilers!), that will provide our usual blend of important information and great networking opportunities.

Speaking of great networking and important information, if you haven't signed up for Fall Forum, you should. Fall Forum will take place on October 24 & 25, 2014 at Blue Mountain in Collingwood. It's worth 7.0 Professionalism Hours (a large part of your CPD requirement for the year), will feature great speakers and mentors, and is a great place to mix with your peers and with leading lights of the bench and bar. We look forward to seeing you there.

More to come, and happy summer,

Brent

**Fall Forum 2014
Profile Building
with a Purpose**

The Advocates' Society, in conjunction with the Young Advocates Standing Committee, is pleased to present Ontario's premier CLE and networking conference for lawyers one to ten years in practice. Join us this fall at the stunning Westin Trillium House, Collingwood for Ontario's only destination education and networking conference for young advocates. This biennial program offers an extraordinary opportunity for junior and intermediate lawyers to learn from leaders in the profession and take home practical advice to help them build their confidence, their network and, ultimately, their practice. Timely topics, mentoring sessions and social events make this THE conference for today's rising stars.

**Early Bird Deadline
August 29, 2014**

Click here to register now.



The YASC Interview: Antonio Di Domenico

By: Vanessa Voakes, *Stikeman Elliott LLP*



Antonio Di Domenico, known on the street as “Tony”, was called to the Bar in 2006. Outgoing Chair of the Young Advocates Standing Committee, Tony is a Partner in the Litigation, Antitrust/Competition and Class Action Groups of Fasken Martineau.

Why did you become a litigator or advocate?

A: It is exhilarating and rewarding.

Which word do you prefer: litigator or advocate?

A: L'Avvocato.

What is your idea of perfect lawyerly happiness?

A: Winning.

Why?

A: Because I hate losing (and I have not perfected my “look at the bright side” speech for clients).

If you weren't a lawyer, what would you be?

A: A teacher. I've always enjoyed empowering people through knowledge, sharing and skill development.

If you could have one superpower what would it be and why?

A: Psychic abilities because they might improve my cross-examinations.

What is your preferred tippie on a hot summer day?

A: Peroni. Why? Because it's Italian beer. Isn't it obvious?

What words or phrases do you most overuse?

A: Strategic Plan.

Who is/are your Judge crush(es) and why?

A: Chief Justice McLachlin – I am a sucker for red and she pronounced my name perfectly on CPAC.

You were the Chair of YASC last year – what would you say was your biggest accomplishment?

A: Developing and then executing a multi-faceted strategic plan focused on mentorship, building professional relationships and the exchange of ideas impacting young advocates.

If you could give one piece of advice to a new lawyer, what would it be?

A: Invest in yourself by working hard

(billable and non-billable).

What's your motto?

A: Tentanda via (the way must be tried).

Who would you like to see as our Keynote Speaker at the 2015 End of Term Dinner?

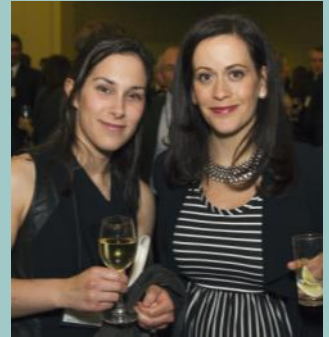


Tweet your answer to **@Advocates_Soc** with #YASC and you could win a \$50 Best Buy Gift Card!

Deadline to enter is August 31, 2014



The Young Advocates' Standing Committee meets Rick Mercer at the 2014 End of Term Dinner.



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Young Advocates at 2014 End of Term Dinner and After-Party

Don't Lawyer Me!

Yasmin Vinograd , *Merovitz Potechin LLP*

As I reflect on the other aspects of my life outside of my professional capacity as a lawyer, it is truly fascinating to realize just how much being a litigator influences my behaviour. Constantly, the skills and strategies that I use on a daily basis at work come out in personal and social situations. I catch myself trying to use logic and reason in discussions with my husband – sometimes to no avail as one may imagine. Even with my parents, I find myself acting as somewhat of a judge when disagreements come to the fore. I can only imagine the situations that are going to arise as my son, who is currently two years of age, gets a bit older.

When I was attending law school, I recall watching a comedy sketch that somewhat alluded to this theme. The comedian was talking about what it was like being raised in a family with a parent as a lawyer, and the types of funny conversations that would occur as a result. He spoke about how before he went to bed at night, his father would ask him if he had brushed his teeth, to which he would respond, "Yes of course, Dad." His father would then enter his room holding up his toothbrush and exclaiming, "I shall now introduce Exhibit A, your toothbrush! Let the record show that, contrary to your previous assertion, you did not in fact brush your teeth, as indicated by the fact that your toothbrush is dry!" The comedian recalled that, being a

young and witty boy, he would sometimes use his father's logic against him and say things like, "Well, Dad if you yourself were to also look back and consult the record, you will see that you never asked if I brushed my teeth *tonight* specifically!"

These are the types of humorous situations that I sometimes find myself eagerly anticipating as I raise my family. Of course, I am not looking forward to the smart comments that may be tossed my way by my children, but at the very least it will be amusing! I think that it is important to focus on quirky, funny aspects of raising children as a lawyer, rather than the negative side that is sometimes focused on. Often, you see articles or features on television discussing how lawyers face serious challenges in balancing their professional and family lives. Instead, I think it is interesting to take a step back and see just how your profession may manifest itself in your parenting style in funny and positive ways. I have often been told by my husband, extended family, and friends, "Don't lawyer me!" The most entertaining part about this is that most of the time, I sincerely do not realize what I am doing until someone points it out. Usually this just makes me chuckle to myself, because "lawyering" people is simply in my nature, and quite admittedly, it does make for some pretty comical interactions!

Young Advocates at 2014 End of Term Dinner and After-Party



Sponsored by:



Pub Nights are back!

Young Advocates' Pub Night · Thursday September 4th, 2014 · 6-8pm

Hot House Café, 35 Church Street, Toronto, Ontario



**Kingston
Pub Night**

July 9, 2014



Congratulations to

David Campbell

on winning this year's David Stockwood
Memorial Prize!

Don't miss his article in the
Fall 2014 Journal

Abstract of *Tables, Chairs, Cats, and Dogs: The Four-Legged Property of Divorcing Spouses*

Jennifer A. Krob, *Brauti Thorning Zibarras LLP*



When a marriage ends, laws dictate how spouses will restructure their families, ensure financial support, and divide their property. These legislative schemes characterize issues respecting children on the basis of custody and access, and issues respecting property on the basis of ownership and possession. While the law is clear that pets are categorized as property, it is interesting to explore how courts have struggled to come to this categorization.

Custody of, and access to, a child is determined in accordance with the child's "best interests". Conversely, possession of property will usually be determined according to ownership. These are markedly different approaches, and yet, a review of the jurisprudence respecting pets in divorcing families yields orders that have been possessory, custodial, and odd mixtures in between. These varied approaches seem to indicate that some find it discomfiting to place pets in the same category as toasters.

Pets are "simple chattels, like couches and cutlery".

The dominant line of jurisprudence treats pets as property. One of the earliest Canadian family law cases dealing with a custody claim for a pet comes from Manitoba. In *Armstrong v. Armstrong*, 1987 CarswellMan 342 (Q.B.), the Honourable Justice Jewers succinctly dismissed a wife's claim for custody of the family dog in one sentence: "There will be no order at this time with respect to the dog "Piper"." One might infer that the wife's claim for custody of a dog seemed too trivial for the court to give it any hearing. Indeed, such is the prevailing attitude today, notwithstanding that pet owners may find the law inconsistent with their

feelings.

In *Warnica v. Gering*, 2004 Carswell Ont 5605 (S.C.J.), a man brought an Application for shared joint custody of a dog named "Tuxedo". Both parties shared the perspective that Tuxedo was not a possession. The man's claim was, in essence, asking for a week-about custody and access order, but after the judge challenged the husband on his basis for making such a claim, the husband awkwardly rephrased his custody claim as a claim for a constructive trust, seeking:

... a declaration that the respondent holds the possession or ownership of the dog, on a constructive trust basis, for both of them, in equal shares and a direction that the applicant should have temporary possession of the dog for alternating one-week periods.

Warnica v. Gering, 2004 CarswellOnt 5605 (S.C.J.), at para. 5.

In dismissing the man's claim, the Honourable Justice Timms wrote:

...In either event, the applicant could proceed there with a claim to have a declared interest in the dog, pursuant to the doctrines of constructive or resulting trust. If a dog is property, then in that sense, it is no different than any other property; for example, a ring or a painting.

19 Of course, any pet is somewhat different, in that it does not readily lend itself to physical division...A pet could be shared, as happened in the case of *Rogers v. Rogers*. In my view that would be akin to a custody access/order. Whether in the Family Court or otherwise, I do not believe that any court should be in the business of making custody orders for pets, disguised or otherwise.

Justice Timms dismissed the man's claim and suggested that it was a waste of court resources to allow him to continue to seek custody. The man appealed the case to the Court of Appeal and the Court of Appeal ruled that the claim was a waste of court time (*Warnica v. Gering*, 2005 Carswell Ont 3989 (C.A.) at para. 5).

The legal irrelevance of the bond between and owner and pet was also confirmed in *Mantella v. Mantella*, [2006] W.D.F.L. 2707 (Ont. S.C.J.), where the Honourable Justice Corbett in *obiter*, discussing the advantages of negotiated resolutions, stated at para. 38

This is one of the strengths of a negotiated resolution: the parties may take account of issues important to them which are legally irrelevant. One need only consider the extraordinary expense and emotion spent by some litigants on "custody" and "access" issues respecting pets, which the law regards as simple chattels, like couches and cutlery.

Custody Orders: The Outliers

In determining a child's best interests, courts will usually review the existing arrangements for care of the child. An analogous analysis in the determination of custody of a pet occurred in *B. (K.) v. K. (H.)*, 1988 CarswellINS 241 (Fam. Ct.). While the case is clearly an outlier and not reliable as legal precedent, it is interesting as a counterpoint to the current state of the law.

In *B. (K.) v. K. (H.)*, the parties were contesting ownership of two dogs, Sheba and Bear. The dogs lived with H.K. in his trailer; however, Justice Daley found that both parties were "instrumental in obtaining the animals and seeing to their daily maintenance". Justice Daley found that the female dog, Sheba, was considered to be K.B.'s pet and that Sheba's male puppy, Bear, had a bond with H.K.'s teenage son. Justice Daley did not solely perform an analysis of ownership, but gave thought and consideration to other factors including the bonds between each dog and the hu-

man they were closest to.

Everything in Between: Property on an Access Schedule

In addition to cases where custody orders have been made and where custody claims have been dismissed, there have been cases that do not fit into either category – the cases where custody orders have been hidden in the language of possession to disguise their true nature.

In the Saskatchewan case of *Gauvin v. Schaeffer*, 2003 SKQB 78, the Honourable Justice Kraus made an order for possession of the parties' dog, "a handsome white Husky" named Shikydoe, on an access schedule, ordering

4) Unless the parties agree to a written schedule for access, Shikydoe shall be in the possession of each of the parties for one week at a time. The defendant shall have Shikydoe from noon, Saturday, February 22, 2003, until noon Saturday, March 1, 2003, when Shikydoe shall be in the possession of the plaintiff, and so on from week to week thereafter during Shikydoe's lifetime.

A few months later a decision came out of Alberta by the Honourable Justice Wilson. In *Millar v. Homenuik*, 2003 ABQB 570, a husband and wife were the owners of two cats. The husband "expressed a wish" to have the cats awarded to him and Justice Wilson, perhaps experienced with the nature of felines, concluded

I make no award with the respect to the cats...in my view, there is no property in a cat, or two cats. Cats confer their presence on people, they do not become their chattels.

Thus, while it is clear that the law treats the bond between pets and their divorcing owners as "legally irrelevant", judges who have found this approach troublesome have sometimes circumnavigated the prevailing law by disguising custody and access orders as orders for possession. These cases are peculiarities that, while perhaps not useful as precedents, have value for the perspective they provide and the questions they raise - not the least of which is why a consideration of what is best for an animal must be disguised in the first place.