ADVOCACY MATTERS

THE ADVOCATES' SOCIETY

Content Marketing | Interview | Pro Bono | Counsel's Role | Blind Justice
Ottawa Honouree Dinner | TAS Medal | The Next 5

EDITOR'S NOTE

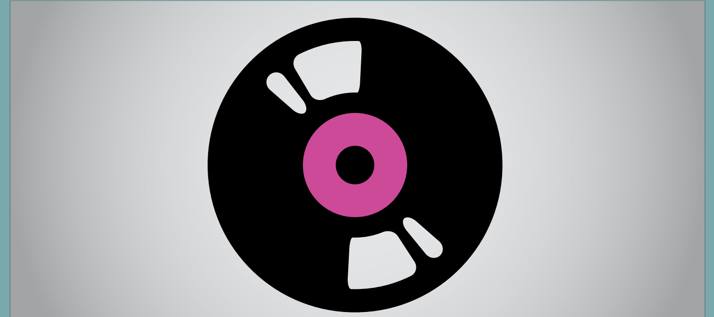
EDITOR: PETER J. HENEIN,
CASSELS BROCK & BLACKWELL LLP

Four months into the year. Into the second quarter. Count your hours, your billings, your fees received. Is there a break in sight? Enough money in trust? If the work is finished, is there more coming down the pipe? Time after time, I ask... are we all singing the same old song?

Can we just stop for a minute? Do as the all wise, all leather-clad, all eye-liner wearing, super-synth group, Depeche Mode, suggested and "Enjoy the Silence"? Or am I just feeling The Reflex?

Should we, as Talking Heads did in their ubiquitous anthem for all mid-life meltdowns, "Once in a Lifetime", ask "Well, how did I get here?" Or should we accept the suggestion in their lesser known but, more deeply existential ballad, "Heaven", which posits that "Heaven... heaven is a place where nothing... nothing ever happens."

Is that heaven? Nothing happening? No hours? No bills? No fees? Don't be silly. That would be a Mad World indeed. It's only April. We still got eight months to go.



On an entirely unrelated note, I've been listening to a lot of eighties new wave. Next month, my thoughts on Tears for Fears' moody and ethereal "Pale Shelter", and whether my parents and teachers ever really "got me".

As for your monthly distraction, we have articles for you to put into your eye-holes: Jasmine Akbarali speaks with Jane Southern about the importance of content marketing for lawyers. Deborah Templer discusses her pro bono child advocacy work with the Holland Bloorview Medical Legal Partnership. Janice Wright talks about the Ghomeshi trial and counsel's role in the legal system. Ariel Neuer and Benjamin Reingold review the Federal Court's thoughts on blinding expert witnesses in patent cases (but not literally). Oh yeah, and I head out west to talk to Cynthia Amsterdam of Dentons Canada LLP. For those of you celebrating, I wish you a happy and peaceful Passover.

For everybody, please sit back, crank some synth-pop, and chill for a few.

Peter

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CONTENT MARKETING

The future of blogging is called “content marketing”

JASMINE T. AKBARALI, *LERNERS LLP*

Who knew when we went to law school that eventually we would strive to become our own multimedia publishing platforms? If that sounds intimidating, read on. Jane Southren is back, to explain how the blog has evolved into content marketing and how lawyers can leverage different platforms to do what comes naturally to us – telling the stories of what we do to showcase our expertise and our passion.

BY: JANE SOUTHREN
JANE SOUTHREN CONSULTING

Blogging is a relatively new element in the evolution of marketing. 25 years ago, marketers controlled the message through the use of advertising and other traditional marketing tools. Today, technology has changed the game completely by putting control in the hands of the consumers who choose what they engage with.

As it turns out, what people want is to engage with relevant, informative material that solves their problems, empowers them or improves their life in some way. And apparently they want it very badly, because this seemingly unquenchable thirst has driven the explosion of what is being widely referred to as “content marketing”.

And this is great news for lawyers!

We are a problem-solving, substance-based and service-focused profession and, while we haven’t named it this, content marketing is actually what most lawyers have always done intuitively and comfortably to attract business. It is telling the great stories about the substance of what we do to showcase our expertise, our passion and our core values. This kind of marketing, unlike many (if any) others, was made for us – it aligns perfectly with our strengths and our personalities. We should be cheering in the streets!

Now that I have sold you on why you should be delighted by the prospect of engaging in content marketing, let’s talk about how you might do that successfully in a very crowded field. Lawyers have an advantage, because we have an embarrassment of riches when it comes to valuable, substantive content to share. Marketers and media love us because, whether we know it or not, we are an unending well of interesting stories that matter, and solutions to problems that multitudes of people face. It doesn’t matter what area you practise in; it is the same for all lawyers.

The challenges for us lie in: (a) being able to identify the stuff that makes good content (because for some reason, most of you think that others will not be interested in what you do or have to say); and (b) conveying that content in a way that it will be enjoyed and understood by people who don’t practise law.

Generally speaking, to be successful in getting attention in the content explosion that is happening on the web, you will have to do more than just publish a blog, or any single form of content, and instead figure out how you are going to become your own multi-media publishing platform.

You will need to consider incorporating content in text form, videos, infographics, podcasts and books; making your sites mobile accessible; and increasing your social media engagement. You will also need to develop an effective means by which you can monitor the impact and the results of your investment in your content marketing campaign.

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For more information contact Jared Ploughman,
Marketing and Communications Coordinator, at jared@advocates.ca

CONTENT MARKETING cont.

In short, you will need to create a plan to provide solutions and relevant information to your constituency. Achieve this using the forums and channels that will put your content in front of the people who want or need it, at the time they want or need it, and encourage them to access it, consume it and share it.

This goes for individuals as well as firms. Though we call it "content marketing", it is more than just advertising or what we would historically have thought of as "marketing". It is a powerful mechanism that we can use to tell our stories to, create value for, and engage with the communities of people that we want to serve. Because the relationship between legal services providers and clients is so intimate, most of the work still comes in to individual lawyers. Accordingly, the exercise of telling our stories, creating value and engaging is at least as important for the individual lawyer as it is for the firm – maybe even more important.

Here are some tips and metrics to help guide you in developing your own content marketing campaign;

A 2015 survey says:

- **Client alerts and practice-group newsletters are taking over as the favoured type of law firm generated content -** Thirty-five percent picked blogs, down from 38 percent in 2014.
- **Social media platforms are becoming more popular** — Facebook, YouTube and Twitter are continuing to gain ground in professional use.
- **LinkedIn continues to lead the pack:** Sixty-eight percent of respondents said they used the service in the last week in 2015, compared with 62 percent in 2014. Thirty-seven percent said they had used it within the past 24 hours; more than the number of lawyers who used Facebook, Twitter and YouTube combined in that period.
- **LinkedIn is the lawyer's best friend:** most people who are engaging in LinkedIn are not engaging with the firm's content—they are engaging in the content of individuals.
- **Wikipedia use on the rise**: Seventy-one percent of respondents used Wikipedia to conduct company and industry research — up from 51 percent in 2012.
- **Who's managing content?**: Forty percent of firms have a dedicated content manager in 2015, up from 29 percent in 2014. Only 19 percent have staffed the position with a journalist, content specialist or professional storyteller.
- **Increasing focus on results:** 74 percent of respondents said they used analytics such as "views" and "shares" to justify content marketing investments, up from 59 percent in 2014.

Other collected pearls of wisdom:

- **Focus on demonstrating thought leadership**: Demonstrate thought leadership first and build brand awareness along the way.
- **Write like journalists**: At some law firms, lawyers have adopted the narrative techniques of professional journalism in order to create accessible stories for current and potential clients.
- **Use social media channels liberally**: More so than other businesses, law firms rely on social interactions with clients and among professional colleagues to be successful at their work and attract business. Your relationships are built on intellectual leadership, subject matter expertise and integrity. All of those characteristics lend themselves to expression in the content you generate and over social media channels.
- **Use social media channels liberally II:** As lawyers, you face the challenge of trying to sell what is in your head. Social media is a great tool for making that intangible tangible, by giving you a platform from which you can write and talk about what you know. Making your service and your value to clients tangible can help turn contacts into connections and connections into clients.

The content marketing revolution has given lawyers an abundance of opportunity to do what we do naturally to attract work and a greater number of farther reaching and more easily accessible platforms from which to do it. Get out there and enjoy it!

Hitting Your Stride

A new program for mid-career advocates

June 1, 2016

Learn how to build your profile, develop a direction for your business, and grow your litigation practice.

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INTERVIEW

Interview with Cynthia Amsterdam, *Dentons Canada LLP*, Calgary

BY: PETER J. HENEIN, CASSELS BROCK LLP

1

Q: The greatest legal mind, other than yourself?
A: There are so many in the running - the Jury is still out.

2

Q: The Law: Magic or daily grind?
A: Most days I am bedazzled, but then, there are stints in the salt mines.

3

Q: Where do you find inspiration on a file?
A: My clients – seriously !

4

Q: Work? Life? Balance??
A: That endless pursuit is truly an oxymoron.

5

Q: What's the funniest thing about your job?
A: That clients actually listen to me.

6

Q: What gives you sanity?
A: That question presumes I have any.

Q: What drives you to madness?
A: Sanity – it is so overrated.

7

Q: Pets or no?
A: Never been successful in training one to fetch my dry cleaning or do the cooking, so "no" – one less responsibility to juggle in that pursuit of Work/Life "Balance".

8

Q: Best album ever?
A: *Thriller* – upbeat, great lyrics and sometimes hearing Vincent Price's closing lyrics to the title song just resonate when dealing with counsel opposite.

9

Q: Favourite app?
A: Vivino – the virtual Sommelier to ensure the optimal experience when the pendulum swings to the "life balance" (however fleeting those moments may be).

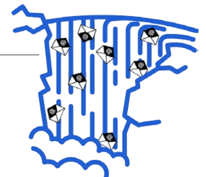
10

Q: Favourite culinary indulgence?
A: Hands down, salted caramel ice cream, or truffle oil French Fries [when I am really on the wrong side of sanity].

11

Q: Favourite judge or master?
A: Judge Judy, but then again, Sarah Palin is soon to be in the running.

12



Q: When do the emails start flowing?
A: Like Niagara Falls, the stream is endless.

13

Q: When you want to unwind, you...?
A: Step on my sailboat, press the email "ignore" button and cast off from the dock.

14

Q: Physicist Stephen Hawking's proposed solution to the black hole information paradox misapprehends Einstein's general theory of relativity. Discuss.
A: Eddie Redmayne, who won an Academy Award for portraying Stephen Hawking in The Theory of Everything, would say that his spikey hairdo is sufficient proof of quantum mechanics to dispel Einstein's theory that information is lost forever once it crosses into the Black Hole - really, you should not have gotten me started …

PRO BONO

Advocates Assist Families at Children's Hospitals Across Ontario

BY: DEBORAH TEMPLER
GOWLING WLG

When my daughter was born just over four years ago my sister, then an experienced mom herself, said to me that the most important role of a parent is to be an advocate for your child; that while others will play a part in teaching your child the ways of the world, no one else can or will protect and advocate for their interests with the same level of drive and determination as you.

And while I have been called upon to use these advocacy skills on more than one occasion in my daughter's short life (let's just say, she was a biter …), it is through my work with the Holland Bloorview Medical Legal Partnership that I have stood witness to the truth of my sister's words time and time again.

The Holland Bloorview Medical Legal Partnership is a remarkable collaboration of Pro Bono Ontario, Holland Bloorview Kids Rehabilitation Hospital (Canada's largest children's rehabilitation hospital) and my firm to deliver a free legal clinic to the Hospital's patient families as their children receive medical treatment. Launched in the fall of 2013, the Holland Bloorview Kids Rehabilitation Hospital clinic was modelled on existing medical legal partnerships ("MLP") housed at Toronto SickKids and at (London) Children's Hospital with several partner law firms, and has since been replicated at CHEO in Ottawa and McMaster Children's Hospital. Since launching the first MLP in 2009 (at Toronto SickKids), PBO and participating advocates have served more than **3800** patients and their families.

The origin of these MLPs stems from the recognition that the challenges that come with caring for a child who is sick or disabled frequently involve legal issues, particularly where those health problems are associated with or exacerbated by poverty or disadvantage. These legal problems include, for example, employment issues when a parent is at risk of losing their job because of time away from work, housing or education support where a child requires but is not receiving special accommodation, or estate planning for the future. The rationale behind these MLPs is that, while they remain the *best* advocates for their children, parents are often too overwhelmed or do not have the means to address these legal needs alone. The strategy of the MLP model is to connect these families with legal resources through the delivery of seminars on a variety of legal topics and one-on-one legal representation where required.

It has been my privilege to serve, along with dozens of advocates across Ontario and the indefatigable PBO staff lawyers, as 'second chair' advocate to the parents and grandparents who lead the charge on behalf of their children in facing these legal issues. By way of brief illustration of the work being carried out, in 2015 we represented a number of families in appeals before the Social Benefits Tribunal of decisions denying or reducing their applications to receive the Assistance for Children with Severe Disabilities (ACSD) benefit made available under the Ontario Disability Support Program. We have achieved success on every appeal taken to the Tribunal thus far.

PBO is currently in discussions with pro bono partner agencies outside of Ontario to support the development of MLPs in other provinces, demonstrating once again the commitment of advocates across Canada to bridging the gap created by access to justice concerns.

Guess Who's Coming To Dinner on June 16?

Well, we can't tell you quite yet, but you are welcome to guess the mystery Keynote Speaker for End Of Term Dinner 2016.

Tweet your guesses to @Advocates_Soc using #EoT2016.

Here are 3 hints:

- Canadian
- In the press
- Likes to tweet!

All will be revealed May 9, 2016! So, stay tuned!

COUNSEL'S ROLE

The Ghomeshi trial and counsel's role

BY: JANICE WRIGHT
WRIGHT TEMELINI LLP

I have been prompted to write as a result of the recent Peter Mansbridge interview of Marie Henein concerning the Jian Ghomeshi trial.

I can't help but feel the need to comment on the issues raised in the interview respecting our legal system.

Lawyers have an obligation to represent clients fearlessly within the bounds of their ethical obligations. Every person is entitled to legal representation and our system functions best when individuals are represented by skilled and competent counsel. Our trial system is a cornerstone of Canada's democracy and is recognized as a model for the rest of the world. That is not to say our system is perfect, but no one is suggesting that.

Some of the questions raised by Peter Mansbridge probed issues respecting the appropriate role of defence counsel in the justice system. In my view, the debate generated by this trial is welcome and productive insofar as it brings these issues to the forefront of public discourse.

However, it does not serve the public well or assist them in understanding how our legal system works when a lawyer is criticized for the simple fact of defending her client. A lawyer's professional obligation is to represent her client pure and simple – again always within well-established ethical boundaries.

Every person in Canada benefits from a legal system where lawyers are understood to be separate and apart from their client. This separation fosters a system where the presumption of innocence functions best and is at its strongest.

To associate lawyers with their client's cause or the issues surrounding a particular case is unhelpful. This type of thinking creates a real danger that clients with "unpopular" cases will not be able to find competent counsel because lawyers may come to feel inhibited about which case they take on due to public perception and/or pressure.

The benefit of able counsel is something we should all applaud and stand up for. This does not mean we need to agree with the outcome of any particular case – that is the luxury of having the liberty to speak out and disagree.

The justice system, as with other institutions in our democracy, operates best in an environment of open and considered debate.

But criticism of advocates within the trial system merely because they strive to fervently and passionately fulfill their professional obligations ought to be condemned.

We are so close!

It's not too late to help TAS Gives Back reach its goal of raising $135k to support War Child's justice work in Uganda and Afghanistan.

If each TAS member donates just 15 minutes of their billable rate we will meet our goal!

Click HERE to donate today!

Blind Justice

BY: ARIEL NEUER
BELMORE NEIDRAUER LLP
BENJAMIN REINGOLD
BELMORE NEIDRAUER LLP

There have been a series of recent Federal Court patent decisions that have addressed the value in "blinding" expert witnesses.

In patent proceedings, blinding has taken on two different, but similar forms. In the context of patent infringement, the expert is asked to interpret the patent without knowledge of the allegedly infringing product. The expert then provides an opinion whether the product at issue is encompassed under the scope of the claims of the patent. In the context of patent validity, the expert is first asked to identify and assess the relevant scientific knowledge as of a particular date (the "prior art"). The expert is then presented with the patent and asked whether the differences between the prior art and the inventive concept of the patent are obvious. Proponents of this form of blinding have argued that its roots lie in the obviousness test set out by the Supreme Court in *Apotex Inc v Sanofi-Synthelabo Canada*, 2008 SCC 61, where the Court directed that the obviousness assessment is to be made "without any knowledge of the alleged invention as claimed".

Over the past two years there have been a number of cases where parties have blinded their experts and argued that the testimony of their witnesses ought to be preferred over their opponent's witnesses by virtue of being blinded.

Spring Symposium 2016

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Keynote Speaker: Elizabeth N. Mulvey, *Crowe & Mulvey LLP* (Boston, Mass.)

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In *AstraZeneca Canada Inc v Apotex Inc*, 2014 FC 638, the Court preferred, in part, the evidence of Apotex's experts on the issue of obviousness because they had been blinded to the patent prior to providing an opinion on the prior art. In *Teva Canada Innovation v Apotex Inc*, 2014 FC 1070, the Court again preferred the evidence from Apotex's experts in part because they were blinded to the allegedly infringing product at issue. Similar propositions supporting blinding have also been accepted in *Takeda Canada Inc v Canada (Health)*, 2015 FC 570 and, again, in *Allergan Inc v Apotex Inc*, 2016 FC 344.

Although this thread of cases seems to categorically support blinding an expert, the matter is by no means settled. First, the Court in *AstraZeneca* acknowledged that it was prepared to accept the (un-blinded) evidence of AstraZeneca's experts where their opinions were found to be more persuasive. Second, in *Eli Lilly Canada Inc v Apotex*, 2015 FC 875, the Judge --who had also written the *Teva* decision--considered the *Teva* and *AstraZeneca* decisions and held that neither case stood for the proposition that a blinded expert is always to be preferred over an un-blinded expert.

Finally, in the most recent decision to consider the matter, *Shire Canada Inc v Apotex Inc*, 2016 FC 382, the Court held that blinding has not been raised to the level of a legal principle that must be applied in all cases. Instead, the Court concluded that it was mainly interested in the substance of an expert's opinion and the reasoning that led to that opinion.

It is worth noting that all of these decisions have been at the trial level and the Federal Court of Appeal has yet to consider this issue.

OTTAWA HONOUREE DINNER, SHAW CENTRE, OTTAWA, APRIL 6, 2016

The Advocates' Society President Martha McCarthy offers greetings from TAS

Bill Simpson, Q.C., delivers keynote toast to Mary Jane Binks, Q.C.

2016 Ottawa Honouree recipient Mary Jane Binks, Q.C. & Dinner Chair Tara Sweeney

THE ADVOCATES' SOCIETY MEDAL DINNER, VALE CAVERN, SUDBURY, APRIL 14, 2016

The Advocates' Society President, Martha McCarthy, presents James C. Simmons, Q.C., with the 2016 TAS Medal

Master of Ceremonies Harold Cares, *Miller Thomson LLP*

Martha McCarthy, James C. Simmons, Q.C. & Treasurer Janet Minor

Jim Simmons celebrates with his family

Sold-out crowd of 175 guests

View the full photo album on The Advocates' Society Facebook page HERE

THE NEXT 5

EDUCATION PROGRAMS

NEGOTIATION STRATEGIES FOR LITIGATORS
April 25, 2016 - Toronto

COURT HOUSE SERIES: DISCOVERY SKILLS WIN AT TRIAL
April 26, 2016 - Kitchener

SPRING SYMPOSIUM
April 27, 2016 - Toronto

BUSINESS VALUATIONS
May 3, 2016 - Toronto

APPELLATE ADVOCACY SKILLS WORKSHOP
May 4, 2016 - Toronto

ADVOCACY EVENTS

YASC PRACTICE PERKS
May 6, 2016 - Toronto

YASC PUB NIGHT
May 12, 2016 - Toronto

MENTORING DINNER SERIES TIME IS ON YOUR SIDE!
May 16, 2016 - Toronto

YASC PUB NIGHT
May 18, 2016 - Ottawa

YASC PUB NIGHT
June 8, 2016 - Barrie

PRACTICE GROUPS

SENTENCING UPDATE: A CONVERSATION BETWEEN PARLIAMENT AND THE COURTS
May 19, 2016 - Toronto

FAMILY LAW BENCH AND BAR
May 26, 2016 - Toronto

YOUR PROFESSION, YOUR FUTURE
June 6, 2016 - Toronto

Get Involved!

Do you have an idea for a new Practice Group program? Let us know.

Send your ideas to Dave Mollica, Director of Policy and Practice Groups, at David@advocates.ca

End of Term Dinner 2016

Thursday, June 16, 2016

Click here for more information ▶