

ADVOCACY MATTERS



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NOTE FROM THE PRESIDENT

PETER HENEIN,
CASSELS BROCK & BLACKWELL LLP



Hello and happy 2017, everyone. It's time for the President's annual address, so thank you, Mr. Berg for taking over master of ceremony duties! But before I hand over the proverbial microphone, I wanted to welcome two new regular contributors to Advocacy Matters. I'm pleased to announce that Jessica Amey will be taking over the monthly interviews and that Lauren Tomasich is joining us as assistant editor. Look for hard hitting interviews (next month, because I did this last interview – my swan song if you will) and, uh, hard-hitting assistant editing, um, functions from Lauren. Anyway, please put your hands together for them. And without further ado, Mr. Brad Berg...

BRADLEY E. BERG,
BLAKE, CASSELS & GRAYDON LLP



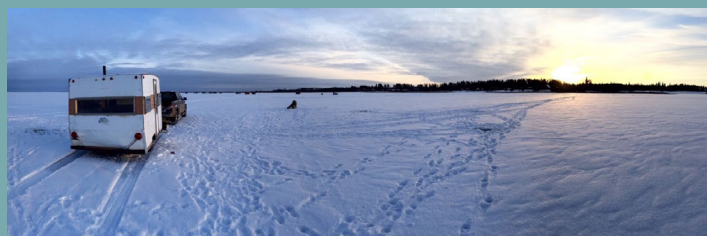
This is the first edition of Advocacy Matters for 2017 – a great occasion to highlight some of our Society's projects for the coming year. A new website is around the corner. Innovative new education programs are coming, including more on-line learning options. Our court intervention practice continues. And our national outreach to litigators across the country is ramping up, including the launch of programs in Quebec. The list goes on.

I am particularly jazzed about TAS True North, our special outreach on Indigenous and northern issues. We have established Indigenous law scholarships at four universities, and we are looking for your support through our "Donate Your Rate" program. In April, we will be teaching trial skills in Nunavut. And we have already started an ambitious project for developing guidelines and practice tips for litigators working with Indigenous peoples. The Truth and Reconciliation Commission's report included a specific call to action for lawyers in Canada, and The Advocates' Society is answering that call. Stay tuned!

For all of our initiatives, we need your help. Please contact us at any time by emailing jared@advocates.ca. Follow us on Twitter @Advocates_Soc. Get involved. Help us to lead this group of 5500 lawyers and judges to become the most effective voice for the litigation bar in Canada.

On a more reflective note, let me share a photo from my Christmas break at home in northern Saskatchewan. There is nothing better than ice-fishing with family to put our busy lives in perspective. I hope you found some downtime too. ■

Brad



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INTRODUCING THE NEW ASSISTANT EDITOR



LAUREN TOMASICH,
OSLER, HOSKIN & HARCOURT LLP

I'm thrilled to be joining the Advocacy Matters team as Assistant Editor, and am looking forward to continuing to contribute to the publication regularly.

My love for the publication began when the colorful, clever and topical inaugural edition hit my inbox back in 2015. I was a regular reader from the outset. The easily digestible compilation of pieces on everything from social justice issues, to social media advice, to reports on TAS events made me think, made me smile, and made me feel connected to TAS and to our litigation community. I liked it so much that I wrote to Peter, asking if I could get involved as a contributor.

I've written several pieces since then, which provided a refreshing change of pace from the technical legal writing that occupies so much of our day jobs. I found that litigators across the country were also avid Advocacy Matters readers. Many people would take the time to reach out after seeing one of my articles – whether just to say hello, to ask questions, or to find out how they too could get involved with TAS. I hope that everyone will continue to do that. And let me know what you like to hear about – we want to continue to make Advocacy Matters relevant to our litigation practices, a means of connecting, or if nothing else, a welcome distraction from that factum that you are supposed to be finishing... 🖋️



CALL FOR NOMINATIONS: 2017 Walter S. Tarnopolsky Human Rights Award

Do you know an advocate who has made an exceptional contribution to the field of human rights? Nominate them for this prestigious annual award.

The award is administered by the International Commission of Jurists Canadian section, in memory of the late Walter S. Tarnopolsky, renowned legal scholar, judge, and human rights advocate. It consists of a bronze medallion and one thousand dollar honorarium, to be presented at a public event. Nominees must be individual Canadian residents. Nomination forms and supporting materials must be received **by April 30, 2017** to be considered by the Selection Committee.

Please visit www.icjcanada.org or contact ICJC Executive Director Janine Lespérance at Janine.lesperance@icjcanada.org to obtain the nomination form or more information.



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Tricks of the Trade: The Ultimate PI Conference

M.J. LUCILLE SHAW, MILLER MAKI LLP, SUDBURY



The 20th annual Tricks of the Trade conference took place on January 27, 2017 at the gorgeous Carlu in Toronto. For the past 15+ years my colleagues and I have made the trip from Sudbury for Tricks, not only because of the excellent speakers and topics, but because it gives me the chance to connect with my peers from all over the province. This year over 400 lawyers from across Ontario attended this one-of-a-kind conference that brings both Plaintiff and Defence counsel together. It is rare to find a comprehensive program that offers a balanced discussion about timely issues relevant to the perspectives of both injured parties and insurers - which is why Tricks is so special. The post-program cocktail reception is a nice bonus, too!

So, what were this year's hot topics?

LAT: Eric Grossman gave an excellent update on the LAT ([License Appeal Tribunal](#)). Most counsel agree that there are procedural concerns and issues with access to justice that need to be addressed at LAT.

Storytelling: Richard Shekter entertained us again this year with an excellent presentation on "The Art of Storytelling". As a defence counsel, it is my role to poke holes in the Plaintiff's story, which will certainly prove to be more difficult if opposing counsel follow Richard's advice!

Retainers and contingency fee arrangements: I sat on a TAS Task Force, along with Roger Chown, Susan Gunter and Stephen Abraham, that examined this issue and subsequently wrote a letter to the LSUC recommending that amendments be made to [The Solicitors Act](#) so that lawyers would be able to enter into retainer and contingency agreements that would not violate the act. Many of us woke the next morning to read the article in *The Toronto Star* about personal injury lawyers and the use of contingency fee arrangements. I personally hope the LSUC will consider what it can do to lobby the government for changes.

Advertising: The advertising of legal services continues to be a hot-button issue in the profession but particularly with personal injury lawyers. From what I gathered, I think it is fair to say that most delegates in the room

were of the opinion that the current level and type of advertising should not continue. The debate is whether we need better enforcement of the existing Rule that governs advertising or if the LSUC needs to implement stronger language regarding what is acceptable. I expect the discussion will continue for some time.

Aside from the exceptional learning and collegiality that took place last Friday, I am pleased to say that - after an appeal from me! - Tricks of the Trade delegates generously donated over \$5,000 for the 2017 TAS Gives Back campaign, that is raising money to fund scholarships at four Canadian law schools. The scholarships will go to indigenous students or students that are committed to indigenous studies or communities. As lawyers, I believe we have an ongoing duty to learn about our indigenous communities, their histories and their ongoing challenges. Please continue your generosity and return your pledge and/or postcard to the TAS office.

Many thanks to Tricks Chairs - **Patrick J. Brown**, *McLeish Orlando LLP*, **Susan E. Gunter**, *Dutton Brock LLP* and **Peter W. Kryworuk**, *Lerners LLP* - for another fabulous conference. See you next year! 🍷

Save the date: January 26, 2018



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(L o R) Peter W. Kryworuk, *Lerners LLP*,
Richard H. Shekter, *Shekter Dychtenberg LLP*



(L to R) The Honourable Regional Senior Justice Harrison S. Arrell, The Honourable Justice James F. Diamond, *Superior Court of Justice, Superior Court of Justice*, The Honourable Justice Helen Rady, *Superior Court of Justice*, J. Patrick Brown, *McLeish Orlando LLP*



(L to R) Claire Wilkinson, *Martin & Hillyer*, The Honourable Justice Grant R. Dow, *Superior Court of Justice*, Roger Chown, *Carroll Heyd Chown LLP*, Richard Bogoroch, *Bogoroch & Associates LLP*

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Carolyn D. Silver, College of Physicians and Surgeons of Ontario

By: Peter J. Henein, Cassels Brock & Blackwell LLP



1

Q: The greatest legal mind, other than yourself?

A: Vinny Gambini (aka My Cousin Vinny). Also one of the great trial movies. Disclosure, expert evidence, the perils of witness identification and confessions. It has it all. Watch and learn.

2

Q: What keeps you coming back day in, day out?

A: My assistant's exceptional skills. She always manages to track me down.

Q: When you're looking for inspiration on a file, you...?

A: Binge on a Netflix or Crave crime/law show. Most recent: The Night Of. John Turturro's speech on jury selection is a must. Makes me itchy to watch it again.

3

4

Q: Work? Life? Balance?

A: I generally can't complain but in the middle of a long hearing, I have been known to recommend that my daughters seriously consider dentistry.

9

Q: Pets or no?

A: I'm on a dog break right now but under a lot of pressure (from the teens who give me sanity/take it away) to get a new rescue mutt. My concern is my ability to enforce undertakings from minors to care for their beloved pet.

5

Q: What's the most ridiculous thing about being a litigator?

A: Dealing with other litigators.

10

Q: Favourite courtroom in the country? Why?

A: Osgoode Hall. I gave the tours the year I clerked (just a few short years ago really). It was that or prepare case summaries, and I decided I was more of a people person.

11

Q: What's the most important rule for you regarding email etiquette?

A: There are rules about that? Uh oh.

6

Q: What gives you sanity?

A: (1) My fabulous colleagues; (2) my two lovely daughters. Both teams support me but keep me in line.

12

Q: When you want to unwind, you...?

A: Run around Queen's park (much slower than I used to), and try to get out of town for a long weekend.

13

Q: Best album ever?

A: In honour of the recent untimely passing of Major Tom, I'm going with Hunky Dory.

7

Q: Favourite culinary indulgence?

A: Currently Planta. As a long standing veggie, it's nice not to be the problem diner.

14

Q: So my arm hurts when I move it like this. Any advice?

A: Trying to catch me practising without a licence? Nice try. Who put you up to it? ■

Breakfast with Lainey Feingold



MORGAN SIM,
PINTO WRAY JAMES LLP

8 a.m. may seem a little early for some CPD, but Lainey Feingold was worth the early daycare drop-off. She came prepared on February 9th to charm a sleepy audience at The Advocates' Society with props, humour, and inspiring stories about huge victories she has obtained for her disabled clients – each of which she achieved without ever filing a lawsuit.

Lainey's approach to advocacy is refreshing and has proven to be extremely successful for the blind community in the United States. It

has resulted in accessible information and technology, supervised implementation of settlements, and she still gets paid.

Young advocates often bemoan the ever diminishing number of opportunities to get "on our feet" in a courtroom. As someone who practices in the areas of human rights and disability rights myself, I have come to terms with the dearth of opportunities for trial advocacy in part by focusing on the opportunities for creative remedies in structured settlements. In my experience, clients are almost always happier with a negotiated settlement than with litigation, and negotiated settlements allow clients to maintain relationships with the entities against which they have legal claims.

Lainey Feingold has made a career out of this less adversarial approach to advocacy. She has pioneered "Structured Negotiations", an alternative dispute resolution process that seeks win-win solutions to legal claims without going to court. Using

this method, she has negotiated more than 50 settlement agreements with some of the largest institutions in the United States – Bank of America, Walmart, CVS, and Major League Baseball, to name a few. Lainey is sought out by clients because of her approach to advocacy. She receives calls from claimants asking, "Are you the lawyer who doesn't sue people?" – a moniker Lainey is proud to wear.

While Lainey's book (<http://www.lflegal.com/>) sets out a detailed guide to Structured Negotiations, her overall approach is an excellent reminder to a high-stress profession plagued by depression and addiction: "Being a zealous advocate *doesn't* mean you can't also be a peacemaker." In fact, trading the stress and conflict of litigation for relationship-building and true problem-solving may result in even better outcomes for your clients. ▀



Pitch Perfect: How to Win and Keep Work from In-House Counsel



SARA J. ERSKINE,
RUETERS LLP

Congratulations to the 10+ Task Force on the success of their launch event, Pitch Perfect: How to Win and Keep Work from In-House Counsel on February 9, 2017. The evening began with the attendees mingling over wine and cheese. This was a great opportunity to meet mid-career lawyers and to catch up with old friends and colleagues. Once the program started, the panel of Gena Argitis, Julia Evans, Martin Herman and Tracy Wynne, provided excellent insight and tips for lawyers looking to develop and foster business relationships with in-house counsel. The members of the panel were candid and did not shy away from difficult topics ranging from how lawyers get their “foot in the door” to understanding the business pressures facing in-house counsel. Hats off to the Program Chairs and the members of the 10+ Task Force. I look forward to attending the next event. ■



THE NEXT FIVE

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Live Webcast Option Available!

MASTERING THE ART OF EXAMINING WITNESSES
March 1, 2017 - Toronto

PREPARING WINNING COURT DOCUMENTS
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ADMINISTRATIVE TRIBUNAL ADVOCACY
Mar 28, 2017 - Toronto

Live Webcast Option Available!

DO A TRIAL!
April 1, 2017 - Toronto

COLLEGIAL EVENTS

WINE & CHEESE WITH THE BENCH
March 1, 2017 - Barrie

YASC PUB NIGHT
Mar 9, 2017 - Windsor

YASC SIXTH ANNUAL TRIVIA CHALLENGE FOR CHARITY
Mar 23, 2017 - Toronto

WINE & CHEESE WITH THE BENCH
April 6, 2017 - Toronto

THE JOHN P. NELLIGAN AWARD FOR EXCELLENCE IN ADVOCACY
April 20, 2017 - Ottawa

PRACTICE GROUPS

AN EVENING WITH SOAR
Feb 23, 2017 - Toronto

TOP CASES IN COMMERCIAL LITIGATION
Mar 1, 2017 - Toronto

LABOUR & EMPLOYMENT PANEL AND RECEPTION
Mar 22, 2017 - Toronto

FIRESIDE CHAT ON ADVOCACY
April 10, 2017 - Toronto

YOUR PROFESSION, YOUR FUTURE
June 5, 2017 - Toronto

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