

ADVOCACY MATTERS

Business Development | Interview | Employment Law Top 10
Pro Bono | Making a Fundraiser | The Next 5

EDITOR'S NOTE



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



Happy winter/summer/spring, everyone.

In keeping with the yo-yoing weather, I thought now would be a good time to talk about balancing our temperament as advocates. Last week, I had the pleasure of hearing Dean Strang speak at the War Child: Making a Fundraiser event. For those of you who have been living under a rock for the past three months, he was one of the defence attorneys for Steven Avery featured in the harrowing “Making a Murderer” series on Netflix. What struck me as he spoke during last Wednesday’s question and answer session is how genuinely humble he seems, yet at the same time, how clearly passionate he is about being a defence attorney.

The dialogue surrounding civility versus the zealous advocacy posits a “politeness versus passion” paradigm. But Mr. Strang’s often self-effacing comments never came across as anything other than being passionate, and zealous. He was forthright about his concerns and criticisms of a number of actors in the prosecution

of Steven Avery. Yet, he came across as an eminently “reasonable man”; exactly the kind of normative viewpoint our common law so frequently proposes as the measuring stick for judgment.

I’ve discussed the concept of identity and finding your voice before. Mr. Strang was a shining example of how passionate representation doesn’t need to be bombastic. And that’s one to grow on...

What more can I say? Yet another great issue... Lauren Tomasich interviews Jodi Kovitz about business development tips for litigators, I interview the fantastic Dianne G. Corbiere, Hermie Abraham summarizes 10 top employment law cases in 140 characters or less, and Ranjan K. Agarwal talks about the impact of pro bono work. Also photos and stuff.

Peter

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Business Development for Litigators - Listen, Give, Make Friends, and Have Fun

Lauren Tomasich - discussion with Jodi Kovitz

LAUREN TOMASICH, OSLER, HOSKIN & HARCOURT LLP

JODI KOVITZ, OSLER, HOSKIN & HARCOURT LLP



“Business Development” is a buzzword that is becoming more and more ubiquitous in the legal community. Obviously the concept isn’t new. The business of private practice is and has always been about finding and servicing clients. But there is now an evolving sentiment that “the business of law is changing dramatically”. I wanted to know what exactly this meant, and more specifically, what it meant for litigators. How can we sell people on services that they actually hope to never have to buy? And how can we fit in “developing new business” when we’re so busy litigating for our existing clients?

For guidance on these issues, I turned to Jodi Kovitz, Osler’s Director of Client and Business Development, Litigation and Growth Initiatives. Jodi is a former litigator who realized that her calling was the “selling of law” instead of practising it. Jodi is a frequent speaker on business development strategies and selling for lawyers, networking, social media strategies, and business development for women, and loves sharing her wisdom.

LT: So the “business of law is changing dramatically”. What does that really mean? How do those of us who are

already in the profession need to adapt and evolve to be successful?

JK: Yes, the business of law *is* changing dramatically. Law is a highly competitive and mature market. We are contending with consolidation, globalization and non-lawyer competition. We face new legal world pricing pressure, and there is a ruthless focus on profitability and cost containment. All of this results in increased pressure for lawyers in private practice to focus on value-added business development activities in order to be revenue generators.

Some call this a “bad news story”. I don’t believe this is true. While our new reality presents challenges and new rules of play, it is also presents significant, though perhaps less obvious, opportunities for growth. You just have to focus on finding those opportunities.

LT: I’m focused! But surely business development is different for litigators when people only come to us when they have a problem...

JK: You’re right, litigators in particular can’t do business development



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solely for the purpose of getting files “immediately”, because often a litigation file may not exist when a relationship is formed. Even if it does, it is hard to have that degree of trust at the first “hello” to get hired for a serious piece of litigation. The key is to understand that it is *not about the file*. It is about engaging in behaviours that broaden your network. Develop, cultivate, and invest in your relationships, making them mutually beneficial. Little actions over a long period of time will result in a rich, broad and deep network full of loyal relationships. Those are the best kinds of relationships – because people that are *loyal* to you will go out of their way to *advocate* for you.

LT: What advice would you give an “adolescent” lawyer who has some experience to sell, but isn’t a seasoned “grey-haired” litigator quite yet? How can they meaningfully grow their practice from a business development perspective?

JK: Have a vision for your career and some very concrete goals (both long term and shorter term). The most successful people take the time to think and dream big, and then plan how they are going to get there, with

very actionable goals. Think about where you want to be when you have the grey hair, but also focus on what you can realistically do now. Focus on your “critical few” existing clients and key referral sources. Specifically target some carefully thought out high potential client and referral source prospects – do the work it takes to come up with a short, high potential list (so that you don’t waste your valuable time).

LT: Litigators are outgoing by nature right? So why does “business development” have the potential to feel awkward? Or is that just me?

JK: It is not just you. People often think that developing business necessarily means “selling”, which makes many people nervous because selling doesn’t come naturally to everyone. However, as I’ve said, business development for litigators means building relationships. Part of building relationships is making them *authentic*. This necessarily involves a lot of listening.

Some studies show that lawyers are actually more introverted than the general population. My friend Natalie Jenner who is a performance and transition consultant that works with many lawyers often says that lawyers are “*extroverted* introverts”. We can project confidence and an interest in others. But ultimately we are most comfortable with quiet, and our own

lines of thinking (and the sound of our own voices). We do not naturally derive our energy from others (including listening to them) the way that true extroverts do. The end result? We’re not very good listeners.

So next time you’re at a networking event, remind yourself that you can get the most out of it by listening, not talking or “selling”. Listen for opportunities to ask further questions, or find little treasures of information to act on for the benefit of the other person – first, before asking for anything. Those little treasures of opportunities to “give first” are easy to miss when you’re too busy thinking five steps ahead, or too focused on your own point of view or story that you are waiting to share.

LT: Ok so just for the record, the right answer to that last question was “Lauren, you’re not awkward”. My next question is about making time. Can you share some tips on fitting business development into our already jam-packed schedules?

Quarterly, take a half day to work on your business development plan. You need thinking time, creative time and “you time” to make sure you are being real with yourself about your vision, goals and strategy.

Weekly, take three hours of “white space” in your calendar to contemplate your week, see if you are being true to your goals and advancing them, and tweak where required. Creative white space time is critical to success and can

dramatically change how effective you are.

Daily, carve out 30 minutes to advance your plan *tactics*. This is where you send e-mails to contacts, book lunches, send articles of interest, research topics of interest or discussion points etc.

LT: I love attending TAS events, and think they provide excellent networking opportunities with amazing people. Do you have any advice specifically about networking at TAS events?

Attend TAS events that interest you. Go looking to meet new people who you connect with easily, naturally and want to get to know – people you *like*. Chances are, if they are interested in the event too you’ll have something in common, and something to chat about. But also be methodical and purposeful. Don’t just wander around the room - go with an objective of meeting three new friends. Take business cards and follow up right away to get together again to continue the conversation you started. I always send myself an e-mail after I meet someone, capturing a few highlights that we discussed (their favorite sports team, holiday spot etc.), and any follow up ideas so I don’t forget the details. This helps to explore mutual interests at the outset to build the relationship over time. And litigators are lucky to have such a great forum in The Advocates’ Society to build these relationships...so make the most of it! ▀

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Interview with Dianne G. Corbiere, IPC, LL.B, HBSW
Nahwegahbow Corbiere Genoodmagejig Barristers & Solicitors

BY: PETER J. HENEIN, CASSELS BROCK LLP



1 **Q: The greatest legal mind, other than yourself?**
A: Your question implies there are others. Interesting...

Q: The Law: Magic or daily grind?
A: Grinding out the magic daily. **2**

6 **Q: What gives you sanity?**
A: Let me just check with my therapist (s).

Q: What drives you to madness?
A: Let me just check with my other therapist(s).

7 **Q: Pets or no?**
A: Lizards - unlike me they can last a while without much attention.

8 **Q: Best album ever?**
A: My wedding photo album.

Q: Favourite app?
A: I rock in the tree tops and tweet all day long. **9**

3 **Q: Where do you find inspiration on a file?**
A: See #2...

4 **Q: Work? Life? Balance??**
A: I have no idea what you're talking about. Is this interview going to take much longer?

5 **Q: What's the funniest thing about your job?**
A: That I have one.

10 **Q: Favourite culinary indulgence?**
A: Joe Louis - this was brought to my attention during dinner at my wedding.

11 **Q: Favourite judge or master?**
A: I am constantly judging and mastering everything, yes - oh, wait...did you mean something else?

12 **Q: When do the emails start flowing?**
A: As long as the sun shines and the emails flow...or was that rivers flow...either way, same result on my end.

13 **Q: When you want to unwind, you...?**
A: Write lyrics for Kanye West (he doesn't like to admit it publicly but let's just say he loves my stuff).

14 **Q: According to particle physics, matter and antimatter are equal but entirely opposite. So why is there more matter than antimatter?**
A: Naturally being a lawyer, I have an opinion on this - like all things - but for this one let me ask my husband the scientist...if his 'ideas' differ from mine I'll just insert my correct viewpoint. ▀



How Tweet it is: Top 10 Employment Law Updates in 140 Characters (...or so)

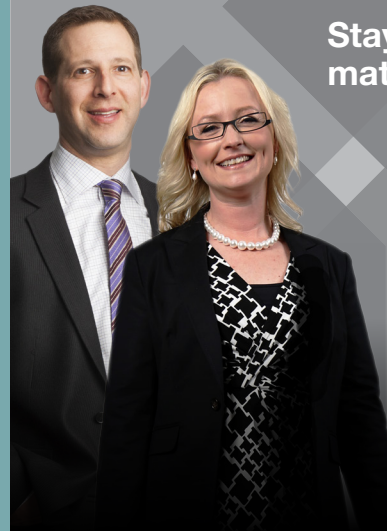
HERMIE ABRAHAM,
ADVOCATION PROFESSIONAL CORPORATION

Staying on top of updates in employment law can be difficult and time consuming. Here, we have provided you with ten notable decisions and legislative updates, issued within the last 12 months and presented in an easy-to-digest, largely twitter-compliant format.

1. Termination clause with 'saving' language that guarantees statutory minimum entitlements is ruled to be enforceable. (*Luney v. Day & Ross Inc.*, 2015 ONSC 1440 (CanLII))
2. SCC clarifies constructive dismissal: it can result from a unilateral act that breaches an essential term of employment OR a series of acts that together demonstrate the employer no longer wishes to be bound by the employment contract. (*Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 (CanLII))
3. High damages for breach of Ontario's *Human Rights Code*: two workers, who experienced workplace sexual harassment receive \$150,000 and \$50,000 respectively. (*O.P.T. v. Presteve Foods Ltd.*, 2015 HRTO 675 (CanLII))
4. Ontario court affirms duty of honesty in contractual performance in employment contracts and awards 8 months' notice and \$500,000 in lieu of unissued shares. (*Antunes v. Limen Structures Ltd.* 2015 ONSC 2163 (CanLII))
5. Alleging just cause in an effort to avoid payment of reasonable notice results in punitive damage award of \$100,000. (*Gordon v. Altus Group Limited*, 2015 ONSC 5663 (CanLII))
6. New limits on candidate background checks: Ontario passes Bill 113, which restricts information that can be disclosed in criminal records checks. (*Police Record Checks Reform Act, 2015*, SO 2015, c 30 (granted Royal Assent on December 3, 2015 but not yet in force; the Act will come into force on a day to be named by proclamation of the Lieutenant Governor))
7. Appeal Court affirms family status ruling: 36-year-old office manager with 7+ years of service gets \$20,000 in damages and 12 months' reasonable notice for employer's failure to properly reinstate her after maternity leave. (*Partridge v Botony Dental Corporation*, 2015 ONCA 836 (CanLII))
8. Worker safety matters: construction manager sentenced to 3½ years of prison for criminal negligence causing death and bodily harm for fatal construction accident. (*R. v Vadim Kazenelson*, 2016 ONSC 25 (CanLII))
9. Two long service workers, treated as 'sub-contractors,' are found to be dependent contractors and each are awarded 26 months of reasonable notice. (*Keenan v Canac Kitchens*, 2016 ONCA 79 (CanLII))
10. AODA Update: Individual emergency response information must be provided to employees with disabilities (all employers). Employers with 50+ employees must prepare individual accommodation plans for employees with disabilities and have a return-to-work process for employees on disability leave who require accommodation to return. (*Accessibility for Ontarians with Disabilities Act, 2005*, SO 2005, c11 (CanLII))

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Voices for Pro Bono



SARAH J. ARMSTRONG,
FASKEN MARTINEAU DUMOULIN LLP

One of the things that I love about being a member of The Advocates' Society is being a part of a community of advocates. I am inspired by so many of my colleagues in the profession for the work they do, but especially those members who commit to pro bono work. Pro bono work is an important avenue through which we, as advocates, can advance the cause of access to justice. In my column for Advocacy Matters, I want to continue to celebrate the Society's members who give their time, skill and passion for advocacy to pro bono work, and let them share their stories in their own words. In this issue, we welcome Ranjan Agarwal and thank him for taking the time to share his story. If you have a great pro bono story to share, we'd love to hear it. Send to me at SArmstrong@fasken.com



RANJAN K.
AGARWAL,
BENNETT JONES LLP

An immigrant to Canada with no job prospects. A slick recruiter who promises access to the "hidden job market". For most of us, when something sounds too good to be true, it usually is. But for Golam Mehedi, Job Success promised something irresistible: for just under \$3000, he was "guaranteed" a job as a Project Manager. Of course, there was no job.

When Mehedi sued Job Success, he



faced an uphill battle. The recruiters were good with words, and persuaded the trial judge that they never made such a promise. Mehedi appealed, which was summarily dismissed. And then...CBC's Marketplace broadcast an undercover investigation, showing the very same recruiters from Job Success, on hidden camera, making the very same promises. The very definition of a good fact!

For most litigators, the need to move to re-open a trial might come up once in our career, if at all. So, navigating the rules and procedure would be difficult for any of us, but even more so for a self-represented litigant with poor English. Unfortunately, the justice system didn't help Mehedi—he was bounced around between courts and registrars for over a year until, finally, Justice Juriansz of the Court of Appeal, on a motion, took the time to review the file and write careful reasons providing some guidance as to how this matter should proceed. That work was undone when Mehedi appeared in busy motion court, Marketplace transcript in hand, and his motion to re-open was nonetheless summarily dismissed.

Prodded by a judge with some knowledge of the case, we contacted Pro Bono Law Ontario to see if we could assist Mehedi. PBLO suggested something novel: rather than acting for Mehedi, why not offer our services, pro bono, to the Court of Appeal as an *amicus*? That seemed pretty neat—probably as equally rare as moving to re-open a case is the opportunity to act as an *amicus curiae*.

In this case, the order, which PBLO helped obtain, appointed us *amicus*

curiae for Mehedi. So, we took that as licence to actively argue for Mehedi's side of the case (as opposed to being a neutral friend of the court). As was expected where both sides are representing themselves, the appeal materials were a mess (the rules for the various briefs that need to be filed on an appeal really need a law degree to decipher). So, we took it as one of our tasks to file a proper appeal book and explain the procedural history of the matter. And, of course, to argue that the motion judge erred when he refused to re-open the trial.

Success! In written reasons, the Court unanimously set aside the motion judge's order and sent the matter back to trial, and directly to the original trial judge to boot (and with costs for Mehedi).

At that point, we agreed to go on the record as Mehedi's counsel, if only to assist in navigating the process to actually get this matter back before the trial judge (which also apparently requires a law degree). As sometimes happens though, the imposition of a lawyer seemed to hasten a settlement, avoiding the re-trial.

For us, this was a precise example of how litigators can advance the cause of access to justice by volunteering pro bono. The experience of navigating the court system, including the rules and forms and the Registrar's office, is often the best assistance we can provide. Though I hope our argument on the appeal was persuasive, it was really our ability to assist Mehedi to actually get the case back on track that was the real value. And, of course, it's the rare case where, at the end of the brief, you have the thanks of your client, the court and your opponent. ■

MAKING A FUNDRAISER

What a night!! On March 9, 2016 The Advocates' Society held "Making a Fundraiser: An Evening with Dean Strang" in support of War Child. The Advocates' Society was honoured to host Dean Strang's first appearance in Canada. The sold-out crowd of 250 filled Steam Whistle brewery to hear Frank Addario interview Dean Strang, followed by a live and silent auction.



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A full house



Fun with Dean and Frank



Dean Strang



Frank Addario



Audience Q & A

MAKING A FUNDRAISER cont.



Dr. Samantha Nutt, Frank, and Dean



A fun and successful auction



Whiskey tasting with The Macallan



#Inspiring



On-stage selfie w/ Sam Walker

#MAKINGAFUNDRAISER

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Interview with @CBCNews & Dean Strang in action pre @Advocates_Soc #makingafundraiser tonite!



RETWEETS 2 LIKES 3

Jeffrey Shinehoft
@JeffShinehoft

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Had the chance to ask Dean Strang a question. #makingafundraiser - #classact #lawyerlawyer



RETWEET 1 LIKES 2

HLLP
@HeneinHutchison

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HLLP lawyer Sam Walker meets the incomparable Dean Strang at fabulous @Advocates_Soc Making a Fundraiser event.



RETWEET 1 LIKES 7

Kris Borg-Olivier
@KrisBorgOlivier

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Dean Strang and me comparing notes on criminal defence. I think we both learned a lot...



LIKES 7

THE NEXT 5

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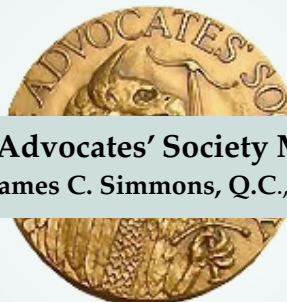
**CALGARY BENCH AND BAR
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**SECURITIES LITIGATION
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March 31, 2016 - Toronto

**COMMERCIAL LITIGATION
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MAKING A FUNDRAISER: AN

EVENING WITH DEAN STRANG

In Conversation with Frank R. Addario

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