

# ADVOCACY MATTERS

From The Editor | TAS Report | The Profession | Spring Symposium | The Future of Advocacy  
Photo Gallery | Interview



FROM THE EDITOR

## Moving Forward

Lauren Tomasich, *Osler, Hoskin & Harcourt LLP*



Happy May and welcome to what is finally starting to feel like spring! This edition of *Advocacy Matters* is all about moving forward, which is how I'm sure many of us feel this time of year. I, for one, just had my first post-court patio lunch of the year—isn't that the hallmark of spring for a litigator?

Our *Advocacy Matters* contributors all, in their own way, touch on how we can move forward individually and as a profession. Jordan Lester profiles some of TAS's finest "second career" lawyers. Can you ever imagine leaving a job where you were in studio with the Red Hot Chili Peppers? John Sorenson from Gowlings WLG tells *Advocacy Matters* how being a tax lawyer is just as exciting.

Sarah Armstrong's summary of the Commercial Litigation Women's Breakfast, which, for the first time, "Brought Men Into the Conversation", does a wonderful job of capturing this panel discussion about moving forward against the "unconscious bias" that may predispose more senior male lawyers to leading roles on commercial files. This is not only important to women, but to us moving forward as a profession to give more junior men and women leading speaking roles.

And you can't get much more forward thinking than filing documents electronically. Think about how much easier our lives would be if we didn't have to build in time for someone to run up to court and stand in line before the filing cutoff to get something in on time. Brent Arnold tells us how to do this, and what the future holds.

We also have a report on Spring Symposium, and our always entertaining interview. So get ready to move into Spring with our May issue of *Advocacy Matters* (and it wouldn't hurt to go find a patio to read it on...just sayin!).

**Editor:** Lauren Tomasich, Ltomasich@osler.com

**Contributors:** Sarah J. Armstrong, Jordan Lester, Robert Martz, Brent J. Arnold, Alfonso Campos Reales, Laurie Livingstone

*Advocacy Matters* | May 2018 | Page 1

The opinions expressed by individual authors are their own and do not necessarily reflect the policies of The Advocates' Society





## Women in Commercial Law: Bringing Men Into the Conversation

Sarah J. Armstrong, *Fasken*



Enrollment rates of men and women at Canadian law schools have been substantially the same for years. In Ontario, more women than men were licensed to practise law in each year between 2011 and 2015, except in 2012.<sup>1</sup> In its

annual report for 2016, the Law Society of Ontario reported that more than 43% of all practicing lawyers in Ontario are women and that there are more female than male licensees in the under-30 and 30-to-39 age cohorts.<sup>2</sup>

But the statistics also reflect that the representation of women declines markedly in more senior segments of the bar<sup>3</sup> and significantly more men than women remain in law and are partners in private practice.<sup>4</sup> And, reports continue to show that women earn less than their male counterparts.<sup>5</sup>

The gender gap also exists in the courtroom. Recent statistics from the New York State Bar Association indicate that just 25% of the counsel appearing across all types of litigation matters in New York state's courts are women. The percentage of women counsel appearing in New York courts as counsel in commercial litigation matters specifically is also roughly 25%, as is the percentage of women appearing as lead counsel in commercial litigation matters. However this number decreases significantly as the complexity of the matter (measured by the number of parties) increases.<sup>6</sup>

With no shortage of women students entering law school, more women than men in the early years of practice and a clear business case for advancing women in our profession<sup>7</sup>, why are we not seeing more improvement in the numbers? What can we do to make the practice of commercial litigation more inclusive?

On April 3, 2018, The Advocates' Society's Commercial Litigation Practice Group gathered over breakfast to explore the above statistics and the reasons for them, and to discuss potential solutions. A full house of advocates at all stages of practice (including a number of current and former managing partners) attended "Women in Commercial Law: Bringing Men Into the Conversation." The program featured a panel discussion that was expertly moderated by Shara Roy (Partner, Lenczner Slaght) and Robert MacDonald (Partner, Fogler Rubinoff) who led the dialogue of panelists: Justice Fred Myers of the Ontario Superior Court of Justice, Linda Plumpton of Torys LLP, Bindu Dhaliwal of BMO and Tim Moseley of the Ontario Securities Commission.

I was pleased that the discussion involved only a brief mention of the overplayed "work-life balance" narrative that so often dominates conversations about keeping women in private practice. As one panelist pointed out, the pace of complex commercial litigation practice is challenging and often unfriendly to *all* who seek to have an active role in family life or who have other interests and commitments outside of work. There is no denying that this reality has a more significant impact on those who have greater respon-

sibilities at home. Continued progress is required on this score, at work and at home, but there are other significant drivers behind the disappointing statistics.

Unconscious bias also plays a significant role. The panelists commented that this starts right from the hiring stage (the “mini-me syndrome”) and continues through to decisions about work allocation and sponsorship of candidates for advancement. In commercial litigation in particular, deeply entrenched views about what it means to be an advocate for clients involved in significant business disputes may also factor in to decisions about staffing on significant files, including who leads the file and who makes submissions in court. These views may be shared by clients and prospective clients who have a pre-conceived notion of the characteristics that “their litigator”—their champion—should have.

### What can be done to tackle this unconscious bias?

**In the large law firm context**, panelists emphasized that:

- Women must play a role in the power structure of the organization;
- Leadership roles on student recruiting committees and professional personnel committees are important but women must also be part of the conversation on their respective compensation and executive committees in order to be in a position to effectively question the status quo and make change.
- Diversity and the role of women must be taken into consideration throughout the organization, in particular when it comes to important business development initiatives like RFP responses and speaking opportunities.
- Contributions to diversity initiatives must be considered performance deliverables and non-performing behaviour must be called out, even when the most profitable partners are involved.<sup>8</sup>

The good news is that many clients are driving change within their organizations and demanding the same from their service providers. Bindu Dhaliwal explained the focus at BMO on the implementation and maintenance of diversity metrics and the importance of accountability for diversity-based goals. She described the process that BMO has gone through in working with its service providers to have them provide these metrics and noted that diversity programs are “without teeth” unless they are led and championed by senior leadership.

**In the courtroom**, panelists explained that there is a role for both counsel and the Court to play in addressing unconscious bias.

- Senior counsel should be encouraged to give their juniors (women and men) opportunities to make submissions and question witnesses.<sup>9</sup>
- Everyone in the Courtroom must also be aware of the way in which they interact (or don’t interact) with more junior members of the bar and women advocates in particular.
- Increased awareness and more positive interactions can help to avoid inadvertently creating or reinforcing the impression that only advocates of a certain age, gender or ethnicity have the access, opportunity and respect that their clients want them to have. It was observed, for example, that in practice, even the “three C’s” of the Commercial List—cooperation, communication and common sense<sup>10</sup>—may sometimes have the unintended consequence of excluding less experienced counsel.

Congratulations to the Commercial Litigation Practice Group for organizing this important discussion and to all of those in attendance, both men and women. There is much room for improvement. Let’s keep talking. ■

---

#### Notes

1. Law Society of Ontario Annual Report for 2015.
2. Law Society of Ontario Annual Report for 2016, see pages 23 and 51.
3. Law Society of Ontario Annual Report for 2016, see page 50.
4. Law Society of Ontario, Statistical Snapshot of Lawyers in Ontario 2015, p. 2.
5. For example, see Ronit Dinovitzer, *Law and Beyond: A National Study of Canadian Law Graduates*, University of Toronto.
6. New York State Bar Association, *If Not Now, When?* (<http://www.nysba.org/Women-TaskForceReport/>).
7. See, for example, McKinsey Global Institute, *The Power of Parity: Advancing Women’s Equality in Canada*, June 2017.
8. It was acknowledged that some of these suggestions may be more challenging to implement at small or mid-sized firms.
9. See *Schenk v. Valeant Pharmaceuticals International, Inc.*, 2017 ONSC 5101 (CanLII) at para. [8] “Junior counsel are invited to argue motions or pieces of motions that they have helped prepare and to question witnesses with whom they have worked without fear of cost consequences related to over-staffing concerns.”
10. Paragraph 5 of the Consolidated Practice Direction Concerning the Commercial List provides: “5.Cooperation, communication and common sense shall continue to be the principles of operation of the Commercial List.” <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/commercial/>

Who said this? Chief Justice Richard Wagner or Justice Michal Fairburn:  
**“A lawyer who never loses a case is not a litigation lawyer.”**

*Answer on page 5*





## THE PROFESSION

# Life Before Law: What motivates a career change?

By Jordan Lester, *Cheadles LLP*



What's more exciting: being in the studio with the Red Hot Chilli Peppers as they record their massive *Californication* album, or tax law?

Perhaps the only person on earth who would choose the latter is John Sorensen.

Sorensen is a partner at Gowling WLG's Toronto office specializing

in tax law. In his former life, he spent six years as a sound engineer at the renowned Ocean Way recording studio in Los Angeles, where he recorded acts like the Rolling Stones, Beck, Willie Nelson & B.B. King, just to name a few. He also worked with the Chilli Peppers and legendary producer Rick Rubin on *Californication*.

But for Sorensen, who's originally from St. John's, as exciting as the work was, he knew it wasn't his true calling: "I'm a nerd who happened to be in a room with cool people. The lifestyle wasn't conducive to being a normal human being." He eventually enrolled at Osgoode Hall where he received a JD and LLM in tax law.

Sorensen says his background in music has carried over well to tax law. "Music theory is all about unpacking a puzzle to see how it works. Tax law is the same."

When asked why he went into law school, Sorensen says it was because he didn't like the sight of blood, so he couldn't be a doctor, and because he's "too dumb to be an engineer" (those are his exact words).

Rachael Paquette's reason for changing careers for a path in law is quite different.

Prior to law, Paquette worked with First Nations organizations in northern Ontario, primarily in the education field. She's now a partner at Cheadles LLP in Thunder Bay, specializing in labour and employment, aboriginal and police services law.

Her decision to enter the world of law was based on her experience being raised in a remote First Nation community whose family eventually had to relocate for work. Paquette, who was born in Sioux Lookout, Ontario, says that her personal and family experiences led her to decide very early in life that she wanted to be a lawyer to defend the rights and interests of her family and others.

"After getting a degree in political science, I began preparing to write the LSAT, but life took me down another path and led me to work for approximately 10 years in First Nations' education. This experience was the catalyst for pursuing a law degree, mainly because of the enjoyment I took in advocating for First Nations people, and in particular, the students."

After a decade in First Nations' education, Paquette felt the time was right for law school. She moved to Winnipeg and began her path in law at the University of Manitoba.

For Bob Vangenne, he had known the time was right for law school for quite a while. Coordinating the logistics of it all was the hard part.

Vangenne owned an aromatherapy business that manufactured candles, soaps, lip balms, and everything in between. The products were retailed, wholesaled, and distributed across western Canada, the United States, China and Taiwan. Despite the growth of the business,

and his 20 years growing it, Vangenne says he wanted to do something new and different.

At the tender age of 41, he and his wife sold the business, packed up their 9 year old daughter and 5 year old son, and moved to Gold Coast, Australia, where Vangenne pursued his JD at Bond University.

He's now back home in Victoria where he opened his own practice, Vangenne & Company, specializing in corporate and commercial law.

"Law school was always in the back of my mind. For my

wife and I, it all came down to doing to something new and different."

When asked what his wife said when he first proposed the idea of selling the business and moving the family to the other side of the world so he could go back to school, Vangenne says her response was: "Let's go!"

Like Sorensen and Paquette, Vangenne says the decision to leave behind his previous career for a career in law was the right one. As for his wife: "Looking back on it, she says we won't do that again." ■

## THE NEXT 10

### Summary Judgment Motions

Friday, May 25, 2018  
Toronto & Ottawa | 9:00 AM  
*To learn more click here*

### Termination Clauses in Employment Contracts

Tuesday, May 29, 2018  
Teleseminar | 12:00 PM  
*To learn more click here*

### Mid-Career Litigators Forum

Wednesday, May 30, 2018  
Toronto | 9:00 AM  
*To learn more click here*

### Negotiation Strategies for Litigators

Wednesday, May 30, 2018  
Halifax | 9:00 AM  
*To learn more click here*

### Le Symposium Pour Les Femmes En Litige

Thursday, May 31, 2018  
Montreal | 9:30 AM  
*To learn more click here*

### Insolvency Litigation

Friday, June 1, 2018  
Toronto | 9:00 AM  
*To learn more click here*

### Objection, Your Honour!

Tuesday, June 5, 2018  
Toronto | 9:00 AM  
*To learn more click here*

### Privilege: A Litigator's Guide

Tuesday June 12, 2018  
Toronto | 1:00 PM  
*To learn more click here*

### Summer Trial Advocacy College

Thursday, June 14, 2018  
Toronto | 9:00 AM  
*To learn more click here*



Who said this? Chief Justice Richard Wagner or Justice Michal Fairburn:

**"A lawyer who never loses a case is not a litigation lawyer."**

*Answer: The Right Honourable Richard Wagner, P.C.*

**End of Term Dinner 2018 | Thursday, June 7, 2018**

Save the date for Canada's largest gathering of advocates  
Toronto | Reception: 5:30 pm | Dinner: 7:00 pm | Black Tie  
*To learn more click here*



## SPRING SYMPOSIUM

# 17<sup>th</sup> Annual Spring Symposium: The Advocate Matters

Robert Martz, *Burnet Duckworth & Palmer LLP*



On April 25, 2018, The Advocates' Society hosted its 17<sup>th</sup> Annual Spring Symposium at the Carlu in Toronto. The event featured a series of speakers, panels, and fireside chats on the question of how the advocate matters in the context of today's legal system and political climate.

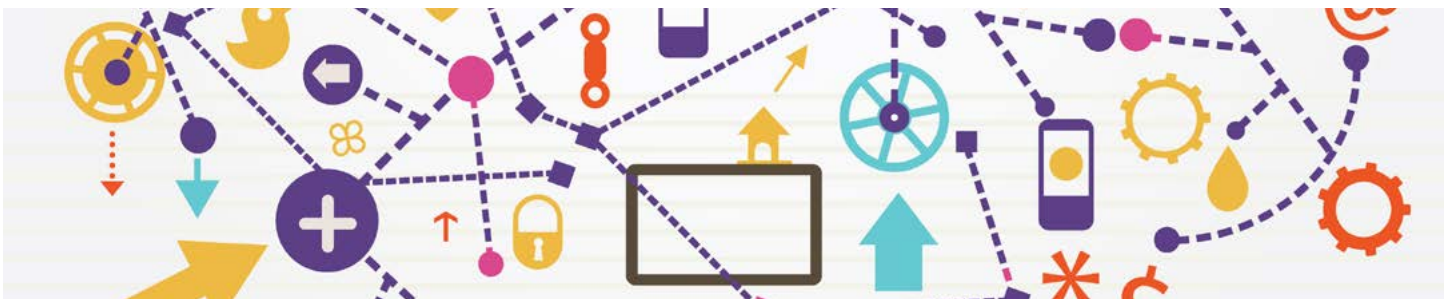
Robert Byman, the Former President of the American College of Trial Lawyers, also brought important perspective on the role of the advocate in society. In pointed reference to today's political climate in the United States, he emphasized that advocates have a positive duty to promote the rule of law, calling out falsehoods when they see them and promoting the truth in public discourse. In the afternoon we heard Marc-André Blanchard, Canada's Ambassador and Permanent Representative to the UN, give an impassioned speech on Canada's role in the world, emphasizing our need to engage in a meaningful way in places like Africa and Southeast Asia.

A number of panels, including Justices Rothstein, Fairburn, and Hainey, discussed (and debated) the principles of effective oral and written advocacy. Katherine Kay and Benjamin Zarnett emphasized the central role

that written advocacy plays in any case, but also offered some important points on oral advocacy—that oral submissions should invite a discussion with the judge, and that the most effective oral submissions tease out and respond directly to any questions or issues the judge may have with your written submissions.

Of all the engaging talks and discussions at Spring Symposium, the one that resonated with me the most were the comments of the Former Chief Justice, The Hon. Beverley McLachlin, P.C. She spoke of growing up in Pincher Creek and how her experiences prior to becoming a judge helped shape her career. She also talked about how the legal profession and legal system need to boldly move forward. She made the forceful point that the legal community needs to be open to new ideas about how to move cases to quicker conclusions and that just because we aren't certain that a new idea will work is no reason not to try it—as she commented, if it doesn't work, we can always go back.

Her call upon the legal system and the profession to embrace change struck me as vitally important. As we have seen over the past few years, virtually any change in the legal system will run up against entrenched views and interests. But this should not get in the way of necessary changes vital to ensuring the continued functioning of our legal system and the rule of law. ■



## THE FUTURE OF ADVOCACY

# E-filing is Here—Use it!

Brent J. Arnold, *Gowling WLG (Canada) LLP*



The Ministry of the Attorney General's Superior Court of Justice e-filing pilot has been rolled out across the province and is already in use. For now, it's a great way to save turnaround time and cost in issuing claims anywhere in any Superior Court in Ontario. Over time, it will allow you to file a wide range of court documents almost instantly and from your own desk. Here are some quick facts about the service:

### What documents can I submit online *now*?

- Statement of Claim – Form 14A or Form 14B
- Notice of Action – Form 14C
- Affidavit of Litigation Guardian of a Plaintiff under a Disability (Form 4D)
- Request for Bilingual Proceedings (Form 1)
- Consent to File Documents in French

### What's it cost?

You can commence an action for the same price as at the desk at the courthouse. You can pay fees online with a credit card or via online banking.

### How does it work?

Complete your forms offline, login to the MAG e-filing portal, and upload your document as a PDF. Turn-around is quick: if you file a Notice of Action or Statement of Claim during business hours, you'll get an email back almost immediately with your issued Notice or Claim attached, complete with court file number, date of issue, and court seal. Instructions and further information on the program can be found [here](#).

### How do I start?

You'll need to set up a *One-key* online account, which you can do [here](#).

### What's next for e-filing?

The program is building incrementally. Soon you'll be able to file the following documents online:

- Proof of Service of documents that are electronically filed
- Statement of Claim subsequent to a Notice of Action
- Notice of Intent to Defend
- Statement of Defence 🚩





WOMEN IN COMMERCIAL LITIGATION BREAKFAST | APRIL 3, 2018



THANK YOU TO OUR PANELISTS FOR CAREER TRANSITIONS FOR MID-CAREER ADVOCATES | MAY 8, 2018



**Save The Date For Fall Convention 2018**  
Montage, Laguna Beach | November 7-11 2018  
Registration opens May 22, 2018

# Off to court?

Create documents by voice!

Click to learn how

Phone: 1-866-544-8877  
charles@talk2me.com

## PHILIPS



THE RT. HON. BEVERLEY MCLACHLIN PC  
IN CONVERSATION WITH GUY PRATTE  
SPRING SYMPOSIUM | APRIL 25, 2018





## Interview with Alfonso Campos Reales, *Lerners LLP*

Compiled By: Laurie Livingstone, *Cassels, Brock & Blackwell LLP*

Alfonso is Partner at Lerners LLP in London, Ontario with a practice focused on personal injury litigation.

### 1. Q. Most proud moment as a litigator?

**A.** Successfully arguing the existence of a novel duty of care at trial in a case that has now taken us all the way to the Supreme Court of Canada (*JJ v CC*, 2016 ONCA 718). We await the Court's decision—fingers crossed!

### 2. Q. Most embarrassing moment as a litigator?

**A.** Being handed a mint by a senior partner mid-way through opposing counsel's oral argument on a summary judgment motion after I had excitedly whispered something to her that I considered earth-shattering to the success of our case.

### 3. Q. How long from the time you wake up in the morning to the time you first look at your phone?

**A.** Under 10 minutes. Optics told me better to say "under 30" but I was reminded to be reasonable and fair.

### 4. Q. A person in the profession you look up to?

**A.** My mentor and friend, Maia Bent.

### 5. Q. TV/movie lawyer you most relate to and why?

**A.** Harvey Specter of course! Billion dollar clients, chauffeured in luxury cars, Michael Jordan on my speed dial, and showing up to trial with only a manila folder (empty?) to yet again win the case. *(Please read that response in a sarcastic tone with an eye roll.)*

### 7. Q. Your key to staying healthy in a stressful profession?

**A.** Cycling and down time with my wife and kids.

### 6. Q. Any pre-game rituals before court?

**A.** Visualize play-by-play how I want the first 5 minutes to go of what I am about to do, and then, in the 15 minutes leading to "go time", wash away any thought relating to the work.

*Continued on page 10*



**Log On! Volunteer to Mentor! Appear on the Member Directory! Track your CPD!**  
Click here to visit The Advocates' Society's NEW website!

**8. Q. Other than files, name 3 things that are always on your desk?**  
A. Aside from four picture frames of my wife and kids, nothing! Having things on my desk also drives me insane!

---

**9. Q. Restaurant recommendation for out of town counsel?**  
A. King of the Pigs (Portuguese open flame BBQ cuisine).

---

**10. Q. Preferred social media platform?**  
A. LinkedIn.

---

**11. Q. A food you can't stand?**  
A. Tuna casserole.

---

**12. Q. What word or phrase do you most overuse?**  
A. Reasonable and fair.

---

**13. Q. During your commute to work you are ...?**  
A. Listening to podcasts.

---

**14. Q. Podcast recommendation?**  
A. Finding Mastery: Conversations with Michael Gervais

---

**15. Q. What gives you sanity?**  
A. My two crazy sons (ages six and four).

---

**16. Q. What drives you insane?**  
A. When technology fails and powerlessness sets in.

---

**17. Q. Favourite vacation spot?**  
A. Cottage life with my family.

---

**18. Q. Your best advice for young litigators just starting out?**  
A. Really latch on to your mentor and use what you have.

---

#### **THE SIX WORD CHALLENGE**

**The best part of summer in London, Ontario is....**the festivals all summer long.

[Editorial Note: That was only five words. Breaking the rules—a total Harvey Specter move!]

## **End of Term Dinner™ | Thursday June 7, 2018**

The Right Honourable Richard Wagner, P.C., *Chief Justice of Canada, Supreme Court of Canada*  
in conversation with The Honourable Justice Michal Fairburn, *Court of Appeal for Ontario*