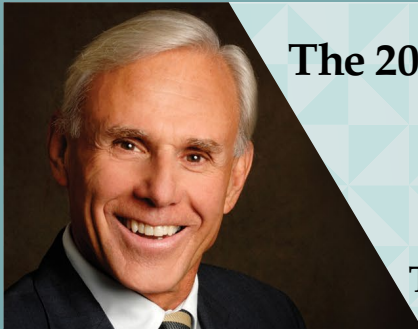


ADVOCACY MATTERS



Catzman Award Speech | Social Media | Interview | Health Law Blog | The Next 5



The 2016 Catzman Award for Professionalism & Civility Honours Donald Bayne, *Bayne, Sellar, Boxall*.

The award will be presented at the Opening of the Courts in Toronto (September 13, 2016) and Ottawa (September 28, 2016).

EDITOR'S NOTE



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

Welcome back to the 2016/17 term of The Advocates' Society and the second year of Advocacy Matters!

As we look forward to this term, we want to expand our bevy of contributors. So please feel free to contact me if you have ideas for specific articles, proposed monthly beats, or if you just want to get involved and don't know how. Heck, I'll even take an angry letter to the editor or the odd tweet (#AskingForIt). In the meantime, we will continue our goals of engaging the legal community, reporting on the many and varied initiatives of The Advocates' Society, and, of

course, ensuring that we maintain our high quotient of obscure eighties new wave music references. #Gowan #PlatinumBlonde #Spoons

In this issue, Jasmine Akbarali talks about Instagram, without photos (#irony), Rebecca Durcan contributes to our Health Law blog and, in anticipation of the upcoming presentation of the Catzman Award to Donald Bayne, we have reproduced the acceptance speech of last year's recipient, Sam Marr. In addition, and in an effort to show that my shameless willingness to engage in transparent, bald-faced nepotism knows no bounds, I interview my very own Cassels Brock law partner, Lara Jackson.

I hope you enjoy. Even if you don't, read this anyways.

Peter

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CATZMAN AWARD SPEECH

On September 13, 2016 at the Opening of The Courts Donald Bayne, *Bayne, Sellar, Boxall*, will be awarded the 2016 Catzman Award for Professionalism & Civility. The recipient of the 2015 Catzman Award, Samuel S. Marr, *Landy Marr Kats LLP*, agreed to share his acceptance speech.

"This is an amazing and extraordinary moment in my life. When I look at the list of the past recipients of this award I am truly humbled to be even mentioned in the same sentence as those recipients, together with the Honourable Mr. Justice Marvin Catzman.

I was an admirer of Justice Catzman's thoughtful legal decisions, and his unflinching politeness in the Courtroom, in an era where judges could often be very difficult with counsel. I was also an avid reader and fan of his very humorous, fascinating and informative pieces he wrote for *The Advocates' Society Journal*.

I particularly remember one article Justice Catzman wrote entitled: "The Wrong Stuff: How To Lose Appeals in The Court of Appeal." In order to educate the reader on how to succeed on appeals, he described several things guaranteed to lose an appeal, including

1. Never begin at the beginning;
2. Always file an incomprehensible factum; and
3. Never start with your strongest point.

The article was funny, practical and very helpful.

I was asked to keep my remarks brief, which is very difficult because of the long list of individuals I wish thank for being there for me throughout my legal career. I will quickly acknowledge and thank all those who wrote letters of support for my nomination, my law partners Keith Landy and Vadim Kats, all the lawyers and staff at Landy, Marr Kats LLP, my parents who always



Julie Catzman presents the 2015 Catzman Award to Samuel S. Marr

encouraged me to pursue the career I dreamed of, my extended family, and last but definitely not least my friend and buddy, and my pillar of support, my wife Susan.

I was probably a very strange kid because I wanted to be a lawyer since I was about 9 years old (about the same time I concluded that a career in professional sports was not a viable vocation for me). How many people get to live their childhood dreams, and make a good living doing what they love, while proudly helping those who express their faith in me when they retain me.

I have always believed that you can be a strong and effective advocate while still playing by the rules, and maintaining and establishing new friendships with my fellow members of the Bar. I am proud of the success I have achieved as a lawyer, while never losing sight of my professional obligations of civility.

Our legal system is a cornerstone of our democracy and our civilization. Justice is a bedrock Canadian principle. It is our actions as practising lawyers which ensure that the ideal of Justice remains a pillar of Canadian society.

I have always proudly declared I am a lawyer, and receiving this award from the profession I love is one of the proudest moments of my life.

As some of you know there was a point about 3 years ago when I feared my health might not allow me to continue my journey in law. But thanks to the support of Susan and the amazing generosity of a stranger, I can proudly and loudly say thank you for this amazing tribute, while being able to revel in this moment which I will never forget.

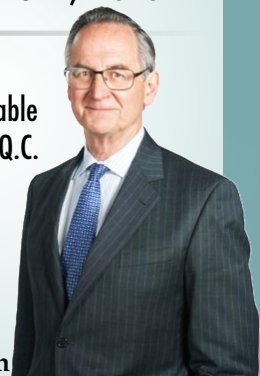
Thank you so very much."

- Sam Marr

Celebration of Advocacy

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Instagram

JASMINE T.
AKBARALI,
LERNERS LLP



I've recently made a foray into a new social media platform: Instagram. I did it begrudgingly, afraid of duck-lip selfies. Much like when I joined Facebook, I didn't intend that Instagram would wind its way into this column. I joined because my 14-year-old twins use it much more than Facebook, and I wanted to keep an eye on their social media presence. I also joined because one of my twins had signed up for a three week Mandarin language camp in China. Gmail, Facebook and twitter can't be accessed in China without a VPN, but the camp posts photos of the campers on its Instagram account. To keep up with what she was doing (like the amazing race through the Forbidden City or camel riding in Inner Mongolia) I decided it was time to get an Instagram account.

Instagram is largely a pictorial platform. Users post photos which can be, but need not be, accompanied by text. Users choose their accounts' privacy settings. Some choose to allow anyone to follow them. Others require that a potential follower seek permission before being able to view their posts. As with Facebook and twitter, others can like and comment on your photos.

At the outset, I followed my kids, the Mandarin language camp, a few

organizations my family is involved in, and some friends and family. I've found that a lot of the posts from friends and family duplicate what I see on their Facebook feeds. But Instagram for businesses is an idea that I am finding quite interesting.

For example, I follow an emerging artist. It's fascinating to see what this young woman produces through images she posts of her new work.

Instagram works well for restaurants. If I'm trying to decide where I want to eat, a restaurant's Instagram feed will give me a sense of the food and atmosphere in a way a website can't. Instagram provides more images and is much more current – the plate on the restaurant's website might not have been served in a year, but the most recently posted photo of a dish on Instagram is probably on the menu tonight.

What, then, of lawyers and Instagram? I started hunting around to see who I could find with an Instagram presence, and how lawyers might use it to their advantage. I discovered very little use of Instagram by law firms or organizations with a few notable exceptions.

The Law Society of Upper Canada has an Instagram account. It's new – there have been 17 posts since June (as of the day I write this column). Many of the posts focus on new calls to the bar – and one on Pokémon Go – but I can see a lot of potential here. Many younger lawyers have Instagram accounts, making Instagram a way for the Society to communicate its work to that constituency. The Advocates' Society president in 2015-2016, Martha

McCarthy, used an Instagram account that serves the same purpose.

I found one large firm that has an account for its students. It posts photos of what the students have been up to, like community-based activities and social events. It also showcases achievements of associates at the firm. It looks like a good recruiting tool to me.

The third way I found the legal market popping up on Instagram was through posts of lawyers with Instagram accounts. Like twitter, people use hashtags on Instagram. I found different firm names popping up when lawyers posted about events to which they had been. And #advocatessociety was a popular hashtag on the night of the end of term dinner.

Instagram, given its heavy reliance on photos, is not the platform to engage in a serious discussion about a new decision or promote the academic paper you just wrote on remedies (though you could post a photo of the cover page). But it is a way to communicate the personality of an organization. Who are your people and what do they care about? Did your organization just participate in a charitable initiative, run a training session that is interesting, or hold a great marketing event? Did you celebrate your newest lawyers' call to the bar, or a fabulous win in court? Posting photos like these on Instagram humanizes organizations and allows a glimpse into the people behind the letterhead. Instagram may not be the most effective social media platform out there for lawyers, but it has the potential to be a useful marketing and recruitment tool - once we start paying attention. ▀



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Interview with Lara Jackson, Cassels Brock & Blackwell LLP



Lara Jackson has an active and varied commercial litigation practice with particular expertise in securities litigation and class actions. Lara a valued member of The Advocates' Society, offering her talent and knowledge for our advocacy programs. When she isn't chasing her new puppy or giggling with her family, Lara can be seen hitting the pavement with Dave Grohl screaming through her iPod.

1

Q: The greatest legal mind, other than yourself?

A: David Roebuck, who was brilliant, strategic, kind and an amazing mentor.

2

Q: The Law: Magic or daily grind?

A: Both –you can't find magic without the daily grind – but I could always use a little more magic.

3

Q: Where do you find inspiration on a file?

A: Teamwork, collaboration and surprising twists.

4

Q: Work? Life? Balance?

A: A frustrating and over-used term. Yes to all – but health and family first.

9

Q: When do the emails start flowing?

A: They don't really stop. I try not to press 'send' late night or early morning unless absolutely necessary.

5

Q: What's the funniest thing about your job?

A: My co-workers. And calling opposing counsel "my friend" during submissions - some clients find this so strange.

10

Q: Favourite app?

A: Spotify, Nike Running, The Globe and Mail.

11

Q: Pets or no?

A: Recently yes, with the arrival of our puppy Roxy. Just when I thought we were past potty training, teething and being housebound. Fun times!

6

Q: What gives you sanity?

A: My family – my husband, Jeff and our kids – they're hilarious.

12

Q: Favourite judge or master?

A: Favourite real judge: The Honourable John W. Morden, C.M., my former colleague and a great friend. Favourite TV judge: Judge Patrice Lessner on The Good Wife ("in my opinion").

Q: What drives you to madness?

A: Dockets and unreasonable expectations.

7

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

A: Spend time with my family, exercise, read.

13

Q: Best album ever?

A: Albums? I listen to playlists these days– but best recent album – Foo Fighters, Sonic Highways.

8

Q: Favourite culinary indulgence?

A: Always changing – this summer it was peach salsa and Rosé.

14

Q: How has your life changed since the recent discovery of the earth-sized planet orbiting a star – Kepler-186f – and the prospect that it is a habitable zone planet... legally speaking?

A: Not at all apparently since I had to look this up. Earth has a cousin? ♣

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HEALTH LAW BLOG



REBECCA C. DURCAN,
STEINECKE MACIURA LEBLANC

Courts have said that in credibility cases adjudicators should say more than just that they believed one witness over another. There should be some explanation of those findings. However, articulating why one witness is more credible than another witness is difficult. In one recent discipline case, the highest court of British Columbia gave an example of what might be acceptable reasons. In *The Law Society of British Columbia v. Sas*, 2016 BCCA 341 the tribunal in that case used language such as evidence that was “argumentative, imperious, self-serving and

evasive” or that was “argumentative, evasive in answering some questions, and non-responsive in answering others”. The tribunal gave examples in its reasons to illustrate these conclusions. The tribunal also did a close analysis of the substantive series of events describing what it viewed as actually having occurred. The Court said that the tribunal had not used “empty descriptions to characterize the evidence of” the witnesses it did not believe. The reasons were “meaningful, and describe proper bases for assessing evidence”.

The Court also gave the tribunal a pass on not addressing a discrepancy between a witness’s original statement and her testimony at the hearing as to whether she issued one or three cheques on a particular account. The Court said: “While [the practitioner’s] counsel undertook an extended cross-examination on the discrepancies between Ms. Clarke’s original statement and her testimony at trial, the discrepancies were not of any particular moment. They went only to

minor details surrounding the August 31, 2011 transactions. At most, the discrepancies might have cast some doubt on Ms. Clarke’s ability to recall minute details of the August 31 transactions. The discrepancies did not go to the nature of the transactions, themselves. In my view, given the limited importance of the discrepancies, it was not incumbent on the hearing panel to mention them in its reasons.”

Thus a discipline panel needs to articulate in some reasonable fashion why it believed one witness over another and should discuss any significant discrepancies in the evidence of a witness whose evidence it accepts. However, perfection is not required. ▀



PROGRAMS

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Sept 16, 2016 - Toronto

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HEALTH LAW LITIGATION

Sept 23, 2016 - Toronto

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BROWN BAG EXPRESS FOR ADMINISTRATIVE LAWYERS

Sept 26, 2016 - Toronto

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How to Say "No" and Preserve the Relationship
Sept 29, 2016 - Toronto

APPELLATE ADVOCACY

Oct 13, 2016 - Toronto

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ADVOCACY EVENTS

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Sept 15, 2016 - Sudbury

BREAKFAST NEAR TIFFANY'S VI

Sept 30, 2016 - Toronto

TORONTO MENTORING DINNER SERIES:

Practice Makes Perfect
Oct 13, 2016 - Toronto

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Ian Lake as Macbeth in Macbeth. Photography by David Hou.



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