

ADVOCACY MATTERS

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FROM THE EDITOR

Resolutions

Lauren Tomasich, *Osler, Hoskin & Harcourt LLP*



Happy 2018, TAS members! January is the time when many of us turn our minds to resolutions for the coming year. For those who haven't yet settled on a resolution (or perhaps for those who are already done with resolutions like "eat better", "go to the gym more", or "procrastinate less"...all decidedly less exciting come the end of

January), the Advocacy Matters team has some potential new year's resolutions for you that you can read about in this issue:

1. Develop capabilities in electronic trials. Brent Arnold writes about why electronic trials are more efficient and effective, how you can have the same facilities as with a paper trial, and how to implement your next electronic trial. #2018trialgoals

2. Follow TAS litigators on Twitter...or better yet, start your own Twitter profile and make the Top 10 list next year. Yola Ventresca profiles our top 10 TAS tweeters, all of whom not only excel at providing law and strategy updates, but also demonstrate that litigators can actually be interesting in "real life"...in 280 characters or less!

3. Follow TAS interventions. TAS continues to make important contributions on the intervention front, recently intervening in *Trinity Western University v. Law Society of Upper Canada* and *Law Society of British Columbia v. Trinity Western University*, which were heard jointly by the Supreme Court of Canada on November 30 and December 1, 2017. Emily Lawrence writes about how counsel for TAS made important contributions in this hearing, and TAS will no doubt continue to do so in other precedent-setting cases going forward.

4. Contribute to Advocacy Matters. We are always looking for contributions from our members. Advocacy Matters is a refreshing way to write (a welcome change from the factum you are working on, I promise!) and a great way to raise your profile and facilitate connections with our nation-wide litigation community. We would love to hear your voice, and we look forward to receiving your creative input in 2018.

Without further ado, dive into our Winter issue to read more about your 2018 resolution! ■

Editor: Lauren Tomasich, Ltomasich@osler.com

Contributors: Emily Lawrence, Brent J. Arnold, Yola S. Ventresca, Heidi Schedler & Laurie Livingstone



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CASE SUMMARY

Trinity Western University v. Law Society of Upper Canada and Law Society of British Columbia v. Trinity Western University

Emily Lawrence, *Paliare Roland Barristers*

Trinity Western University v. Law Society of Upper Canada and Law Society of British Columbia v. Trinity Western University were heard jointly by the Supreme Court of Canada on November 30 and December 1, 2017.



The Advocates' Society, represented by my partner, Chris Paliare, and Joanna Radbord of McCarthy and Company and Monique Pongrac-Speier of Ethos Law, intervened at the SCC and in the courts below. I was proud to assist counsel in all of the appeals. I also attended the SCC hearing with counsel and Deborah

Palter, a TAS director and Chair of the TWU Task Force. The Court was packed with counsel for the parties and the 27 interveners, all representing a variety of professional, academic, LGBTQ2, and faith groups from across Canada.

This case has attracted attention from the bar and the public. It addresses the appropriate balancing of the Charter values to hold and practice religious beliefs and of the rights of equality and anti-discrimination against LGBTQ2 people. For law nerds, the appeals also raise thorny issues of statutory interpretation, standards of review, and the use of precedent (particularly the 2001 *TWU v. BCCT* case involving similar issues).

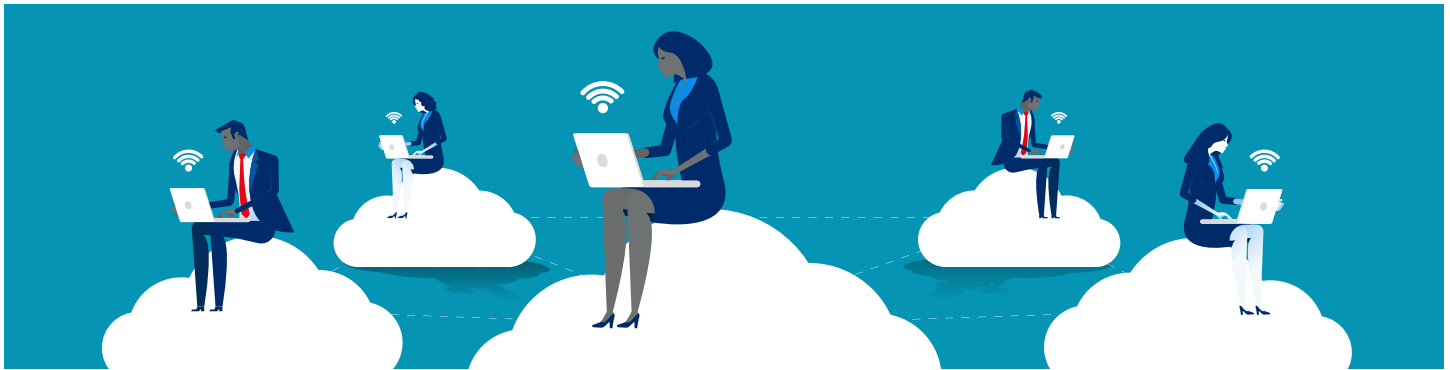
The facts are straightforward: In 2014, Trinity Western University (TWU), a private, evangelical Christian university in British Columbia, proposed to open a law school. TWU will not hire nor admit anyone as a student who does not sign a "community covenant" that forbids, *inter alia*, "sexual intimacy that violates the sacredness of

marriage between a man and a woman." Citing its discriminatory covenant, the Law Societies of both British Columbia and Ontario refused to accredit TWU for the purposes of their respective licencing processes. These decisions were judicially reviewed in both provinces, and ultimately appealed to the SCC.

At all levels of court, TAS has opposed accreditation, focusing on the benefits of diversity in education, the wide scope of the public interest of the Law Societies, equal access to the legal profession, and the balancing of competing Charter values.

As the last intervener, Chris Paliare on behalf of TAS, encouraged the Court to be mindful of the Law Societies' public interest mandate. He urged the Court to take inspiration from the advocacy process itself: "Just as advocates here have argued from different perspectives in this chambers over the last two days to assist the Court to achieve the right result, so too law schools must welcome diverse law students ... The dialogue across differences enhances our ability to envisage and achieve justice."

The Court reserved, unsurprisingly. Although some justices signalled their views during questioning, one can only speculate on the Court's eventual decision. Regardless of the outcome, once released, the decision will provide guidance for the appropriate balancing of religious beliefs and LGBTQ2 rights, in the administrative law context and elsewhere. ▀



THE FUTURE OF ADVOCACY



5 Tips for Electronic Trials and Arbitrations

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

1.

It's worth going paperless. Apart from the cost savings (for many cases, you can buy a tablet or laptop for less than the price of printing, binding and courier costs), electronic documents are just better. Having documents in digital form and searchable makes it easier to respond to unexpected arguments and evidence in court or a hearing. They also make written submissions easier—you can cut and paste.

2.

There's nothing you can do with paper that you can't do electronically, with the right gear. Software, particularly tablet apps, now have close analogues to everything you do with highlighters, post-its, and tabs. And it doesn't take long to figure out how.

3.

Figure out the logistics at the start. What software will you use? How will you present documents in court? What will the digital court record look like? Does the courtroom or hearing room have the gear you need, or will you need to supply it and set it up in advance?

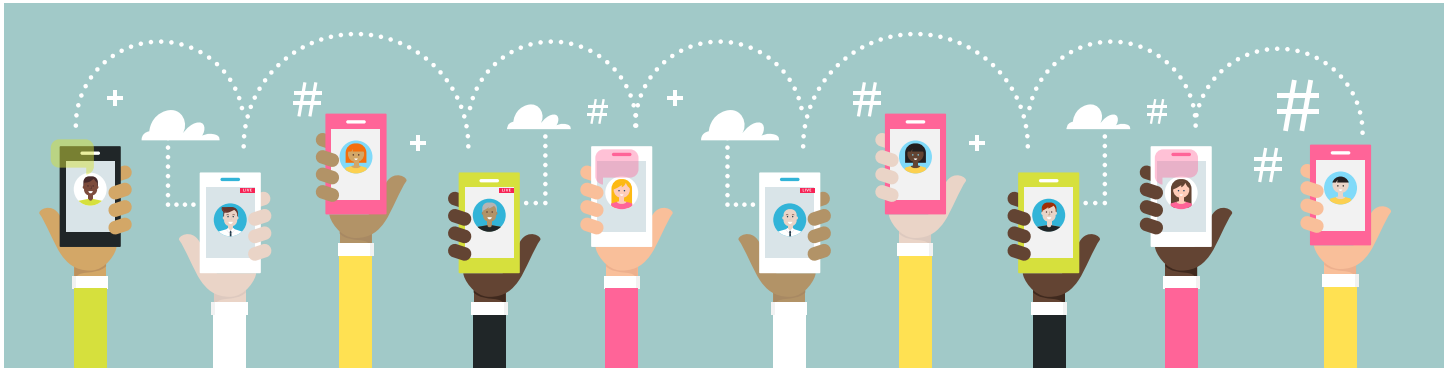
4.

Advance preparation avoids duplication and waste. Planning for a paperless trial at the beginning of your case means you can make decisions with opposing counsel early on that will save you and your staff time down the road. How will documents will be exchanged and named? Will you use PDFs and PDF readers or document management database software? What fields of information will you exchange about your documents? How will the files be named? It is always better to start electronic than be digitizing paper close to the hearing.

5.

Use the *TAS Paperless Trials Manual*. TAS-written, judge approved, and free on the [TAS website](#).

Learn more from Brent when he speaks at our upcoming [Electronic Trials and Arbitrations](#) program on Monday, April 9. 📌



GET SOCIAL



Top 10 Lawyers to Follow on Twitter

Yola S. Ventresca, *Lerners LLP* | @YolaVentresca

Follow me for my musings on health, administrative and labour law and the status of women in the profession. Oh, and to get the latest on the antics of a very adorable 3 year old, IMHO.

1. Paul-Erik Veel | @PaulErikVeel: Litigator at Lenczner Slaght. Follow for excellent analysis and commentary on case law, economics and the state of the legal profession. Not to be missed are the adorable photos of Louis the Bernedoodle in his winter garb.

2. Erin Durant | @ErinDurant42: Lawyer at BLG. Smart and timely tweets about cutting edge issues including women in the law, civil procedure and all things Advocates' Society. For those softball and baseball fans out there, you won't be disappointed.

3. Robert Centa | @RobCenta: You can bet that if there is breaking legal news, Rob is the first to know about it. Timely and informative legal tweets. Raptors and music fans will also be pleased with spot-on commentary that calls out for retweets.

4. Tom Curry | @jthomascurry: The newcomer to Twitter in 2017 has made a big splash. Practical, clear advice from one of Canada's premier trial and appellate lawyers. Not to be missed - Tom's Tuesday Trial Tips #TTTT which has sparked some great debate: should you ask permission to approach a witness? What's the approach to an opening statement in a jury trial? Follow Tom to find out.

5. Mike Peerless | @PirateMike911: You'll come for the class action news and stay for everything else. Cars? Politics? Travel? Sports? Mike does it all. Really.

6. Atrisha Lewis | @atrishalewis: Excellent, must-read posts and retweets about law and life. Especially moved by Atrisha's recent personal reflection on the resistance to the Statement of Principles and her commentary on racialized minorities. In my view, a must read for all law students and lawyers.

7. Jasminka Kalajdzic | @JKal: Another go-to for class action lawyers. The Associate Professor at Windsor Law keeps her followers coming back for more with her cutting edge commentary on access to justice and class actions.

8. Gillian Hnatiw | @gillianhnatiw: Razor sharp, witty analysis of all things women and the law. Also the place to find compelling feminist analysis on a wide range of issues. Some adorable children also adorn Gillian's twitter feed.

9. Lonny Rosen | @LonnyRosen: Attention all health law lawyers, here is your must follow for 2018. Up-to-date information about a wide range of topics including patients tapping encounters with regulated health professionals, advertising and consent. Also the place to get inspiration for your next vacation.

10. Gerald Chan | @Gerald_Chan_law: Chances are that whatever you are looking to find out about, Gerald has the answer. Criminal law, constitutional law, regulatory law, white collar crime, digital privacy and appeals are just a few of the topics Gerald covers. 🐾



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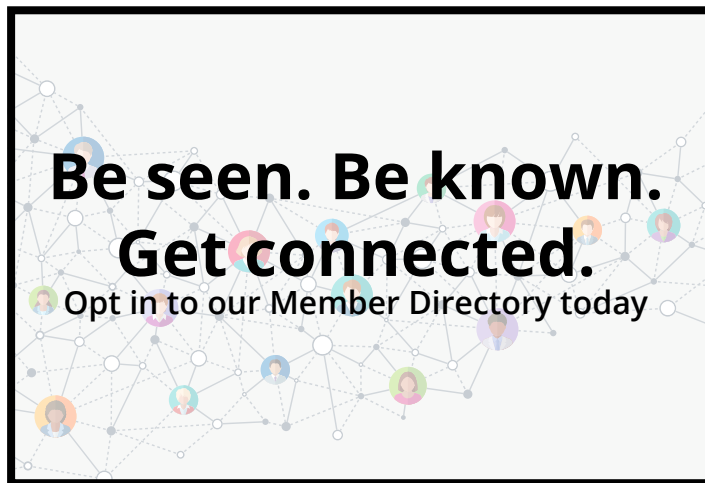
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Motions Advocacy

Wednesday, February 7, 2018

Toronto | 9:00 AM

To learn more click here

Class Actions Advocacy

Monday, February 12, 2018

Toronto | 9:00 AM

To learn more click here

A Cure for the February Blues Reception

Wednesday, February 7, 2018

Halifax | 5:00 PM

To learn more click here

Skating the Canal Bench & Bar Event

Thursday, February 15, 2018

Ottawa | 5:30 PM

To learn more click here

Ottawa President's Reception

Wednesday, February 7, 2018

Ottawa | 5:30 PM

To learn more click here

Kingston Trivia Challenge

Thursday, February 15, 2018

Kingston | 5:30 PM

To learn more click here

Peel Pub Night

Wednesday, February 7, 2018

Mississauga | 5:30 PM

To learn more click here

Pitch Perfect II: "The Incumbent Lawyer"

Thursday, February 15, 2018

Toronto | 6:00 PM

To learn more click here

Top Cases in Estates Litigation

Thursday, February 8, 2018

Toronto | 8:00 AM

To learn more click here

An Evening With SOAR

Wednesday, February 21, 2018

Toronto | 5:30 PM

To learn more click here



Interview with Heidi Schedler, *Nova Scotia Securities Commission*

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

Heidi Schedler is Senior Enforcement Counsel with the Nova Scotia Securities Commission. She is a graduate of the Schulich School of Law at Dalhousie University.

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

A. Jen from *Life in Pieces*. That show is comedic brilliance generally speaking, but I freaking love her character. She is witty and quietly acerbic, two great qualities in a woman lawyer.

2. Q. What gives you sanity?

A. Exercise. 6 days a week. On the seventh day, let there be rest (aka, movies and tv).

4. Q. Podcast recommendation?

A. Why, none other than the [Not Just a Bystander Podcast](#). It is free to all, topical and a great piece of work! I am the moderator, so my bias is clear.

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

A. Hmmmm... between 30 and 60 minutes. But, for the record, when I look at my phone in the morning, it is to check for messages from my exercise buddies.

5. Q. What drives you insane?

A. Opposing counsel who think it is appropriate to correct my grammar in letters, particularly when they are wrong.

6. Q. Pets: Yes? No? What kind?

A. Most recently, I had two standard poodles. I loved them dearly, but they are both gone now. My husband and I are currently taking a pet break, and it's kind of nice having all the freedom.

7. Q. During your commute to work you are ...?

Scrolling through twitter, dozing off and/or staring out the window of the bus.

8. Q. Your best advice for young litigators just starting out?

A. Refuse to let someone else decide how your life, your career, will go forward. You decide. Take the reins, giddy up and enjoy the ride. Be stubborn and resolute, not obtuse and defeatist.

Continued on page 8

Spring Symposium 2018

Wednesday, April 25, 2018 | To learn more, [click here](#)

9. Q. Restaurant recommendation for out of town counsel?

A. Chives is more of a relaxed-upscale dining experience, and they bring you fresh, warm biscuits instead of bread. I mean, come on! John's Lunch is a diner that has the best fish and chips in Canada, according to Canadian Living magazine in 2013. And yeah, it's pretty damn good!

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

A. Exercise. I row, run, spin, practice yoga and just generally try to stay fit. That hour or so of exercise is just for me. I'm listening to music, run-dancing, getting the latest update from my girlfriends, focusing on all the elements of a stroke, gasping for air or just trying to not fall over onto someone else's yoga mat. No matter how stressed I am, exercise always clears my head and allows me to start my day fresh.

11. Q. Most proud moment as a litigator?

A. When a decision of the Court of Appeal largely quoted from my factum.

12. Q. Most embarrassing moment as a litigator?

A. When I forgot to serve one of the parties to a proceeding and didn't realize it until the proceeding was being called to order.

13. Q. Favourite vacation spot?

A. In the winter, skiing somewhere. In the summer (and in the winter when I am not skiing somewhere), my camp in New Brunswick.

14. Q. What word or phrase do you most overuse?

A. The F-word. I have been holding back here, but trust me, I have wanted to say it many times already.

15. Q. Preferred social media platform?

A. Twitter, I guess. I'm not huge on social media, but I like twitter for my ability to consume with little obligation to provide.

16. Q. Any pre-game rituals before court?

A. Peeing. You never know how long it will be before you get a break – and you only make that mistake once!

17. Q. A food you can't stand?

A. Seafood. Yes, I'm a Maritimer that doesn't eat seafood. But I'm a great partner at cocktail parties, because you'll get my scallop.

18. Q. Other than files, name 3 things that are always on your desk?

A. A yo-yo. A philosopher's stone. A bar of soap.

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

The late Honourable Constance "just call me Connie" Glube. She was truly spectacular and if I can become one millionth of the woman she was, then I will have succeeded.

20. THE SIX WORD CHALLENGE

Using six words, no more, no less, finish this sentence:

This year I'm going to make mistakes, fix them, move forward. ▀