



Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

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Chair Chat

Brent Arnold

It's been a busy and exciting spring for YASC. Our 4th Annual Trivia Challenge sold out, with 31 teams participating. Proceeds from the event will support the Inmate Appeal Duty Counsel Program. Thanks to our working group Emily Graham, Jenn Krob, Hilary Book and David Campbell, and to quizmaster Chris Horkins for a great night. Our Wine and Cheese with the Bench at Campbell House brought the Hon. Chief Justice Strathy and 25 other members of the bench together with a house full of eager young advocates.

We have a number of events coming up, beginning with pub nights in Kingston (May 5) and Toronto (May 7). We will be holding our first-ever Practice Perks Coffee Connection in Toronto (May 15), giving young advocates in uptown Toronto a chance to network and connect. Our "Your Profession, Your Future" event (June 11) will bring together a panel of dynamic speakers (Jordan Furlong, Monica Goyal, and Mitch Kowalski) to discuss what the future of practice holds for young advocates. Our year will end with our not-to-be-missed End-of-Term After-Party at the Steam Whistle Brewery.

YASC programs give young advocates a great opportunity to forge and nourish relationships that promote collegiality and can help you build your practice. So, join us for exceptional events and take full advantage of the chance to meet your peers and, maybe, your future clients.

Brent

Upcoming Events

Pub Night (Kingston)

May 5, 2015

Ready, Set, Litigate! (Halifax)

May 6, 2015

Pub Night (Toronto)

May 7, 2015

Mentoring Dinner (Toronto)

May 12, 2015

Ready, Set, Litigate! (Toronto + Sudbury)

May 13, 2015

Practice Perks (Toronto)

May 15, 2015

Summer Trial Advocacy College (Toronto)

June 4 & 5, 2015

Your Profession, Your Future (Toronto)

June 11, 2015

End of Term (Toronto)

June 18, 2015

Mentoring Dinner (London)

June 22, 2015

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Practice Perks
Casual Connections over Coffee
May 15, 2015 @ 8:00am
Java Joe's — 25 Sheppard Ave W, Toronto
To RSVP, contact Shane D'Souza sdsouza@mccarthy.ca

The YASC Interview: Jessica Prince

By: Vanessa Voakes, *Stikeman Elliott LLP*



Jessica Prince is an associate at Polley Faith LLP with a diverse litigation practice. Prior to her call to the Ontario Bar in 2011, Jessica spent a year in London, England training as a barrister at Gray's Inn. Since then she has appeared before the Ontario Superior Court of Justice, the Federal Court of Canada and, recently, the Supreme Court of Canada. Jessica currently volunteers as duty counsel at Pro Bono Law Ontario's Law Help Clinic at the Superior Court and serves as an executive member of the Toronto chapter of the Women's Legal Education and Action Fund. Day to day she tries to live by the best piece of advice she's ever received: always try to maintain a sense of justice and a sense of humour.

Which word do you prefer: litigator or advocate?

Litigator; it more precisely describes what I do. My dad does advocacy work as an academic and activist, but he is not a lawyer.

Why did you become a litigator?

To help people navigate disputes and institutions, and hopefully make their lives a bit easier in doing so. I also wanted to make arguments for a living. My best days at work are when I'm working directly with my clients, colleagues or other counsel and when I'm on my feet in court, at a discovery or in a mediation.

How would you describe your career so far?

Exciting and diverse. I had the privilege of articling at a litigation boutique with a lot of very different practice areas and being exposed to many different styles of practice. After my call to the bar, I spent nearly two years at a commercial litigation boutique, working on complex files with excellent senior counsel. For the past two years, I've been at my current firm juggling everything from prosecution work for a regulatory body and criminal defence files to solicitors' negligence and defamation matters. I feel very lucky to have enjoyed the array of litigation experiences that I've had so far.

You recently appeared as counsel for an intervener at the SCC in *Carter v. Canada* – what was it like to work on

such a high profile case? What was the atmosphere in the courtroom?

It was a total career highlight. The *Carter* case concerned the constitutionality of physician-assisted dying, and Harry Underwood and I had the privilege of representing the Canadian Medical Association as an intervener at the Supreme Court of Canada. Up until that point, the CMA's policy on euthanasia and assisted death had been part of the trial record, but the CMA itself had not participated in the case. It was a particularly fascinating challenge to represent an organization that was not taking a strictly pro or con position on the issue, but that wanted to contextualize its policy and express the practical concerns of physicians – regardless of their stance on the issue – if physician-assisted dying were to be legalized. At the hearing, the atmosphere in the courtroom was electric. It was clear that, no matter how the case was decided, history was being made and the country was watching. I witnessed incredible oral advocacy and whip smart questions from the bench. It was an honour to be there and now I just can't wait to go back!

What is your idea of perfect lawyerly happiness?

Working directly with my clients to help them solve their problems, and enjoying the company of my colleagues. Having my brain constantly challenged by interesting legal conundrums, and making novel written and oral arguments. Spending lots of time in court, on my feet, and

having enough capacity for pro bono work that I'm passionate about.

If you could have one superpower what would it be?

Mind reading. It would make my job (and let's be honest, life) so much easier.

Who would you most like to be stuck in an elevator with?

Tina Fey. Have you seen '30 Rock'? She is basically my spirit animal.

Which words or phrases do you think other lawyers most overuse?

'Govern yourself accordingly.' I mean, come on, what else did you think I was going to do?

Which words or phrases do you most overuse?

In a non-professional context, I overuse both 'totes' and 'obvs'. I love a good abbreviation.

Word on the street is that you like a good debate (Jessica is a former president of the Canadian University Society for Intercollegiate Debate, top speaker at the 2007 World Universities Debating Championship and has taught debating in the Middle East) – what is the most interesting topic you've ever debated?

During law school, I did a lot of debating at the Oxford Union – the debate society on campus - and got a reputation for being willing to speak in public debates on

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very little notice. As a result, when a planned speaker cancelled at the last minute, I debated in favour of the resolution 'This House Regrets the Founding of the United States of America.' My teammates were members of British Islamist political parties, and I spoke against a former US Assistant Secretary of Defence, a Washington-based BBC correspondent, and a writer for the National Review. During the debate, the BBC reporter paid me the best compliment I think I've ever received, which was "I didn't think I'd ever use the words "Canadian" and "exciting" in the same sentence, but you, madam, are a firebrand!"

If you could give one piece of advice to a new lawyer, what would it be?

You aren't going to know all – or even, most – of the answers. Become comfortable with being uncomfortable, rely on your research and critical thinking skills, and don't be afraid to ask questions.

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June 18, 2015

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*Some conditions apply.

Litigating in the Fast Lane: Alternatives to Summary Judgment

Anne Juntunen, *Halfnight & McKinlay P.C.*

Litigators often look to summary judgment motions under Rule 20 as a method of avoiding the long road to trial in Ontario. Rule 20 motions have become particularly popular since the Supreme Court of Canada issued its decision in *Hryniak v. Mauldin*, encouraging judges to decide cases as a matter of summary judgment when possible and lamenting the “*increasingly expensive and protracted*” nature of trials in Canada.

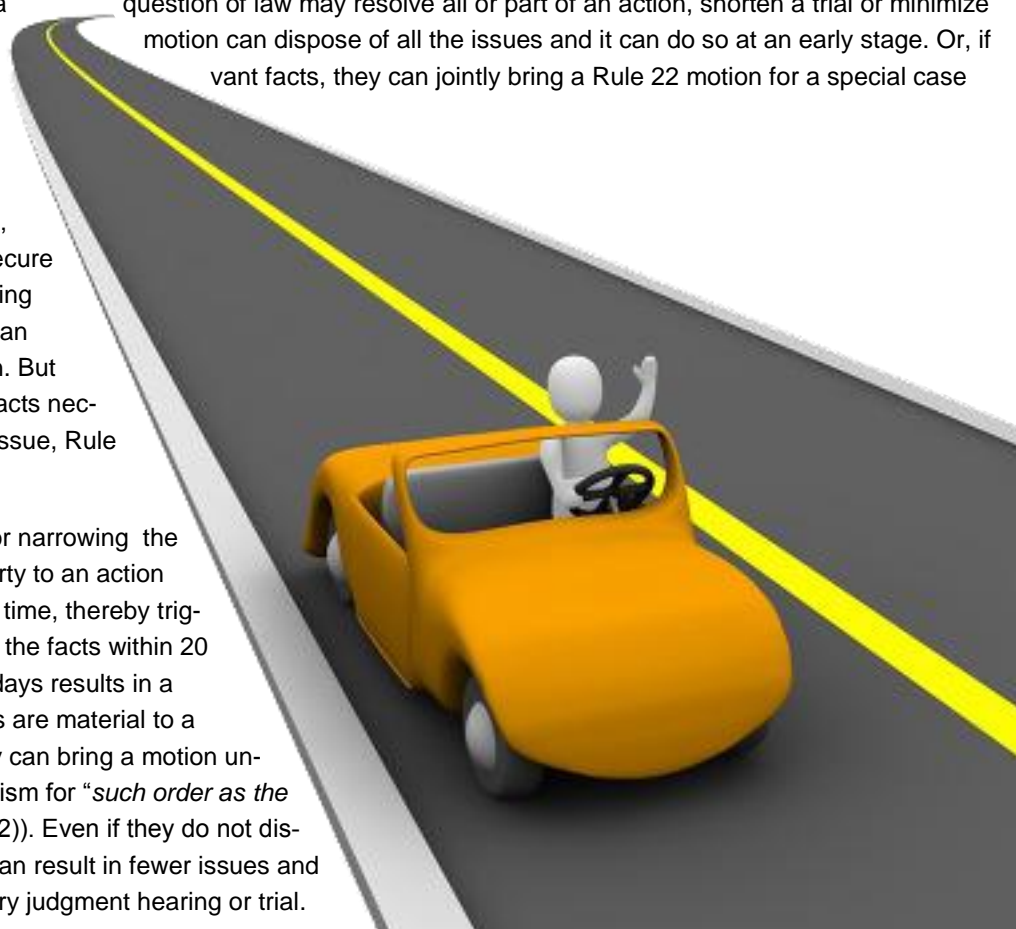
Unfortunately, summary judgment motions rarely guarantee a short road to final disposition. Although the rules permit the parties to move for summary judgment on the close of pleadings, in reality, Rule 20 motions tend to follow a number of other time-consuming steps including documentary discovery, oral discovery, answers to undertakings and sometimes discovery motions. Proceeding through these steps can, and often does, take years. Some counsel, cognizant of the risk that the motion will be denied and the case will proceed to trial anyway (leaving the parties further back in the queue for a trial date), eschew summary judgment in favour of proceeding directly to trial.

Fortunately, summary judgment motions are not the only tool available to litigators seeking to shorten the path to disposition. The *Rules of Civil Procedure* provide other mechanisms that can lead to an earlier court appearance on the substance of the case, or help narrow the issues to be decided. This article reviews three alternative methods available under Ontario’s current rules:

1. Narrow the issues with a Rule 21, 22, or 51 motion.

Rule 21 motions are used when there is an issue as to whether the pleadings disclose a reasonable cause of action or defence, or when the determination of a question of law may resolve all or part of an action, shorten a trial or minimize costs. In the right case, a Rule 21 motion can dispose of all the issues and it can do so at an early stage. Or, if the parties can agree on the relevant facts, they can jointly bring a Rule 22 motion for a special case and ask the court to resolve their dispute without trial on the basis of the agreed-upon facts. The Rule 22 procedure has been called “unusual”, and in practice it can be difficult to secure the sort of agreement from an opposing party that is necessary to dispose of an entire case through a Rule 22 motion. But where the parties can agree on the facts necessary to obtain a ruling on a major issue, Rule 22 can help to narrow the issues.

Rule 51 also provides a procedure for narrowing the facts in dispute. Under Rule 51, a party to an action can deliver a request to admit at any time, thereby triggering an obligation to admit or deny the facts within 20 days. A failure to respond within 20 days results in a deemed admission. If the admissions are material to a claim or defence, the delivering party can bring a motion under Rule 51’s built-in motion mechanism for “*such order as the party may be entitled to*” (rule 51.06(2)). Even if they do not dispose of an entire case, admissions can result in fewer issues and a correspondingly shortened summary judgment hearing or trial.



Unfortunately, this procedure has proved to be less useful than originally contemplated because many parties who receive requests to admit deny much or all of the requests, and the costs consequences provided by the rule have generally turned out to be an impractical sanction.

2. Use the simplified procedure available under rule 76.

The simplified procedure available under Rule 76 was first created in 1996 in response to concerns about the length and cost of litigation. It can result in a significantly truncated procedure culminating in a regular or summary trial. Affidavits of documents are due within 10 days of the close of proceedings and examinations are limited to two hours each. A Notice of Readiness for pre-trial is due within 180 days of the first defence being filed.

The simplified procedure is mandatory for cases involving less than \$100,000, but a case involving more than this amount can proceed by way of Rule 76 with the agreement of both parties. If the plaintiff in a case valued at over \$100,000 has not filed under the simplified procedure, the defendant can propose to proceed in this manner by consent. The practical result of Rule 76 is to limit discovery and provide a shorter timeline for the steps in litigation, which can help to mitigate the delays inherent in the discovery process in a traditional action.

3. Bring the case as an application under rule 38.

Formerly called an “originating motion”, an application represents an exception to the rule that disputes must be commenced by issuing a statement of claim or notice of action. Rule 14.05(3) lists circumstances in which a proceeding can be commenced by way of an application, such as where material facts are unlikely to be in dispute, where a *Charter* remedy is sought, where a case involves the interpretation of a contract (permitted under 14.05(3)(d)), or where the rules specifically authorize it.

Although plaintiffs’ counsel sometimes dismiss the possibility of bringing a case by application where facts are disputed, a court may decide a matter by way of application even if material facts are in dispute, provided it otherwise falls under one of the categories provided. The benefit of the application procedure is that it often delivers a dispute directly to a judge, with minimal detours along the way.

As contemplated by the rules, the procedure for an application is relatively straightforward: the applicant issues and serves a Notice of Application and the respondent delivers his notice of appearance. Rather than affidavits of documents and day-long examinations for discovery, the parties submit affidavits and conduct cross-examinations on the affidavits. The application hearing proceeds on the basis of factums and oral submissions.

The length of an application can vary significantly, depending on the issues and the parties. But the availability of fewer steps along the way to the hearing can permit a swifter pace, if the parties will cooperate.

While they cannot guarantee a short road to disposition, in the appropriate case the above options can provide counsel with real alternatives to narrowing the issues in dispute and proceeding efficiently to judgment.

Anne Juntunen is an associate with Halfnight & McKinlay in Toronto. Her practice focuses on fidelity and other commercial insurance matters including professional liability, directors’ and officers’, cyber liability and commercial general liability coverage.



Trials, Tribulations, and Truffle Cheese

Stephanie Voudouris, *Cassels Brock & Blackwell LLP*



On Thursday April 16, 2015, the Young Advocates' Standing Committee hosted "Wine & Cheese with the Bench" – an opportunity for young lawyers to mix and mingle with their colleagues as well as esteemed judges and masters from the Court of Appeal for Ontario, the Superior Court of Justice, and the Ontario Court of Justice. Now, I know you are probably thinking that as a 2014 call and a first year associate, I would jump at the chance to mingle with the judiciary outside of the courtroom. Obviously, I went because of the cheese. I love cheese. The only thing that I love more than cheese is wine. But I digress.

The event was hosted at the Campbell House and boasted a selection of four wine stations serving both new world and old world vintages. I arrived at the Campbell House with some of my colleagues and took in its eclectic mix of antique furniture as I climbed up the winding staircase to the first room of wine tastings. Members of the bench were scattered throughout the room as junior lawyers hovered in groups around them chatting about life and the law. I joined one of these groups – forgetting entirely about my quest for cheese (shocking, I know) – and was swept up by conversations about judges' and masters' fond memories as junior lawyers, the challenges facing the legal profession, and advice on how to handle the growing pains of being a new call. I've distilled this advice into a list (because litigators like lists, and also alliteration) which I hope will provide my colleagues with the same sense of comfort and encouragement that the event provided me:

1. Steer your own career. I believe it was Socrates who said that "the unexamined life is not worth living". So, too, the unexamined career path is not worth pursuing. Every once in a while, take a step back to ask whether you are truly getting the experiences that you want in the area of law that you find most interesting and do not be afraid to change course.

- Chief Justice Strathy, accompanied by *Les Charmes De Magnol 2010* and *three month old Manchego*

2. Mistakes will happen, and they will happen more often than you'd like. Despite our desire to be superhuman, we are in fact incapable of completing every task perfectly, one hundred percent of the time. This realization should bring with it a sense of relief not just because perfectionism is futile but also because members of the bench are not expecting perfection.

- Justice Molloy, accompanied by *Quails' Gate Chardonnay 2013* and *La Extra Double Cream Brie*

3. Own your mistakes - especially in court. Notwithstanding point number two above, members of the bench *do* expect that lawyers recognize when, despite their best efforts, they have not crossed every "T" and dotted every "I". Admit to this, and proceed to fix it.

- Justice Horkins, accompanied by *Pascual Toso Malbec Limited Edition 2012* and *Aged Asiago*

4. Take responsibility for your materials. It does not matter who prepared the materials before you walked into court. If you are in court, the materials in front of you are yours. This requires that you also take responsibility for errors made by others. Members of the bench do not want an explanation about why the error was not yours (or some other type of “the dog ate my homework” excuse). You will go much farther by taking ownership of the file than you will by attempting to evade that ownership.

- Master Graham, accompanied by Kellerei St. Magdalena Pinot Grigio 2013 and Taleggio

It can be a great challenge navigating the very steep learning curve of being a junior lawyer. Speaking with members of the bench was a reminder that these challenges will become the building blocks of a successful career; they may even become the anecdotes that you will turn to at wine and cheese parties, surrounded by junior lawyers, reminiscing about your very first steps into the legal profession.



Thank you to the event co-organizers:

- Ben Kates, *Stockwoods LLP*
- Emily Lawrence, *Paliare Roland Rosenberg Rothstein LLP*
- Chloe Snider, *Dentons Canada LLP*

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The Catzman Award for Professionalism & Civility

Call for Nominations



The Catzman family, The Advocates' Society and the Chief Justice of Ontario's Advisory Committee on Professionalism are pleased to call for nominations for an award in memory of the late Justice Marvin A. Catzman, recognizing individuals who have demonstrated a high degree of professionalism and civility in the practice of law. The Award will be presented by the Chief Justice at the Opening of the Courts on September 24, 2015.

Nominations deadline May 29, 2015

Please provide a brief statement outlining the reasons for your nomination, the nominee's current c.v., and a minimum of two letters of support. **Please forward nominations to:** The Advocates' Society, 250 Yonge Street, Suite 2700, Toronto, ON M5B 2L7. **Electronic submissions are encouraged to robin@advocates.ca**

2015 Committee Members: The Hon. Justice Kathryn N. Feldman, The Hon. Dennis O'Connor, Q.C., The Hon. R. Roy McMurtry, Q.C., LSM, Janet E. Minor, Martha A. McCarthy, LSM and Julie Catzman

Trivia Challenge for TAS Gives Back

A2J

The sold-out 4th Annual Toronto Trivia Challenge took place in March, as part of the TAS Gives Back campaign to support the Inmate Appeal Duty Counsel Program.

The Inmate Appeal Duty Counsel Program gives the most disadvantaged members of our society meaningful access to their statutory right to appeal, by offering them expert legal assistance for free. Most of these clients are vulnerable and marginalized, and many face challenges such as mental health issues, illiteracy, poverty, and lack of education. Members of First Nations are disproportionately represented. Funds raised will provide financial support for a professional administrator or paralegal for the Program.

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**Next: Sensational Wine & Art Auction on May 20, 2015.
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Thank you to our Trivia Challenge sponsors:



Poetic Justice

Erin Durant, *Dooley Lucenti LLP* and Chris Horkins, *Cassels Brock & Blackwell LLP*

Young advocates spend countless hours reviewing case law, searching for the hidden gem that will elevate our not-so-brilliant legal arguments in the minds of the court. Every now and then, we stumble upon a case that is completely irrelevant to what we are researching but which causes us to laugh and waste several non-billable minutes sharing the case with colleagues on Twitter. Below are some of our favourites.



Do you know the judge and case name for the classics below?

"It has been said that, given enough time, ten thousand monkeys with typewriters would probably eventually replicate the collected works of William Shakespeare. Sadly, when human beings are let loose with computers and internet access, their work product does not necessarily compare favourably to the aforementioned monkeys with typewriters." ⁱ



"Early one morning in June 2006, Melvin Flores closed the book on his relationship with Cindy MacDonald. With a butcher knife left embedded in Cindy's back. Fifty-three blunt force injuries." ⁱⁱ



"In my view, the parties do not need a judge; what they need is a rather stern kindergarten teacher. [...] As I explained to Plaintiffs' counsel at the hearing, a court cannot order the Defendants to be nice to the Plaintiffs." ⁱⁱⁱ

"Leave an untruthful man in the witness box long enough and he will reveal himself to the world." ^{iv}



Get featured in an issue of Keeping Tabs!
Tweet us your Poetic Justice [@Advocates_Soc](https://twitter.com/Advocates_Soc)

ⁱ Justice Fergus O'Donnell, *R. v. Duncan*, 2013 ONCJ 160 at para. 8.

ⁱⁱ Watt J.A. in *R. v. Flores*, 2011 ONCA 155 at para. 3.

ⁱⁱⁱ Justice Morgan in *Morland-Jones v. Taerk*, 2014 ONSC 3061 at paras. 23-24.

^{iv} Justice J.W. Quinn in *The Hearing Clinic (Niagara Falls) Inc. v. 866073 Ontario Limited*, 2014 ONSC 5831 at para. 1.