



# Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

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## CHAIR CHAT



### Young Advocates Contribute to the Community of Best Advocates

BY: Yashoda Ranganathan

The Advocates' Society is known for its unparalleled hands-on advocacy training for young advocates. But the Society knows that young advocates are good for more than attending CPD programs. In recent years the Young Advocates' Standing Committee ("YASC"), encouraged by the Society's Board of Directors, has become integral to all aspects of the Society's work.

Each year, two YASC members represent YASC on each of the Society's other [Standing Committees](#). YASC mem-

bers work on these committees contributing the perspective of young advocates. For example, YASC members provide research/writing support to the Society's Standing Committee on Advocacy and Practice which oversees the Society's interventions in litigation. This past year, young advocates contributed to the [Society's submissions](#) to the Law Society of Upper Canada in the Trinity Western University accreditation matter and continue to participate on the taskforce overseeing the Society's interventions as they proceed through the courts.

YASC members have also been instrumental in the development of many of the Society's important publications, such as:

- [Best Practices companion to the Principles of Professionalism and Civility in the Profession](#)
- [Principles Governing Communications with Testifying Experts](#)
- [Paperless Trials Manual](#)
- [Best Practices for Civil Trials](#)

The Society recognizes that its work is enriched through the contribution of young advocates—future leaders of the community of best advocates. ▀

*The Young Advocates' Standing Committee ("YASC") is a standing committee of The Advocates' Society with a mandate to be a voice for young advocates (advocates who are ten years of call or fewer) within the Society and within the profession. We do this through networking/mentoring events, by publishing articles by and for young advocates, and by raising issues of concern to young advocates as we work with the Society's Board of Directors.*





## Gavin Cosgrove, Bergeron Clifford LLP

BY: KATE MCGRANN,  
Crawley MacKewn Brush LLP

**Full Name:** Gavin T. Cosgrove  
**Year of Call:** 2009

Gavin Cosgrove attended Manhattan College (The Bronx, NY) on an athletic scholarship where he competed in track and field. Gavin completed his legal studies at the University of New Brunswick and joined Bergeron Clifford in the summer of 2009 after his call to the bar. Gavin's practice is restricted to personal injury litigation. In his free time, Gavin can be found staring mindlessly at his Twitter feed (@gtcosgrove), taking short walks with his wife Whitney or cheering for his beloved New York Yankees, Toronto Maple Leafs, New York Giants, New York Knicks, Toronto Argonauts, Manhattan Jaspers, Holy Cross Crusaders, UNB Varsity Reds or Kingston Frontenacs.



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A NEW PRACTICE DIRECTION REQUIRES COUNSEL TO ENTER THE COURTROOM TO A THEME SONG. YOUR SONG WILL BE?

Lose Yourself (Eminem)

THREE THINGS YOU CAN'T LIVE WITHOUT ARE?

2 My iPhone, my lovely and patient wife Whitney, and MacKinnon Brothers Beer (Bath, ON). Not necessarily in that order.

3 LEGAL PHRASE YOU BELIEVE TO BE OVER-RATED OR UNDER-RATED AND WHY?

"I'll comply with the Rules." Over-rated – overused and lacking clarity.

HAVE YOU BENEFITTED FROM HAVING A MENTOR?

On a regular basis I benefit from the mentorship of Chris Clifford and Ted Bergeron. Having mentors is useful for obtaining work-related advice (the stuff that's not in the *Rules of Civil Procedure* or the *Insurance Act*). Throughout my career those who have mentored me have served as beacons of inspiration and aspiration.

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5 PLEASE TELL ME A JOKE?

Donald Trump got in some trouble recently for saying that John McCain is not a war hero. Trump said: "I like people who weren't captured." Trump's people are telling him to lay low for a while until this all 'combs over.' [credit: Jimmy Fallon]

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DO YOU HAVE ANY FALL RITUALS OR ROUTINES? IF SO, PLEASE SHARE ONE:

My annual Harcourts dry cleaning run.

WHAT IS YOUR PROUDEST ACCOMPLISHMENT TO DATE?

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In 2012, I argued a motion in front of Justice Brian Abrams in jeans and a t-shirt.

HOW DID YOUR EXPERIENCE AS A VARSITY TRACK AND FIELD ATHLETE AT MANHATTAN COLLEGE PREPARE YOU FOR A CAREER IN PERSONAL INJURY LITIGATION?

In the spirit of the recent release of Straight Outta Compton, to paraphrase Ice Cube, "personal injury litigation ain't a track meet, it's a marathon." As a long-distance runner at Manhattan College I developed both stamina and patience – essential skills for a career in personal injury litigation. ■

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## Upcoming Events



**Pub Night (Toronto)**  
September 9th, 2015



**Pub Night (Barrie)**  
September 10th, 2015



**Opening of the Courts**  
September 24th, 2015



**Pub Night (Calgary)**  
October 1st, 2015



**Mentoring Dinner**  
October 15th, 2015

## SUDBURY TRIVIA



### First Annual TAS Sudbury Trivia Challenge

BY: JAMES ROSS, *Orendorff & Associates*

Before I begin, a special thank you goes out to Del Frate J. and Hennessy J. for volunteering as the trivia masters for the event; McKellar Structured Settlements Inc., the Sudbury and District Law Association and The Advocates' Society Staff (Robin, Johanna and Maia) for the monetary support and know-how; and Meaghan Boisvert and Sophie Mageau for all their help with setting up the event.

The trivia night was held on July 15, 2015 here in the "Happiest City in Canada" and with 48 registrants (and spectators), the trivia night was a rousing success. A diverse crowd of attendees ranging from articling students to members of our bar more than 50 years of call (and also some lawyers I had not seen surface outside the courtroom in years) led to an electric atmosphere.

But without further ado, I present The Advocates' Society Sudbury Trivia Challenge's "Best of". Drum roll please ....

#### Best Trivia Performance:

With six prizes up for grabs and six different winners, this list was far more difficult than it might otherwise

have been to make. Here are my top 3:

- **The Unbillables**—Grand Champions with a score of 30 out of a possible 40 total points. A tip of the hat to Meaghan Boisvert, Alex Caza, Adam Kosnick and Shannon Goffin. Please return the trophy within the next year (after it has been thoroughly sanitized).
- **Greece's Two Cents**—They had the potential to win two rounds, but team member Jordan Duplessis lost in an epic rock, paper, scissors battle with J.M. Bray. That loss cost his team the coveted LCBO Gift Cards. They still have some movie passes, so perhaps that softens the blow for the rest of the team.
- **Merry Masters**—They won a tie-breaking round by knowing that the year displayed on the Big Nickel is 1951. There is nothing that epitomizes Sudbury more than the Big Nickel, (well, except perhaps 'rocks'). Please enjoy your indoor rock climbing passes; how apropos.

#### 3 Best Team Names:

Tastes are sure to differ, however, as the event organizer I get to choose and my personal favourites were:

- **Beyond A Reasonable Stout**—Puns may be the lowest form of humour, but combining a legal principle with a beer for a legal trivia night is "pure gold" and why they take home the "Best Team Name" gold. Kudos to the clever Julie Burrassa, Nikolas Chabot, Dhiren Chohan and Ali Chiesa for this gem.
- **I Thought This Was Speed Dating**—Lawyers are busy and dating is hard, so, is this an area for TAS or YASC to expand into? I don't know, but I do know that this team is settling for silver on the "Best Team Names" podium (and a point can be made that this name dovetails perfectly with the silver position).
- **4th Graders**—As a preface, the event was promoted as "Are You Smarter than a 5th Grader?" so the confidence in their own abilities displayed by this team is what makes them my bronze medalist. As they won the "Prison Blues" round, perhaps, they undervalued their knowledge base and were better than advertised.

## SUDBURY TRIVIA contd.

### 3 Best Dressed:

- **The Smartinis**—Sure, their trivial knowledge couldn't match their juniors, the Unbillables, but their spirit, as exemplified by their dress, was second to none and for that, a tip of the (martini) hat to: TAS Director Lucille Shaw, LSUC Bencher Carol Hartman, Trevor Kestle and one, but not both, of Patricia Marcuccio and Gary Marcuccio.
- **The Unbillables**—"You have won second prize in a beauty contest—collect \$10.00". Perhaps their bosses the

Smartinis will go easy on the decrease in billable hours during the month of July, one for winning the trivia challenge and two, for placing second in the "Best Dressed" contest to said bosses.

- **The Wabby Conroys**—Third place was a tough one as no other team dressed up for the event, but based on the attendance of Mr. Conroy, one of the elder statesman of the Bar and the lovely Jeanne Warwick Conroy, this team edges the rest of the other "normally" dressed competitors.

This is James Ross signing off from "the Happiest City in Canada". Tune in next year to see if The Unbillables can retain their crown and, more importantly, what the Smartinis will wear. ■



THE UNBILLABLES WIN



THE "BEST DRESSED" SMARTINIS



WINNERS



THE CUP



## Why Litigants' Conduct Matters: Costs are always at issue!

BY: LIONEL TUPMAN, *Whaley Estate Litigation*

### Introduction:

A successful litigant who has conducted litigation in an unreasonable way may be disentitled to an award of costs notwithstanding their success. This is one of the major lessons from *Brown, Dale and Shackleton v. Rigsby and Shackleton*, a recent decision of the Honourable Mr. Justice Leitch.

### Facts:

Mrs. Shackleton had six children, five of whom fought over her estate. In 1992, when Mrs. Shackleton made her will, she had a \$1 million estate. Her estate was almost all gone when she died. Two of her children (the Respondents) had power of attorney over her, and also acted as her estate trustees.

After their mother's death, three of the siblings brought an Application against the Respondents. The Application was to compel the Respondents' accounts as attorneys and as estate trustees, to replace the Respondents as estate trustees with an independent third party, and to compel payment of improperly received funds and/or damages for breach of fiduciary duty.

In September 2014, the case settled eleven days before trial. The Respondents offered to dismiss without costs. The Applicants wanted costs from the estate, but settled the case by agreeing with the Respondents that the Court would decide costs.

Justice Leitch found it was ironic that in 2008 at the start of the litigation, counsel had agreed not to seek a formal passing of accounts due to the high cost of doing so, but six years later was seeking almost \$150,000 in legal expenses.

As most readers will anticipate, the Respondents sought their costs of defending the Application on a substantial indemnity basis against the Applicants. The Respondents contended, as parties in litigation often do, that the Applicants were motivated by personal interest.



For their part, the Applicants sought their costs payable by the Respondents in their personal capacity on a substantial indemnity basis. The Applicants contended that they acted reasonably in bringing the Application, inter alia, because "red flags" existed in relation to the Respondents' conduct warranting investigation. In the same vein, the Applicants submitted that the Application was reasonable because the Respondents refused to readily provide the financial disclosure sought by the Applicants—their conduct, according to the Applicants, was obstructive.

Ultimately, Leitch J., found that the parties should bear their own costs, notwithstanding that the Applicants based their Application solely on suspicion and belief and corroborative evidence for their position did not exist.

### Discussion

Many readers may be wondering, at this point, why the Respondent was not awarded costs when the Application brought by the Applicants was ultimately settled and the basis for the Application was not grounded in evidence but was, it appears, merely speculative. The answer may be apparent from the following passages where Justice Leitch stated:

[34] I have concluded that the commencement of the application was reasonable. I have also concluded that the respondents did not adequately address the reasonable questions of the applicant early in the application.

[...]

[39] Overall, the applicants' questions remain unanswered for a considerable period of time. Undertakings given on cross-examination by the respondents were not fulfilled. The applicants were obliged to bring a motion to compel the satisfaction of undertakings given by the respondents. This motion was resolved on consent; however, a subsequent motion was brought to have the respondent found in contempt because the undertakings remained unfulfilled. This motion was ultimately withdrawn. Thereafter, correspondence and communication with respect to the issue of outstanding undertakings continued.

## TALKIN' COSTS contd.

It appears, therefore, that at least in part, the Court based its decision regarding the appropriate award of costs on the Respondents' unreasonable conduct in failing to promptly provide information requested by the Applicants, and in failing to answer undertakings resulting in a motion for contempt.

Justice Leitch also noted that the parties' success could be considered to be divided and no clear "winner" could be said to exist so as to warrant an award of cost against the "loser".

Notably however, is the fact that the Respondents were, in a sense, entirely successful at defending the Application brought by the Applicants. This Application took place over 6 and one half years, and cost approximately \$150,000 for the parties collectively. Ordinarily, notwithstanding the "divided success" referred to, it is not an unreasonable expectation that a Respondent against whom an Application is brought which is later, after many years of litigation, dropped, to receive an award of costs referable to the trouble to which they have been put by the Applicant.

Though many factors did influence the Court's decision not to award costs against the Applicants, this case leads inexorably to the conclusion that the Respondents' conduct of the litigation likely mitigated in favor of the parties bearing their own costs, disentitling the Respondents to a costs award.

As the adage goes, "it's not whether you win or lose, but how you play the game." In litigation, it seems, this sentiment is truer than ever. ■

**Young Advocates!**  
Share your voice and contribute to  
Keeping Tabs monthly newsletter.

For more information contact Erin Durant, Editor, at [EDurant@blg.com](mailto:EDurant@blg.com)



## MARK YOUR CALENDARS! Upcoming YASC Pub Nights

There is no better way to connect outside the courtroom. Rally your colleagues and unwind from the grind. Arrive early to enjoy "Happy Half Hour" cocktails compliments of our sponsors. Your business card is your ticket to a complimentary drink, great food, and good times! This event is open only to TAS Members, Non-Members, Lawyers and Students-at-Law.

### TORONTO



September 9th @ CC Lounge & Whisky Bar

6:00 - 8:30pm

Sponsored by:



Giffin Koerth  
LAWYERS



Collins Barrow

### BARRIE



September 10th @ Donaleigh's Irish Public House

5:30 - 7:30pm

Sponsored by:



LARREK  
INVESTIGATIONS

For more information or to RSVP  
[Click Here](#)