



Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

Writing in Obscurity | Interview | Cross-Border Litigation | Upcoming Events

Fall Forum 2016
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 October 21 & 22, 2016
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CHAIR CHAT



BY: DANIEL NAYMARK,
NAYMARK LAW

It's been an historic August, what with the Rio Olympics, the Hip tour (still processing) and [the re-election of Duke](#). Now, summer is drawing to a close... which is good news! Fall marks the start of YASC's event programming for the term. And this term, we will be holding more events, in more places across the country, than ever before.

Toronto and Sudbury kick it off, both hosting social events in September and mentoring events in October: watch for

our flyers for the September 8th pub night and October 13th mentoring dinner in Toronto, and September 15th trivia night and October 21st mentoring cocktails in Sudbury. Thunder Bay (pub night November 2nd) and Ottawa (Fireside Chat November 3rd) get into the mix next, and we've got great events lining up from Vancouver to Halifax and points between over the course of the term.

The marquee event of the season will be Fall Forum, happening October 21-22 in Blue Mountain. Held every two years, the event packs in practical education content, mentoring sessions and networking opportunities, and as past participants (including me) will tell you, it's a good time. Pick up your ticket before it sells out. See you there! 🍷

Daniel

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.



Top 10 Tips for Writing in Obscurity



ERIN PLEET, THORNTON GROUT FINNIGAN LLP

Erin is the 2016 recipient of The David Stockwood Memorial Prize. Keep an eye out for Erin's article, "All's fair in love and court: The use of wrongfully obtained evidence in civil proceedings", in the Fall issue of *The Advocates' Journal*!

You're a Young Advocate so you must see the career and personal benefits to writing on legal issues. You might even enjoy it. But does the thought of having your writing published make you break out in hives? Follow these Top 10 Tips to ensure that your writing will never be published and instead will leave you languishing in obscurity.¹

1. **Disregard your audience.** Who do you expect would read your article? Lawyers in a certain practice area? At a certain stage of their careers? Avoid writing about what your audience (and the editors of any publications focused on this audience) would find interesting and useful, and stick to the obscure and pedantic.
2. **You are not bound by guidelines.** Publication deadlines and editorial guidelines do not govern you. Do not under any circumstances discuss your proposed topic, or how it fits within their publication, with any editors. They might express interest and even offer feedback which will only result in a greater probability that they publish your work.
3. **Avoid ideas gleaned from your own practice.** You could write about interesting issues that have arisen in your own cases, even ones that were resolved before they went to Court. But writing on issues from your practice would mean writing on practical issues facing advocates today, and that might be seen as helpful and worthy of publication.
4. **Never co-author with a senior lawyer.** I can't imagine any senior lawyer would appreciate

your initiative in suggesting co-authorship. Further, a senior lawyer's name as co-author may inadvertently entice editors to choose your article for publication, which will only bolster your own reputation as a sound writer, which will only lead to further published articles.

5. **Avoid brainstorming with others.** The last thing you want is to bring up your article topic with a colleague just to have them give you feedback and share war stories. Best to lay low and hope that you don't come across any diverse views or colourful anecdotes that might animate your writing.
6. **Theses are for chumps.** Ever got to the end of an article or paper and asked yourself, "so what?" Aim for that. Avoid writing something that will move the ball forward in an area of law, raise engaging questions, or shed light on a little-known legal development.
7. **Ignore Elmore Leonard.** Mr. Leonard's rules of writing² ought to be ignored. For example, leave in the parts that readers tend to skip – think paragraphs of dense prose with Latin phrases, if possible. Superfluous Latin is the *sine qua non*, or the *ne plus ultra* if you will, of unpublishable writing.
8. **Fancy language is best.** Your article is serious and demands your most serious tone and most serious words. Toss away everything you learned about plain language writing. Your thesaurus is your friend.
9. **Forego organization and footnotes.** If you stay disorganized as you research and write, you'll be in a much better position to panic as you finalize cites and footnotes (rather than spend time ensuring your paper is letter-perfect) in the face of a looming deadline. (Though see Tip #2.)
10. **Longer is better.** Make every article your longest article. Each case you come across is relevant and worthy of inclusion. May as well write the treatise on that topic. Writing a long, long article will ensure there is no chance your article will get published, as no editor would want to fill the entire issue with just your article.

So, there you have it. My top tips to keeping your pen and profile under wraps. ■

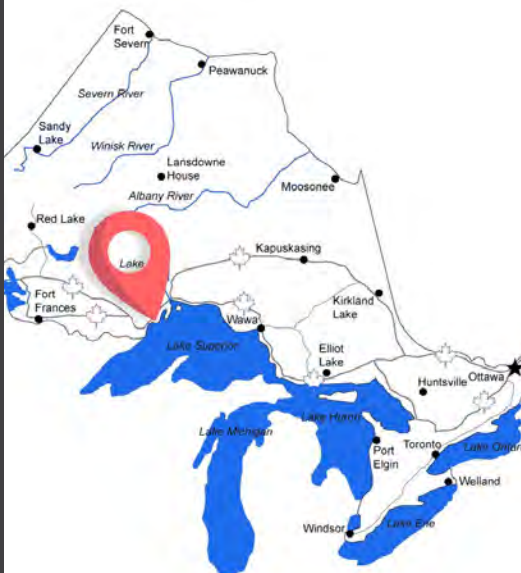
1. Credit to the late The Honourable Mr. Justice Marvin Catzman for his memorable series of articles in *The Advocates' Journal*, commencing with "The wrong stuff: How to lose appeals in the Court of Appeal", 19 *Advocates' Soc. J. No. 1* (Summer 2000), pp. 3-5.
 2. Elmore Leonard, "Easy on the Adverbs, Exclamation Points and Especially Hooptedoodle", *The New York Times* (July 16, 2001).



Jordan Lester,
Cheadles LLP, Thunder Bay

BY: SHANNON BEDDOE,
Martha McCarthy & Company LLP

Jordan is an associate lawyer with Cheadles LLP in Thunder Bay, Ontario. Prior to joining the firm, he clerked for the Superior Court of Justice - Northwest region. Despite being based in Thunder Bay, he also clerked for the judges of Kenora, Sault Ste. Marie and Parry Sound. Before entering the world of law, Jordan spent several years as a reporter for the CBC. He split his time between the stations in Thunder Bay, Sudbury and Winnipeg and made regular contributions to programs such as World Report, Ontario Today, and The World This Weekend. Jordan also spent time hosting Voyage North, the afternoon show for Northwestern Ontario. Above all, Jordan is an avid Blue Jays fan.



1

Q: Why did you become a litigator or advocate?

A: I was a reporter for the CBC in my pre-law life. Because of some organizational changes (i.e., I got canned along with about 800 of my colleagues), I decided to change paths and embark on a career in law. It was always something I wanted to do and the timing seemed right. My background and training in journalism have been an excellent bridge into litigation. Both require strong communication skills, the ability to deconstruct information on-the-fly, and the ability to learn new information quickly.

2

Q: Which word do you prefer: litigator or advocate?

A: I prefer the term 'advocate'. It's more democratic.

3

Q: What is your year of call?

A: 2013.

4

Q: What is your greatest fear in practice?

A: A.B.S.

5

Q: What do you like most about the practice?

A: It's intellectually stimulating. Every day I'm faced with new questions that require a lot of thought and strategy. I also like how every day is completely different from the last. It keeps things exciting (sometimes more exciting than I'd like them to be).

6

Q: From whom have you learned the most about the practice of law?

A: I've been very fortunate to have Don Shanks as a mentor. No matter how busy he is, he always has time to stop and chat whenever I have a question or an idea to bounce off him. His guidance has been invaluable, and I credit him with teaching me how to be a lawyer.

7

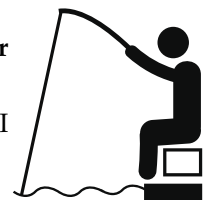
Q: What is your most distinctive characteristic?

A: Professionally, I'd like to think either my patience or my ability to find humour in just about any situation. Physically, I think it's my perfect teeth.

8

Q: What is your greatest extravagance in your everyday life?

A: I spend more money on fishing tackle than I probably should.



9

Q: What would you consider your greatest achievement?

A: William Shatner and I once got into a conversation about poutine on Twitter. (Seriously, check it out [here](#))



10

Q: Which living lawyer do you most admire?

A: My friend Neil McCartney, a criminal defence lawyer here in Thunder Bay. Neil is an excellent lawyer and a genuinely friendly guy. Two years ago, Neil was involved in a very serious boating accident. He ended up in a coma, and there was a concern that he might never recover. But he did. He's back to practising law again. His strength and dedication are inspiring.

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Q: What is your favourite case?

A: Maybe it's the journalist in me, but I've always thought that *Grant v. Torstar* was an excellent judgment, not just for its conclusion, but also for how it was written. Justice Quinn's judgment in *Miller v. Carley* is a pretty hilarious read. In terms of my own cases, they're all my favourites.

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Q: How would your colleagues describe you?

A: Hopefully they would describe me as a good teammate.



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Q: What is the latest non-legal book you've read?

A: I'm a big fan of Canadian historical non-fiction. Right now I'm reading Pierre Berton's *Flames Across the Border*. The Battle of Plattsburgh is about to start.



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Q: What is your favourite drink?

A: Dr. Pepper Slurpee.

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Q: If you weren't a lawyer, what would you be?

A: I'd like to be the Governor General.

14

Q: Who or what is the greatest love of your life?

A: My wife Genevieve.

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Q: What should the rest of Ontario advocates know about the life of a litigator in Thunder Bay?

A: Just as I began my legal career, I had the pleasure of meeting Chief Justice McLachlin. When I told Her Honour about my decision to practice in Thunder Bay, she assured me that I'll find Thunder Bay a very rewarding place to practice. And she was right. Thunder Bay is a wonderful place to practise law. The bar is very cordial, we have an excellent bench, and it's a place where a litigator can have a healthy work-life balance. That being said, hauling bankers' boxes into court when it's -40 gets old pretty quick. But perhaps most importantly, young litigators see the inside of a courtroom quite frequently, and practically right out of the gates. ▀

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Q: Which talent would you most like to have?

A: As I watch the summer Olympics, I'm reminded of all the talent I don't have. As for one specific talent, I wish I could learn to play the harp.



Five Tips For Young Advocates In Cross-Border Litigation



CARA ZACKS,
MCMILLAN LLP

In today's globalized market, being a litigator can provide frequent opportunities to work with clients from around the world. Perhaps you have a foreign client looking to enforce a judgment in Canada or who is involved in a Canadian lawsuit. Or, maybe your Canadian client is participating in an international arbitration with parties and tribunal members from other countries. Whatever the reason for your cross-border dealings, there are unique challenges that come with litigating with clients, counsel, and tribunals outside of Canada. Here are five practical tips for young advocates who find themselves involved in cross-border litigation.

1) Locate your documents

If your client is based abroad, or if your Canadian client has offices or subsidiaries outside Canada that play a part in the subject matter of the litigation, you can expect relevant documents to be stored far away. Documents could be stored electronically on a document management system controlled by an IT department based somewhere across the ocean. Or, maybe the documents are stored physically in boxes, in a storage room thousands of kilometers away. It is a good idea to interview your client early on to find out how and where its documents are stored and who you can speak with to gain access. Don't assume that access will be granted automatically and immediately. An IT department somewhere in Eastern

Europe may not understand why a group of Canadian lawyers require access to employees' personal emails, and they won't necessarily be eager to accommodate you.

If relevant documents are kept in boxes in a storage room (or in multiple storage rooms in different places), is there someone who can ship the documents to you? Does the client have the capacity to send the documents to you electronically? Will someone from your office have to go review the documents in person?

Part of tracking down your evidence is finding out what languages the documents are in. Multinational clients work in multiple languages, so consider whether you'll need the help of a translator.

2) Locate your Witnesses

Similarly, if your witnesses aren't in Canada, consider where they're located and the cost of travelling to meet them. Consider whether you can use video conferencing or skype to save costs.

When interviewing witnesses and drafting affidavits and witness

statements, will you need the help of a translator?

3) Explain the Canadian System

Much of Europe, Latin America, Asia, and Africa use the civil law system. Remember that clients (or client representatives) in these jurisdictions may have expectations and assumptions about how the legal system works that don't correspond with our common law system.

If you're involved in a proceeding governed by Canadian or US law, make sure clients from civil law jurisdictions appreciate the differences between the systems. A significant difference is the process of documentary discovery. In civil law jurisdictions, there is no formal pre-hearing discovery process and no general obligation to produce all relevant documents to the other side. Each party typically provides its own evidence during the hearing and discovery may be restricted by the judge and by local privacy laws.

Our broad discovery obligations, which could require the collection of personal emails and of company documents spanning decades,

Introducing the First Annual YASC Awards!

The following awards will be presented at the biennial Fall Forum on October 21, 2016:

- Outstanding Participation Award
- Commitment to Pro Bono Award
- Writer's Award
- Civility Award

can appear unnecessary and even improper to clients who are used to dealing within the frameworks of a different legal system. It's important to take time to explain the nature of the common law discovery obligations and provide comfort to clients about what is frequently a time-consuming and costly process. Otherwise, you may not have full cooperation when it comes time to gather evidence.

4) Factor in Delays

One certainty about litigating with parties outside of Canada is that things take longer than expected, so it's a good idea to factor potential delays into your timeline.

While we're no strangers to bureaucracy in Canada, bureaucracies abroad can be an entirely different beast. Channels of communication in large businesses may not always be obvious and corporate hierarchies can be complex and opaque. Accordingly, getting instructions from an international client, or getting a response from opposing counsel representing a foreign party, can take time.

If you're serving a document on a party outside of Canada, consider whether you need to serve your documents pursuant to the Hague Convention and be aware of difficulties that may come with service abroad. For example, in 2013, the Court of Appeal for Ontario held that Ontario courts have no ability to substitute,

dispense with, or validate service when a contracting state to the Hague Convention refuses to effect service according to Article 13 of the Hague Convention.^[1]

Other procedural steps as well can take longer than we're used to when dealing with parties outside Canada. For example, getting a simple affidavit commissioned abroad can be a challenge, depending on where the affiant is located. It's a mistake to assume that you can move as quickly when working across the border as you do when litigating in Canada.

5) Know your Audience

When litigating across borders,

you're likely to come into contact with counsel and arbitration tribunal members from other countries who come from a different litigation tradition and practise with a different litigation style. Differences may be subtle, but important. For example, an arbitration panel composed of American trial lawyers may be confused about why you are referring to opposing counsel as your "friend" throughout the hearing. It's also important to know your limits. Consider whether you'll need to retain a foreign legal expert if the arbitration is governed by the law of a different jurisdiction. ■

^[1] *Khan Resources Inc. v. Atomredmetzoloto JSC*, 2013 ONCA 189.

Do you know an exceptional young advocate?

Nominate them for the YASC Civility Award.

Nominating is as EASY as 1, 2, 3!

1. Do not prepare a nomination package. We will not read it. We just need the name, year of call and firm of your nominee



2. Tweet your nomination using the following format

"I nominate '@name' 'year of call' from 'firm' for #YASCCivilityAward. Voting ends Aug31 @Advocates_Soc"

or

3. Email your nominee's name, year of call and firm to Penelope Ng at PNg@epsteincole.com

[Click here for details](#) ►



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Upcoming Events



YASC Pub Night
(Toronto)

Sept 8, 2016



Trivia Challenge
(Sudbury)

Sept 15, 2016



Breakfast Near
Tiffany's VI (Toronto)

Sept 30, 2016



Fall Forum
(Blue Mountain)

Oct 21-22, 2016



YASC Pub Night
(Toronto)

Nov 17, 2016