




Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

Chair Chat	YASC Interview	Bankruptcy and Licence Suspension	Pub Nights	Top Tweeters	Supercart
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Chair Chat

Brent Arnold

YASC's busy year continues. Last month saw a sold-out Fireside Chat (with Justices Cronk and Bellamy), and our Kingston members took part in our first-ever out-of-Toronto Trivia Pub Night. I was also delighted to greet young advocates from the Ottawa region at the Society's hospitality suite at the CCLA's Tremblant conference.

The new year is packed with more great events: our next Toronto Pub Night takes place January 14, and our first-ever Financial Planning 101 on January 29 will help you with strategies for saving (or wisely spending) your hard-earned cash. Watch for the return of Mentorship Dinners in February, too.

Just a reminder that Keeping Tabs wants your articles, serious or fun, short or—well, short. We have an expanding readership and publishing in Keeping Tabs is a great way to get your name out.

Best wishes and see you in the new year!

Brent

2015 YASC Events

TORONTO PUB NIGHT
Wednesday, January 14

FINANCIAL PLANNING 101
Thursday, January 29

FIRESIDE CHAT
Tuesday, February 10

MENTORING DINNER SERIES
Wednesday, February 25

TRIVIA CHALLENGE
Thursday, March 19

WINE AND CHEESE WITH THE BENCH
Thursday, April 16

Have something to say?

Keeping Tabs is now accepting article submissions for upcoming issues.

Contact Erin Durant, Editor:
edurant@dllaw.ca

Award of Justice Call for Nominations

Nominations deadline January 30, 2015



The YASC Interview: Erica Young

By: Vanessa Voakes, *Stikeman Elliott LLP*



Called to the bar in 2012, Erica Young is an associate at Chitiz Pathak LLP. She has a general litigation practice that focuses on corporate and commercial matters and has appeared before the Ontario Superior Court and the Court of Appeal for Ontario. Erica currently serves as President of Young Women in Law and also served as Secretary on the Board of Directors of Meal Exchange, a national, youth-oriented charity dedicated to addressing food security issues. Fun fact: during this festive time of year you may catch her humming along to the holiday classic, “Text Me Merry Christmas”. (It’s true – sometimes a snap on snapchat just won’t do!)

Which word do you prefer, litigator or advocate?

Advocate.

Why did you become an advocate?

It was the romanticism of the profession – the robes, the courtroom, the brilliant closing argument – combined with the opportunity to be a trusted advisor who stands up for the little guy (I’ve never liked bullies).

What do you most like about your litigation practice?

The problem solving and the constant learning that comes with the job.

What is your idea of perfect lawyerly happiness?

Respect from the bench, respect from my colleagues and respect from my clients.

If you weren’t a lawyer, what would you be?

A baker.

What do you consider to be your greatest achievement?

Still working on it! Ultimately I’d like to live a life worthy of my parents’ hard work and sacrifice.

You find a magic lamp and a genie pops out – what are your wishes?

Assuming I get three: (1) Equality for women around the world; (2) Health and happiness for those I hold most

dear; (3) A satisfying end to the Serial podcast.

You are involved with a number of programs in the community. What do you find most rewarding about your involvement outside the office?

Meeting and working with other deeply committed and visionary people. These are individuals, both inside and outside the legal profession, who care about their communities and who care about those most in need of an advocate. They manage to remain optimistic in the face of deep cynicism.

What tips do you have for other young lawyers looking to balance extra-curricular involvement with their practice?

Find an organization you believe in (big or small, local or international) and you’ll never notice the “extra” hours you commit. It will only energize you and inspire you to be a better advocate and a better lawyer.

What advice do you have for other young women lawyers?

Find mentors and be a mentor to others. Don’t be afraid to advocate for better opportunities and recognition of your accomplishments for yourself and for other women.

What do you like best about the holiday season?

Endless excuses to eat and drink (and be merry).

Do you have a favourite holiday carol?

“Text Me Merry Christmas”

Any new year’s resolutions?

To master the art of baking the perfect chocolate soufflé. Also – to find that magic lamp you were asking about earlier!



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Regulating Road Safety or Enforcing Debts? Bankruptcy and Provincial Licence Suspension Regimes

Mark Vernon, *Carroll Heyd Chown LLP*



Is a licence or vehicle permit suspension due to an unpaid judgment still effective if the driver declares bankruptcy? Two upcoming cases in the Supreme Court of Canada will decide this issue.

Suspensions for unpaid judgments

Section 198 of Ontario's *Highway Traffic Act* allows the Registrar of Motor Vehicles to suspend the licence of any person who fails to pay a judgment for damages occasioned by a motor vehicle. Similarly, s. 10 of Ontario's *Motor Vehicle Accident Claims Act* requires the Registrar to suspend the licence of anyone on whose behalf a payment was made out of the Motor Vehicle Accident Claims Fund. Section 198 of the Ontario *HTA* requires that the debtor's licence remain suspended until the judgment is satisfied or discharged, "otherwise than by a discharge in bankruptcy." Section 102 of Alberta's *Traffic Safety Act* uses the same phrase.

You can go bankrupt but you won't get your driver's licence back. Yet the purpose of bankruptcy legislation is to allow people a "fresh start" when they cannot pay their debts.

Bankruptcy is a federal power, therefore a constitutional question arises as to whether the provincial laws that allow licence suspensions to remain in effect post-bankruptcy infringe on the federal bankruptcy power.

Courts in Ontario, Saskatchewan and Alberta have considered whether the provincial licence suspension powers conflict with the federal bankruptcy power under the doctrine of paramountcy.¹ But the issue remains unsettled. In fact, in

*Ontario (Finance) v Clarke and Superintendent of Insurance for Ontario*² Justice Goldstein noted there are two lines of authority in Canada: one line which finds there is a conflict and another line that finds there is no conflict.³

Ontario

In *Clarke*, Justice Goldstein considered whether s. 10 of the *Motor Vehicle Accident Claims Act* conflicted with the *Bankruptcy and Insolvency Act (BIA)*.

Sandra Clarke had a \$55,000 judgment ordered against her in 1995. She was an uninsured driver in a motor vehicle accident in which her passenger was injured. She could not pay the judgment. The Motor Vehicle Accident Claims Fund paid the plaintiff and sought to collect from Ms. Clarke, who subsequently declared bankruptcy. The Minister of Finance sought to suspend Ms. Clarke's licence until she agreed to an appropriate repayment plan.

In deciding an appeal from a master's order, Justice Goldstein wrote: "[t]he denial of a driver's licence to a bankrupt who has not fulfilled a judgment debt...is debt collection and therefore in violation of the *BIA*."⁴

The issue for Justice Goldstein was "whether the *MVA Claims Act* is being used to enforce a judgment debt or promote responsible driving."⁵ He found no "evidence of a rational connection between paying a judgment debt and good driving habits."⁶ He concluded that by suspending Ms. Clarke's driver's licence, the province was punishing her for failing to pay a judgment debt, not for irresponsible driving.⁷

As a result of the *Clarke* decision, the Director of the Fund no longer maintains licence suspensions against a bankrupt judgment debtor. However, for the time being, the Ontario Ministry of Transportation continues to enforce s. 198 of the *Highway Traffic Act*. The Ministry will not, after a bankruptcy, lift the suspension of the driver's licence of a judgment debtor owing for damages occasioned by a motor vehicle.

Alberta

In *Moloney v. Alberta*⁸, the Alberta Court of Appeal followed *Clarke*. The court found that "s. 102 of the *Traffic Safety Act* [is] in operational conflict with the *Bankruptcy and Insolvency Act*".⁹ The Court wrote that the driver's licence suspension provisions were "disconnected in any real sense from any traffic safety considerations"¹⁰ and ruled that maintaining suspensions post-bankruptcy was unconstitutional. The Attorney General is appealing the judgment to the Supreme Court.¹¹

Non-renewal of vehicle permits for unpaid ETR tolls

The *Moloney* appeal will be heard by the Supreme Court in January 2015 at the same time as the appeal of *407 ETR Concession Company Limited v Superintendent of Bankruptcy*.¹² In the 407 case, the Supreme Court will decide whether s. 22(4) of the *Highway 407 Act* is inoperative under the doctrine of federal legislative paramountcy having regard to the *BIA*.

If someone fails to pay a 407 toll, the 407 company can prevent that person from renewing their vehicle permit under s. 22(4) of the *Highway 407 Act*. The 407 company argues that this power should continue even after a toll debtor has been discharged from a bankruptcy.¹³ The Superintendent of Bankruptcy takes the position that provincial licence suspension legislation cannot be used to enforce payment of debts after a discharge from bankruptcy.

The Attorneys General of Quebec, Ontario, Saskatchewan, Alberta and British Columbia are all intervening in the 407 appeal and it is expected they will support the 407 company's position. Three representative plaintiffs in a class action against the 407 company are also interveners and are expected to support the Superintendent's position.

Facts in the 407 case

In 2011 a car salesman with \$35,000 in unpaid 407 tolls brought a motion before the Ontario Superior Court of Justice to compel the province to renew his vehicle permit in light of his recent discharge from bankruptcy. Section 178 of the *BIA* releases a bankrupt from "all claims provable in bankruptcy", except for those listed in s. 178(1). The car

salesman argued that no steps to collect or enforce the debt can be taken post-bankruptcy unless the debt is listed as an exception in s. 178 of the *BIA*. He also argued that s. 22(4) of the *407 Act* conflicts with the discharge provisions of the *BIA*, and therefore is of no force and effect under the doctrine of paramountcy.

Judgment at first instance

Justice Newbould denied the car salesman his vehicle permit in a 9-page decision.¹⁴ Justice Newbould found that: (1) the suspension of a driver's licence is not a remedy to enforce a judgment because a bankrupt has no property right in their licence; and (2) there is no operational conflict between the two statutes because the order of priorities of creditors under the *BIA* is not affected by s. 22(4) of the *Highway 407 Act*.

Decision of the Court of Appeal

Ontario's Court of Appeal overturned Justice Newbould's decision in December, 2013.¹⁵ It found that the operation of s. 22(4) of the *Highway 407 Act* – to allow the 407 company to enforce toll debts – conflicts with the purpose of the *BIA* to provide a "fresh start" for bankrupts. In May 2014 the Supreme Court granted a stay of the Ontario Court of Appeal's order pending the Supreme Court's determination of the appeal.

Conclusion

We will soon have an answer to the effect of bankruptcy on driver's licence suspensions for unpaid judgments and 407 tolls.

If the Supreme Court agrees that there is no "rational connection between paying a judgment debt and good driving habits"¹⁶ then the licence suspension provisions will likely be found unconstitutional. Ultimately, the provinces' ability to continue to suspend the licences of bankrupts will depend on the extent to which the licence suspensions can be characterized as something other than a debt collection tool.

¹ See *Saskatchewan Government Insurance v Gorguis*, 2013 SKCA 32 and *Moloney v Alberta (Administrator, Motor Vehicle Accident Claims Act)*, 2014 ABCA 68 (CanLII).

² *Ontario (Finance) v Clarke and Superintendent of Insurance for Ontario*, 2013 ONSC 1920.

³ *Ibid.*, at para 18.

⁴ *Ibid.*, at para 2.

⁵ *Ibid.*, at para 51.

⁶ *Ibid.*, at para 54.

⁷ *Ibid.*, at para 54.

⁸ *Moloney v Alberta*, *supra*.

⁹ *Ibid.*, at paras 53 to 54.

¹⁰ *Ibid.*, at para 45.

¹¹ Supreme Court of Canada docket # 35280.

¹² Supreme Court of Canada docket # 35696.

¹³ Since 2007, the number of bankrupts and proposal debtors in Ontario who list 407 as a creditor exceeds 6,000. See paragraph 7 of the statement of facts in the factum of the Superintendent of Bankruptcy, posted on the Supreme Court of Canada's website.

¹⁴ *Moore, Re*, 2011 ONSC 6310, 2011 CarswellOnt 15701.

¹⁵ *Canada (Superintendent of Bankruptcy) v 407 ETR Concession Company Limited*, 2013 ONCA 769 (CanLII).

¹⁶ *Clarke*, *supra*, at para 54.

YASC Trivia and Pub Nights Across Ontario



Gavin Cosgrove @gtcosgrove Follow

[@Advocates_Soc](#) The winning team, "The Un"B"eatables", was made up of Hilary Page, Andreea Muth, Gord McDiarmid, and Steve Zap #legalbeagles

Daniel Bach @dehbach Following

Having a great time at the [@Advocates_Soc](#) London pub night!



SAVE THE DATE

4th Annual Toronto Trivia Challenge for Charity

Thursday, March 19 @ 6:00pm - 8:30pm

Hot House Restaurant
35 Church Street, Toronto

To register or for more information, please contact Johanna O'Brien at johanna@advocates.ca or 416-597-0243 x 114.

Top Tweeters

Erin Durant, [@erindurant42](#), *Dooley Lucenti Barristers & Solicitors*

At this year's [@Advocates_Soc](#) Fall Forum, a panel discussed how to use social media to build your profile. Below is my personal list of top 10 legal tweeters. These individuals/groups do a great job using Twitter to enhance their brand and are "must follows" for any lawyer just embarking into the strange world of Twitter.



Atrisha Lewis
[@atrishalewis](#)

Atrisha Lewis is a litigator at McCarthys who tweets about topics of interest to young lawyers, particularly young lawyers finding their way in a big firm.

Chris Horkins
[@chorkins](#)

Chris is a litigator at Cassels Brock & Blackwell who tweets about recent case law, legal news, Toronto politics and Toronto sports.



Sean Bawden
[@SeanBawden](#)

Sean is an employment lawyer from Ottawa who tweets on employment law and current events with a mix of good-natured humour.


Allan Rouben
[@allanrouben](#)

Allan describes himself as an appellate advocate and "law geek". He is not afraid to express his opinion on current events and case law on his twitter feed.



Camille Labchuk
[@CamilleLabchuk](#)

Camille is an animal rights and criminal defence lawyer. She is my go-to source for information on the fate of the Ikea Monkey and similar cases.



Adam Dodek
[@adodek](#)

Adam is a professor at the University of Ottawa who tweets about current events and legal ethics. He has a running list of 100 books he intends to read on his sabbatical.

Sean Robichaud
[@seanrobichaud](#)

Sean is a criminal lawyer. His tweets keep me tuned into the important criminal law decisions and challenges facing the justice system.

Bob Munroe
[@BobMunroeLawyer](#)

Bob is a personal injury lawyer from Hamilton who tweets recent case law and articles of interest to all lawyers.



CanLII
[@CanLII](#)

CanLII tweets recent case law and articles from CanLII Connects – essential for lawyers struggling to keep up with developments in the law.



Thomas G. Conway
[@ThomasGConway](#)

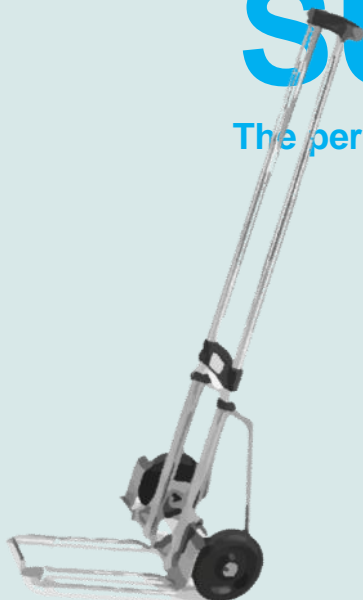
Tom is the former treasurer of the Law Society and is the current president of the Federation of Law Societies of Canada. His tweets have brought both organizations into the twitterverse.

Did I miss your favourite legal tweeter? If so, send your nomination to The Advocates' Society ([@Advocates_Soc](#)) for your chance to win a \$50 Best Buy Gift Card.



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