



# Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

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## Chair Chat

By: Tony Di Domenico, *YASC Chair*

2014 is only a month and a half old and YASC has been extremely busy with initiatives and events focused on mentorship, building professional relationships and the exchange of ideas that impact young advocates. Here are a couple of highlights.

I am happy to note that TAS' Board of Directors has recently approved YASC's proposed reforms to Ontario's Rules of Civil Procedure. YASC has proposed amendments dealing with service upon lawyers of record by fax and email (i.e. Rule 16.05). In YASC's view, portions of these sub-Rules are inefficient and based on outdated assumptions regarding their related technologies. In particular, there continues to be the requirement for documents 16 pages or longer to be faxed after 4pm (effectively requiring lawyers to serve their materials a day in advance) and for service by email to be effective only if the lawyer of record provides by email an acceptance of service (leaving the serving lawyer entirely in the hands of the lawyer being served). YASC is proposing an elimination of the "16 page fax rule" and for service by email to be permitted with either the consent of the parties or upon an order of the court on such terms as are just. A proposal to the Civil Rules Committee is forthcoming.

YASC has also launched an innovative seminar series focused on the impact of technology on the practice of litigation and on the administration of justice. This series will feature different stakeholders and perspectives, ranging from the impacts of social media to the effective use of technology in the courtroom. The series will commence with an event on March 3 on "Demonstrative Aids".

As always, we welcome your views and look forward to seeing you soon!

*Tony*

## Trivia Challenge

Who will be the Key Note Speaker at this year's End Of Term Dinner?



Tweet your answer to @Advocates\_Soc using hashtag #YASCTriva for a chance to win a \$50 Best Buy Gift Card

Get ready for this year's YASC Trivia Challenge, happening on March 20, 2014. Answer the trivia challenge question in each newsletter for a chance to win great prizes and YASC bragging rights!

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## The YASC Interview

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By: Brydie Bethell

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**D**anielle Robitaille is a criminal lawyer, and has just become a partner at Henein Hutchison LLP. Her practice also includes regulatory and disciplinary litigation and appeals. From time to time, she acts for institutions as a prosecutor. Danielle has acted as counsel, often in high-profile cases, all over the province. She has appeared in all levels of court, and acts as inmate duty-counsel before the Court of Appeal for Ontario.

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**Why did you become a litigator?**

A: What else was I going to do? My career as a waitress abruptly ended on day-1 when I spilled a glass of red wine on guy wearing khaki pants. Also, I am hopeless at making change, and pretending to care about anything I don't actually care about.

**How would you describe your career so far?**

A: Charmed. I was very lucky to be hired by Marie Henein after articles and I am extremely fortunate to have Scott Hutchison (!) and now Murray Segal (!) as colleagues and amazing mentors.

**What is your greatest fear in practice?**

A: I make the wrong judgment call and my client goes to jail. Too heavy? Something softer, Bethell? Fine. Forgetting my tabs. Better?

**What is your idea of perfect lawyerly happiness?**

A: The day you find the nugget in the case; finding the hook that you will hum through the trial; the thing that, if accepted, makes your opponent's case impossible.

**Which lawyer do you most admire?**

A: Marie Henein. For being the best lawyer I have ever seen and for taking the time and effort over the last 7 years to teach me everything I know.

**What is your greatest extravagance in your every day life?**

A: Very, very good cheese.

**What is your favourite journey?**

A: What kind of word is "journey"? What am I? A contestant on The Bachelor?

**Which words or phrases do you most overuse?**

A: Bingo-bango-bob's-your-uncle. Try it today. Like a terrible street drug, it is impossible to stop once you start.

**What would you consider your greatest achievement?**

A: Making partner at HHLLP.

**What is your favourite case?**

A: R. v. David Frost. That case had everything: a credibility contest, a conspiracy theory, a small town folk-hero and a third testicle. What more could a girl ask for?

**Which talent would you most like to have?**

A: If I could sing, I would have been an international pop sensation and instead of being nerdily excited about this interview, I would have shown-up 3-hours late, wearing a pair of shades and then peeing in a bucket somewhere. So ya, I wish I could sing.

**Who or what is the greatest love of your life?**

A: Mark, Finn, and Ryann Sanagan who are the most-cute, the most-annoying, and the best things in my life.

**What is your favourite drink?**

A: Anything with alcohol content on a Friday night.

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

A: An Olympic swimmer. I am convinced I have not only the drive but also the required physique. All that was missing to fulfill the dream were the lessons and the training.

What is your most marked characteristic?

A: My sunny disposition.

What do you most value in your friends?

A: Warmth and competence.

If you could have one superpower what would it be?

A: The ability to make a pair of 4-years olds behave in public.

If you were to die and come back as a person or thing, and if you could choose, what would it be?

A: I would prefer not to die, thank you very much. That is truly morbid, Bethell.

Who is/are your Judge Crush(es) and why?

A: Justice Sandra Baccus, Justice Patrice Band, Justice Philip Downes, Justice Peter Martin, and Justice Gary Trotter, all of whom graciously agreed to participate (on a Saturday no less!) in the conference I am co-chairing on March 1st entitled Self-Defence and Use of Force: The New and Evolving Substantive Defences to Violent Conduct. Can you blame me for the shameless plug?

What is your motto?

A: 2014: No guts. No glory.  
2010-2013: Relax yourself!  
2009: You can have it all.  
2006-2008: Fake it 'till you make it. ♦



## The Advocates' Society Education Centre Open House

Wednesday, February 19, 2014  
5:30 p.m. - 7:30 p.m.  
250 Yonge Street, Suite 2700  
Toronto, ON.

You are invited to the grand opening of our new state-of-the-art facility. Enjoy refreshments with other TAS members as you acquaint yourself with our 6 classrooms, 2 boardrooms, and a view of the city not to be missed!

## Tech & Law Series

Monday, March 3, 2014  
5:30 p.m. - 7:00 p.m.  
250 Yonge Street, Suite 2700  
Toronto, ON.

In this first instalment, learn how to make your case (and get the most out of your experts) using demonstrative aids. This event is complimentary for members of The Advocates' Society. For more information or to register please email Rachel Stewart at [rachel@advocates.ca](mailto:rachel@advocates.ca)



## 3rd Annual Trivial Challenge for Charity

Thursday, March 20, 2014  
6:30 p.m. to 9:00 p.m.  
The Hot House Restaurant & Bar  
35 Church St., Toronto, ON.

Set up a team, challenge another Firm and help support TAS Gives Back.

[Click Here To Register >>>](#)

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## Ramblings of a First Generation Canadian Actor Turned Advocate on the Public's Perception of the Legal Profession

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By: Yashoda Ranganathan, *Lenczner Slaght Royce Smith Griffin LLP*

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As soon as a first generation Canadian of East Indian descent can form a coherent thought, they are aware that their parents would like them to become a doctor or an engineer. However, I have found that, if a child of East Indian descent steadfastly shows no interest in (or aptitude for) medicine or engineering, their parents will happily accept any other vocation that is governed by a regulatory body.

When I was admitted to law school my father said it was the best thing that ever happened to him. He was relieved that his daughter, who so far only held a BFA (Bachelor of...I'll let you fill in the rest) might now make something of herself that would translate into a steady pay cheque. He was not incorrect.

I recently made a new friend, also of East Indian descent, at a Young Advocates' pub night and we traded tales of relieved parents. His father offered him a car if he would go to law school instead of art school. He is now a lawyer with a car.

For my new young advocate friend and me, our parents of East Indian origin have come to accept "lawyer" as a profession they deem as respectable.

Unfortunately, the general public do not feel the same way as our East Indian parents.

When I was at Queen's Law, I could not get into a cab without being asked what I was studying. And then, the inevitable...

**Cabbie:** What's the difference between a lawyer and a jellyfish?

**Yashoda:** (sigh) I don't know, what's the difference?

**Cabbie:** One's a spineless, poisonous blob. The other is a form of sea life. (cackling laughter)

**Yashoda:** (sigh)

Some days, I would take it upon myself to advocate for the profession.

Yashoda: Sir, I am sorry that you have formed such an ill opinion of lawyers. I am not sure if you are aware that some of the greatest figures in history were lawyers by training: Sir Thomas More, Abraham Lincoln, Mahatma Gandhi, Nelson Mandela...the list goes on and on. The general public labours under the misconception that

lawyers will lie and cheat to win for their clients. That is not accurate. In Canada, lawyers are officers of the Court and we have a professional duty of honesty and candour. I would like to assure you that it is the noblest of professions. Allow me to outline for you some of the great contributions that lawyers have made...

As you might have gathered, the Kingston cabbies were not much impressed and did not take me up on my offer.

**Cabbie:** (still cackling)...Hey...have you heard this one? How many lawyer jokes are there?

**Yashoda:** (sigh) I don't know, how many are there?

**Cabbie:** One! The rest are true stories (cackling, cackling)...

As young advocates what can we do to ameliorate the public's perception of the profession? We may not be able to stop the lawyer jokes, but perhaps we can incrementally disprove them by example.

Here are a couple of ways you might help sway the public's perception of the legal profession:

### 1. Read and Follow the Best Practices on Professionalism and Civility in Advocacy

<http://www.advocates.ca/new/advocacy-and-practice/institute-for-civility-and-professionalism.html>

In 2013, The Advocates' Society released Best Practices, a companion to its earlier publication Principles of Professionalism and Civility for Advocates. The Best Practices arose from a symposium co-hosted by the Young Advocates' Standing Committee of The Advocates' Society, the Society and the Institute for Civility and Professionalism, and are intended to provide practical solutions to problems that advocates encounter in their daily practice.

### 2. Sign up as Duty Counsel with Pro Bono Law Ontario

<http://www.pblo.org/volunteer/lho/>

Pro Bono Law Ontario has a variety of volunteer opportunities for advocates to help people with civil legal problems in all levels of Court. Lawyers provide services ranging from summary legal advice to full representation.

With great resources such as these, I expect to spend less energy, going forward, convincing cab drivers (and my parents) that I have entered a respectable profession. ♦



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## Back To Law School: Contributory Negligence

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Duncan F. Macgillivray, *CARREL + Partners LLP*

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As an instructor for eager first year Torts students at Lakehead Law, I get to revisit the foundational aspects of tort law on a weekly basis. In doing so, I sometimes find areas that are quite basic, but are misunderstood by many in my day-to-day practice as a personal injury lawyer. Contributory negligence is one of those areas.

On slip and fall files, insurance adjusters and defence counsel often treat contributory negligence as an absolute given and reduce their assessment of damages accordingly. The rationale seems to be as follows: The plaintiff slipped and fell. Walking is a normal, every-day activity for most people. Therefore, there must be some “contrib” if you slip or trip and fall. Perhaps plaintiff’s counsel often go along with this rationale, leading to it being used over and over again. That is troubling.

A first-year Torts type review of contributory negligence demonstrates that “contrib” is not a given. In my opinion, there are four key principles in considering contributory negligence:

The analysis of contributory negligence is done **after** the negligence analysis regarding the defendant’s fault, not at the same time.

Contributory negligence is about a **duty** that the plaintiff has **to him/herself** (not to the defendant). As Lord Denning said: “Contributory negligence is a

man’s carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonably prudent man, he might hurt himself.”<sup>1</sup>

As with any defence, the onus is on the **defendant** to prove contributory negligence.<sup>2</sup> They must have actual **evidence** of carelessness.

4. Contributory negligence is about the “**comparative blameworthiness**” of the parties, not the degree of conduct from each party that caused the harm. Professor Osborne puts it this way:

“The plaintiff’s negligence must contribute to the harm, but the assessment of contributory negligence is **not** made on the degree to which the conduct of each party **caused** the harm. It is made on the basis of **comparative blameworthiness** of the conduct of the parties.”<sup>3</sup>

Leaving the slip and fall context, consider #4 in regard to a motor vehicle accident fact situation where a plaintiff pedestrian is jaywalking and struck by a truck. There may be some contributory negligence. But, consider the amount of contributory negligence if the facts show that the defendant driver was drunk and speeding when he struck the plaintiff. The comparative blameworthiness shifts. The contributory negligence amount lessens (or completely disappears).

The lesson for plaintiff-side personal injury lawyers is to not take contributory negligence as a given on slip and fall files and to re-think contributory negligence on other personal injury files. Do not “mush” the contributory negligence analysis into the analysis of the defendant’s negligence. Make the defendant **prove** that the plaintiff did not take care for his/her own safety. Consider the **blameworthiness** of the conduct. ◆

### (Endnotes)

1 *Froom v. Butcher*, [1975] 3 All E.R. 520.

2 *Linden and Feldthusen*, *Canadian Tort Law*, 8th Ed., (LexisNexis: 2006) at pages 491-492.

3 *Osborne*, *The Law of Torts*, 4th Ed., (Irwin: 2011) at page 110.

## Around TAS Photos



Mentoring Dinner, Thursday, February 13, 2014



Debate Club, Thursday, February 6, 2014



## Ready, Set, Litigate!

Tuesday, February 25, 2014 | 9:00 am to 4:30 pm  
250 Yonge Street, Suite 2700, Toronto, ON.

Judges and Masters answer the questions new counsel are afraid to ask, with candid discussion about what to expect during your early court appearances, and what the bench expects from you.

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We invite your comments and feedback. E-mail us at: [jessical@advocates.ca](mailto:jessical@advocates.ca).