



Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

Advocacy Abroad | Getting Involved | Future of the Profession | Interview
Young Advocate Awards | Fall Forum | Welcome YASC & New Editor



CHAIR CHAT



Chair Chat

BY: DANIEL NAYMARK,
NAYMARK LAW

The new TAS term officially started last month. Excellent things are in store. This year's Young Advocates Standing Committee recently had its annual planning retreat, and it was impossible not to be excited both by the talented and diverse group of volunteer committee members we've assembled and by the program that's shaping up for the year.

Look for the return of YASC's signature programs like mentoring dinners and cocktails, Fireside Chats, pub nights and Wine and Cheese with the Bench. This year's

Committee will also help The Advocates' Society grapple with important issues affecting the profession, through both its intervention and policy advocacy work and its 'thought leadership' in areas like the conduct of civil trials.

The new development I look forward to most is expanding our Fireside Chat program to Ottawa and Calgary for the first time. For those of you who haven't been to one, these are intimate evenings at which prominent, interesting members of the bench and bar tell stories from their careers and share their reflections on practice with a small group of Young Advocates in an intimate setting. Possibly the best thing YASC does (of many good things) is to bring Young Advocates into the broader community and tradition of advocates, and this event is an amazing way to do that. Sign up early... they always sell out!

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.



International Arbitration in Paris



VASUDA SINHA,
FRESHFIELDS BRUCKHAUS
DERINGER LLP

In September 2015, I moved from Toronto to Paris to start practising international arbitration. The intervening ten-month period has involved a learning curve. I find myself regularly dispelling, and being dispelled of, a number of myths about living and practising in Paris. At the same time, I have come to realize that some of the myriad stereotypes which my friends and colleagues predicted my soon-to-be-Parisian life would become do indeed ring at least partially true. YASC has asked me to share a few of realizations I have had since my move:

1. *There are no Rules of Civil Procedure in International Arbitration, but There are Still Rules:* One of the best tips I received in my first year practising as a litigator in Ontario was that, when in doubt about anything, my first move should be to look at the Rules of Civil Procedure. More often than not, I was told, they would contain the answer. In international arbitration, unfortunately, there are no *Rules*. However, there are still many rules. For example, framework rules for the conduct of proceedings set by arbitral institutions (i.e. the International Chamber of Commerce International Court of Arbitration or the Arbitration Institute of the Stockholm Chamber of Commerce), there is legislation that governs arbitrations in a given jurisdiction, and there is an ever-growing set of essential textbooks or go-to publications and guidelines that can be referred to. While there is certainly no shortage

of information available in the world of international arbitration, no single publication provides the same comfort as the annotated, annually-updated bright blue brick of a book that every junior should fear being caught without at court.

2. *Jurisdiction Matters:* One of the reasons that there is no definitive set of rules is because the rules that apply will always depend on the particular facts of a case. A defining element of international commercial arbitration is that the main elements of the dispute (such as the governing law, the seat of the arbitration, or the nationalities of the parties) implicate at least two jurisdictions. No doubt, the approaches taken in different jurisdictions for the dispute resolution process will differ to varying degrees. For example, in one hearing I attended the proceedings were governed by Swedish arbitration law. The witnesses giving *viva voce* evidence were not sworn in or affirmed because Swedish arbitration law does not permit a witness to be put under oath.



3. *Why International Arbitration?* The ability of the parties to set the jurisdictional framework of a dispute is one reason why many parties who do business internationally prefer arbitration to traditional litigation. Arbitration allows them to avoid the risk of a home-court advantage to the other party, in the event there is a dispute over which that party's court should take jurisdiction. This is generally regarded as an advantage of arbitration and is one reason why arbitration is increasingly used as a means of international dispute resolution

and is growing as an area of practice. Yet, notwithstanding this increase in popularity, one can often still find a conference or a lecture dedicated to examining its legitimacy in the most fundamental areas: *What is the role of the arbitrator? Is arbitration a law unto itself? How to save international arbitration from itself?* are recurring topics canvassed by many of the best-reputed practitioners in the field.

Life in France is not all croissants and month-long vacations, although I am the first to admit that the food is one of the best parts about moving to Paris. I lost count of how many *pains au chocolat* I ate in my first month here. But it is not the case that good food permeates every corner of the city, let alone offices. In my experience, law firms here are no more Michelin-starred restaurants than are Toronto law firms—that is to say, they're not at all!

Almost as synonymous as food with the French lifestyle are France's protective labour laws. However, the 35-hour French work week that is often wistfully (or disdainfully) commented on by North Americans generally does not apply to French lawyers in private practice. Indeed, for most young lawyers, the same can also be said of the famed French practice of taking all of August as a holiday. *Avocats-à-la-cour* who work at firms, even those just starting their careers, are self-employed lawyers who are effectively contractors with their firms, not employees. As I understand it, the theory goes that once someone is admitted to practice, they do not need normal employment protection because nothing stops them from earning a living by hanging up a shingle. On the flip side, it is generally accepted that the market for lawyers in France is saturated (particularly in Paris), which creates obvious obstacles for new lawyers to start their own practices successfully from day 1. As a result, young French lawyers who struggle to find permanent jobs will sometimes undertake multiple 3–6 month *stages* (unpaid or underpaid internships) on an informal basis even after they have been admitted to the bar—interesting facts in light of the ongoing debate in Ontario about the role of articling!

GETTING INVOLVED

HOW YOUNG LAWYERS CAN GET INVOLVED IN THE LEGAL PROFESSION



ERIN H. DURANT,
BORDEN LADNER GERVAIS LLP

I am often asked how I became involved in legal organizations like The Advocates' Society as a young lawyer. No one has written a treatise on the topic—perhaps because the content can be summarized on one page. Below are tips on becoming involved that I learned in my first four years of practice.

(1) Find a mentor who is involved

Find a mentor that is active in the legal profession. I would have never become involved had my first mentor not ~~made me~~ encouraged me to volunteer. If you are spending non-billable hours marketing yourself and your firm within a legal organization, it is important to be supported by someone who values this work. Your mentor will also involve you in initiatives that he or she is working on and will give you advice on which organizations are best to join for business purposes (in addition to The Advocates' Society, of course).

(2) Ask how you can help

It is surprisingly easy to get involved in the legal profession. In most cases, attending an event, speaking to someone who looks like they are in charge, and asking "how can I help next time?" will do the trick. If you are physically chained to a chair in your office, sending an email to the organization also works. If no one contacts you in a month's time, follow up! You will get their attention. No one ever turns away free help. But be careful—once they know you are willing to work for free, they will take you up on it, so you need to be committed!

(3) Volunteer early in your career

Do not wait until you have more

experience as a lawyer. You will never have more time to volunteer than in your first few years of practice. I joined the Young Advocates' Standing Committee at the end of my first year of practice. I was quickly asked to create a newsletter which became *Keeping Tabs*. I have since spent every month editing newsletters and have grown my personal network by 51 article writers and 23 interviewees. No one cared that I was a baby lawyer.

(4) Write, write, and write some more

Most legal organizations publish newsletters, journals or website content (blogs) for their members. At The Advocates' Society you can write for *Keeping Tabs*, *Advocacy Matters*, *The Advocates' Journal* or on their online blog. Writing is a great way to get involved and most legal organizations

are begging for short, timely, interesting content from their members

(5) No need to move!

You do not need to live and work in Toronto to be involved. It may actually be easier to become involved if you are located outside of Toronto. Many organizations have fewer members from outside of the GTA and they are looking for volunteers to host local events in their communities. The Advocates' Society, in particular, has expanded its reach outside of the GTA and outside of Ontario. Wherever you are located, you can get involved!

Young advocates have a lot to give—insight, enthusiasm and passion for their new profession.

Follow Erin's Advice. Get involved!

Young advocates across Canada are needed to help with local events and other regional initiatives. Contact benk@stockwoods.ca for more information.



Your Profession, Your Future



JULIA WILKES,
WARDLE DALEY BERNSTEIN BIBER LLP

On June 6, 2016, YASC hosted the second annual “Your Profession, Your Future” event in Toronto. The event was well-attended by young advocates eager to hear from five leading thinkers about the future of the legal profession.

The aim of the event is to encourage young advocates to consider non-traditional approaches to the practice of law and to spark a conversation among young advocates about likely changes to how they will practise in the future.

In a presidential-style debate, the moderators put statements to the speakers about changes to the legal profession – and specifically the world of litigation—that are happening now.

Lee Akazaki, Anne Glover, Patrick Lamb, Gary Luftspring, and YASC member Allison Spiegel considered a range of topics including non-lawyer ownership of law firms, the use of new technologies and outsourcing, the use of alternative fee arrangements, and litigation funding. The debaters urged young advocates to think critically about these issues and ways to improve service delivery for clients in the future.

While all of the debaters agreed that the legal profession is changing and must change, they fell roughly into two camps: “revolution” or “evolution”. Some debaters felt that there should be a complete overhaul of much of the legal system including law firm structure and billing practices (revolution) while others argued in favour of incremental changes within the current structures (evolution).

The lively debate did not disappoint. Debaters considered important issues such as improving access to justice, building and maintaining business relationships with clients (or, more simply, keeping clients happy), and retaining talented young lawyers by improving inefficiencies and decreasing focus on the billable hour.

The most hotly-contested debate centred on alternative fee arrangements in litigation. The revolution message

was voiced strongly: select law firms are already using value-based billing through flat fee models. Clients are happy as these fee models transfer some risk from clients to lawyers and add predictability and transparency for clients. Lawyers are still making money and are no longer slaves to the billable hour. In response, the evolution camp argued that some litigation is too unpredictable for flat fee arrangements. Lawyers should continue to capture their time and employ the billable hour, while innovating through the use of discounted rates for certain services such as large-scale document review.

Despite all of the disagreement, all of the debaters agreed that third party funding has a place in the future of litigation. Once considered champertous, all of the debaters agreed that there is nothing unethical about litigation funding (which is good news for our sponsor Bentham IMF, an established international litigation financing company which recently entered the Canadian market).

The event ended with cocktails, and young advocates started to engage with their colleagues and the debaters about the future of the legal profession. Just as we hoped.



Interview with Daniel Naymark, Naymark Law

BY: KATE MCGRANN,
CRAWLEY MACKEWN BRUSH LLP



1

Q: Why did you become a litigator or advocate?

A: I went to law school for no particularly good reason. I had been bartending in London, which suited me fine, but moved back to Toronto to get back together with an ex-girlfriend (now my wife). Then in first year of law school I volunteered at the student legal aid clinic, and I was hooked instantly. So I guess the short answer to the question is love, risk aversion and luck.

2

Q: What is your year of call?

A: 2009

Q: What is your greatest fear in practice?

A: Forgetting a piece of my lawyer costume when I go to court. There are so many components to that get-up! This is a fear born of repeated trauma. Once I forgot cufflinks and argued an injunction with alligator clips holding my shirt cuffs together.

3

4

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

A: Mississippi John Hurt

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Q: What is your favourite journey?

A: This question seems framed for either a profound existential answer or a Don't Stop Believin' pun, but I'll take it literally. I love me a good road trip, whether the T. Rex-blaring/kicked out of Graceland/tent-in-a-field trips of yesteryear or today's Raffi/petting zoos/trunk-fulla-diapers affairs.

5

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

A: Cliff Lax and Terry O'Sullivan. Before hanging my shingle, I apprenticed for 5+ years under them and other very talented lawyers at what is now Lax O'Sullivan Lisus Gottlieb. Cliff and Terry are very different guys but both amazing mentors, lawyers and human beings.

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Q: Which living lawyer do you most admire?

A: My cousin, Aria Laskin at Torys. She's a new Young Advocate who was called last year. She reminds me of the powerful potential of a set of robes: idealistic, thoughtful, deliberate, humble, bold – and the smartest person I've ever met. Her presence in our community of advocates has been personally very motivating. I wish I had a crystal ball to see just what amazing things she will accomplish.

9

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

A: My late-night Me Time. I work a lot, and I spend as much time as possible with my two little kids. Most nights, by the time those two things are done, it's already too late to get a full night's sleep. But I usually stay up another hour or so for some zen time alone – reading, fiddling with stupid video games on my phone, doing a crossword puzzle, playing guitar. That comes straight out of sleep but well worth it.



6

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

A: A lot of people seem to be lawyers only because they can't think of a good answer to that question. I don't know what else I would do either, but that's because I really love being a lawyer. I am a lawyer by deliberate, renewed choice.

10

Q: What is your idea of perfect lawyerly happiness?

A: Help people who put their trust in me. Have fulfilling relationships with colleagues and clients. Be the best version of myself. Build something, and leave a mark.



Congratulations to Jacqueline Swaisland, *Waldman & Associates*, the Arleen Goss Young Advocates' Award recipient. For more information about the award click [here](#).



Congratulations to Erin Pleet, *Thornton Grout Finnigan LLP*, the David Stockwood Memorial Prize recipient. For more information about the award click [here](#).



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Welcome to New Keeping Tabs Editor David Campbell

ERIN H. DURANT, *BORDEN LADNER GERVAIS LLP*



I am pleased to announce that David Campbell of Rogers Partners LLP is the new Editor of *Keeping Tabs*. I am extremely pleased to pass the torch to David—and not just because I am moving on from the responsibility

of publishing an almost-monthly newsletter. In fact, I am sure I will feel the void soon enough! David is a former recipient of the Stockwood Memorial Prize and has been the Deputy Editor of *Keeping Tabs* for the past year. David has an infectious sense of humour and a passion for writing that you will all enjoy as he takes over as Editor. David also has experience as an Editor with the *Ottawa Law Review* so I expect you will see far fewer typos and more “em dashes”. According to his firm’s website, David is a “Team-Player. Writer. Speaker. Litigator. Musician”—in other words, he is far more talented than yours truly. Join me in welcoming David Campbell as Editor of *Keeping Tabs*! If you have an idea for an article or other feature for *Keeping Tabs*, you can reach David at david.campbell@rogerspartners.com.