




Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

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Chair Chat

Brent Arnold

YASC's busy winter schedule continues. Our first ever Niagara Region Pub Night took place on February 12 in St. Catharines. Thanks to Lionel Tupman for pulling it all together. We look forward to more great events in that region. The Honourable Stephen T. Goudge captivated young advocates at the Fireside Chat at Campbell House on February 10, and our sold-out Mentorship Dinner "They Didn't Teach THAT in Law School" on February 25 gave attendees a chance to learn the ropes from experienced advocates.

Later this month, we are holding our 4th Annual Trivia Challenge for Charity in Toronto, supporting the TAS Gives Back campaign to raise funds for the Inmate Appeal Duty Counsel Program. Once again, the event has **sold out** well in advance. We will post photos of the winners in our next issue of Keeping Tabs. The Society's signature learning-by-doing advocacy skills training continues with Trial from A-to-Z on April 8, 2015.

Finally, we hope you will take advantage of our annual Wine and Cheese with the Bench at historic Campbell House on April 16, 2015. It is a great opportunity for junior counsel to casually meet members of the bench, while sampling some exceptional wine and cheese pairings. We are honoured to have Chief Justice Strathy joining us, as well as many other Judges and Masters from all levels of court.

For those who've been following our work and want to get involved, several positions on YASC will be opening up in the spring and we are now accepting applications for the 2015/2016 YASC. YASC gives a strong voice to young advocates and helps you make great connections.

Brent

Young Advocates' Standing Committee Call for Applications

The Young Advocates' Standing Committee is seeking energetic junior Society members to become part of the 2015-2016 committee. This is an excellent opportunity to build your profile within The Advocates' Society and your local bar.


[Click here for the YASC application form.](#)

Not a Society member? [Click here to join now.](#)

Ready, Set, Litigate!

May 13, 2015
Live webcast option available

[Click here to register](#)




Wine and Cheese with the Bench

Mix and mingle with Judges and Masters. Tantalize your palate with wine tastings and artisan cheese pairings.

Thursday, April 16, 2015 @ 5:30pm - 7:30pm

Toronto

► [Click to register](#)



The YASC Interview: Frank Lamie

By: Vanessa Voakes, *Stikeman Elliott LLP*



Called to the Bar in 2007, Frank Lamie recently became a Partner in Gowlings' Toronto Office where he practices corporate commercial law with a focus on restructuring, insolvency, and related transactional and commercial litigation matters. He also provides guidance and representation as part of Gowlings' Defence, Security, and Aerospace Group. In addition to his busy litigation practice, Frank serves as a Canadian Army (Primary Reserve) Infantry Officer, having been deployed on international operations in the past and currently commanding a para-capable Army Reserve Infantry Company with The Queen's Own Rifles of Canada. Frank's extra-curricular contributions include: taking on *pro bono* cases; serving as The Advocates' Society's representative on the Court Security Committee (Osgoode Precinct); and serving on the board of the Toronto Children's Breakfast Club. In this interview, Frank provides candid advice for young advocates on how to balance a busy career while contributing beyond the everyday practice of law.

Which word do you prefer: litigator or advocate?

Advocate. I never shy away from a scrap, but sometimes constructive solutions can be just as powerful.

Why did you become an advocate?

A genuine interest in being "at the coal face" of the law.

How would you describe your career so far?

Incredibly fortunate. To have the Hon. Roy McMurtry and the Hon. Pat LeSage help guide the marathon that is our lives in the law, service and otherwise from the outset has provided wonderful perspective. Thanks again, Chiefs!

What do you like most about your litigation practice?

Its diversity and the ability to affect real outcomes for a wide range of clients. In particular, I like when I arrive on a *pro bono* matter and can level the playing field.

What are three things you wouldn't want to live without?

My wife, our daughter and our son. Their hugs make me the richest person on Earth. I fear the day when our kids become "too kool" to hug us as much as they do right now.

What's your idea of perfect lawyerly happiness?

Achieving decisive outcomes on issues that really matter... and post-win drinks.

What's your favourite case?

The People of Illinois v. Cicotte et al., 1921 (a.k.a. The "Chicago Black Sox Trial" in respect of the 1919 World Series). "Say it ain't so, Joe..." Innocence lost; partial justice found...?; and the tragic sacrifice of the dreams of one or two for the transgressions of the collective.

You serve as a Canadian Army (Primary Reserve) Infantry Officer and you recently became a Partner at your firm – how do you balance these roles, and what advice do you have for associates looking to advance their practices while simultaneously contributing to society?

Try and make your "7-year old self" proud every day. It is a big ask that you will not always fulfill – but go for it anyway. The bottom line is that those who feel called to serve and do more, simply have to do more – get up early; go to bed late; be creative; leverage your relationships; rinse; repeat. There is no magic to achieving balance on this front, unfortunately. But if you can find a way to contribute toward something that you truly enjoy and believe in, your contributions won't seem like work. We are all in a remarkably privileged position; embrace it.

If you could have any superpower, what would it be?

The suspension of time: to enjoy great moments just a little bit longer and to get more meaningful work done. I think our daughter would say the same thing. She is even more creative than I was as a kid at avoiding going to sleep: one more

book, one more story, one more gymnastics move, one more whatever... she is ingenious at holding on to good times.

Who would you most like to be stuck in an elevator with?

My grandfather. He exuded remarkable serenity and grace; we miss him. And if Pope Francis could join us at the 7th Floor, so much the better. I think he knows how to lead by simply being himself and is not overly constrained by rigid ideological silos. He says what needs to be said and does what needs to be done rather than saying what people expect him to say. People naturally gravitate to that. That is what leaders are called upon to do.

What's the best advice anyone ever gave you?

My mom and dad: "Be Good." They still say it at the end of every phone call with us. Sometimes, I think, as a pre-emptive admonishment, sometimes as a general reminder of "what it's all about". And the Hon. Roy McMurtry: "Keep your powder dry."

Do you have any advice for young advocates?

There was a time when lawyers were expected to lead, and were perceived to lead, across the spectrum. Help restore that leadership. There is a world in need of our collective contribution. Your strength and approach will be incredibly enriched by embracing your interests and by making a contribution above and beyond what your current position mandates – wherever you think that contribution best fits.

Court of Appeal Rules on Appropriate Communication with Experts

Samara Sectar, *Lax O'Sullivan Scott Lisus LLP*



On January 29th, 2015 the Ontario litigation bar collectively breathed a sigh of relief. This relief came as a direct result of the Court of Appeal's much awaited decision in *Moore v. Getahun*. Of greatest consequence for most litigators is the Court's confirmation that (a) it is acceptable for counsel to review draft expert reports and discuss them with expert witnesses; and (b) absent a factual foundation to support a reasonable suspicion that counsel improperly influenced the expert, a party should not be allowed to demand production of draft reports or notes of interactions between counsel and an expert witness.

The issue of the appropriateness of counsel's communications with expert witnesses arose in *Moore v. Getahun* in the context of a medical malpractice suit. While on the stand, the defendant's expert revealed that he had reviewed a draft report with counsel prior producing his final report. The trial judge, troubled by this revelation, determined that the practice of counsel communicating with experts and reviewing drafts of their reports undermines experts' neutrality and credibility. As a result she required that all discussions between expert witnesses and counsel be documented and subject to disclosure and production.

On appeal, the Court took the opportunity to clarify the state of the law regarding the role of lawyers in their interactions with experts. The Court found that counsel's assistance in the preparation of an expert witness's testimony and report does not automatically undermine the independence or objectivity of expert witnesses. In particular, the Court determined that the necessary independence and objectivity of expert witnesses are upheld by the following safeguards:

1. The ethical and professional standards of the legal profession forbid counsel from engaging in practices likely to interfere with the independence and objectivity of expert witnesses
2. The ethical standards of other professional bodies (such as engineers, actuaries, business valuers, etc.) require their members to be independent and impartial when giving expert evidence, and expert witnesses themselves must attest to their objectivity and impartiality by signing the acknowledgment of experts duty mandated by Rule 53.03(2.1) of the Ontario *Rules of Civil Procedure*
3. The adversarial process, and cross-examination in particular, provides a platform to explore the suggestion that counsel improperly influenced an expert witness, where there is an air of reality to this suggestion

Contrary to the finding of the trial judge, the Court of Appeal acknowledged that in fact, consultation and collaboration between counsel and experts assists both the court and the expert.

Further, the Court confirmed that draft reports of experts and records of consultations between counsel and experts (that parties do not intend to rely on) properly attract litigation privilege and need not be disclosed, even where the party intends to call the expert as a witness. That being said, the Court noted that this privilege comes with the following qualifications:

1. If a party intends to call an expert as a witness, the opposite party is entitled to obtain disclosure of the findings, opinions and conclusions of the expert pursuant to Rule 31.06(3)
2. The party who intends to call the expert must disclose the report and other information as mandated by Rule 53.03(2.1)
3. Litigation privilege cannot be used to shield improper conduct. This means that if a party seeking production of draft reports or notes of discussion between counsel and an expert can show reasonable grounds to suspect that counsel communicated with an expert witness in a manner likely to interfere with the expert witness's duties of independence and objectivity, the court can order disclosure of such communications.

What will rise to the threshold of a "factual foundation to support a reasonable suspicion that counsel improperly influenced the expert" will take time to develop in the common law. All that is clear for now is that evidence of an hour-and-a-half conference call between an expert and counsel, as in this case, "plainly" does not meet this threshold.

The Advocates' Society intervened in the appeal and was represented by Linda Rothstein and Jean-Claude Killey of Paliare Roland Rosenberg Rothstein LLP. The Society's submissions had an evident impact. The Court of Appeal cited with approval The Advocates' Society's *Principles Governing Communications with Testifying Experts*, stating that the *Principles* provide "a thorough and thoughtful statement of the professional standards pertaining to the preparation of expert witnesses." The Court also attached the *Principles* as an appendix to its reasons. The *Principles* can be found [here](#).

In addition to the *Principles*, The Advocates' Society also prepared a Position Paper on the topic, which can be found [here](#).

These two publications serve as helpful guidelines for young advocates navigating through their first interactions with experts. The *Principles* are an important tool to assist counsel with fulfilling their duties to their clients, the courts and tribunals without compromising the independence or objectivity of testifying experts or impairing the quality of these experts' evidence.

The Seal of Excellence in Advocacy

Show your commitment to excellence in advocacy. Earn a Civil Litigation Skills Certificate by successfully completing five full-day modules of **TAS Learning-by-Doing** programs.*

Next qualifying Civil Litigation Skills program:

Do a Trial! (Civil)
May 13, 2015

Trial from A-to-Z
April 8, 2015

Objection, Your Honour!
April 17, 2015



Click [here](#) to learn more and to register.

*Some conditions apply.

YASC Events



Geoff Moysa
@geoffmoysa



Following

Great time acting as a mentor at [@Advocates_Soc](#) Mentoring Dinner on things you wished you learned in law school, planned by [@b_kates](#)



RETWEETS
2

FAVORITES
3



Twitter was abuzz about the Feb 25 Mentoring Dinner “They Didn’t Teach THAT in Law School”



Sold out Fireside chat with The Honourable Stephen T. Goudge on Feb 10 at Campbell House



Congratulations to Arnup cup winners Alana Pasut and Elizabeth Gjata from the University of Toronto

Which great cause is supported by the proceeds of YASC’s 4th Annual Trivia Challenge?

- A. Children’s Law Project
- B. Inmate Appeal Duty Counsel Program
- C. Law Help Ontario
- D. The Brent Arnold Tim Horton’s Fund

Tweet your answer to [@Advocates_Soc](#)!



With your Quizmaster,
Chris Horkins,
Cassels Brock &
Blackwell LLP

4th Annual YASC Trivia Challenge for Charity

Thursday, March 26, 2015
6:00pm - 8:30pm
Toronto

SOLD OUT

[Click here to register your team](#)

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