



Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

"Shadow" Rules | Interview | Women in Litigation | Around TAS | Mentoring Dinner



CHAIR CHAT



End of Term

BY: YASHODA RANGANATHAN

The end of term approaches yet again and the 2015/2016 Young Advocates' Standing Committee brings its work to a close with a final event on June 6 considering the [Future of the Profession](#). It has been an honour to serve as the Chair of YASC. This past term, YASC has been involved in every aspect of the Society's work—from broadening the Society's social media presence, to hosting mentoring and networking events for young advocates across Canada and representing Young Advocates on the Society's various

standing committees and task forces.

I would like to personally thank the members of this year's YASC (listed below), as well as the many Young Advocates who have joined our volunteer roster. Stay tuned for further updates from the YASC 2016/2017 Chair, Daniel Naymark. As for me, my son Madhava and I are off to enjoy the balance of our maternity leave basking in the beautiful Ontario summer (just like the advocates of yore who took the whole summer off at the end of term!).

2015 – 2016 Young Advocates' Standing Committee: Daniel Naymark (Vice-Chair), Ben Kates (Secretary), Daniel Bach, Hilary Book, David Campbell, Victoria Creighton, Shane D'Souza, Erin Durant, Andrew Eckhart, Erin Farrell, Emily Graham, Sam Hall, Nader Hasan, Shaun Hohman, Chris Horkins, Emily Kirkpatrick, Emily Lawrence, Malik Martin, Kate McGrann, Jeff Moorley, Kristin Muszynski, Penelope Ng, Philip Norton, Kim Potter, Paul Ratcliffe, Danielle Robitaille, James Ross, Chloe Snider, Allison Speigel, Lionel Tupman, Yasmin Vinograd

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.



"SHADOW" RULES

BEWARE THE "SHADOW" RULES



STEVEN G. FRANKEL,
DAVIES WARD PHILLIPS &
VINEBERG LLP

As young(ish) counsel, we are often responsible for ensuring that our clients' written materials are properly filed with the courts, for scheduling court appearances and for other such matters. The *Rules of Civil Procedure* and applicable Practice Directions, of course, prescribe deadlines and other requirements for just about all of these things. However, some counsel may be unaware that certain courts maintain their own requirements—either in addition to the requirements set out in the *Rules* and Practice Directions or, occasionally, instead of them. Here are a just a few examples of these "shadow" rules and some tips for dealing with them.

Commercial List, Superior Court of Justice. For the benefit of those who practise outside of Toronto and/or do not practise commercial litigation, the Commercial List is essentially a specialized court that deals with commercial matters. There is a detailed Practice Direction that sets out the procedures to be followed in such matters. Among other things, it contains a list of the types of matters eligible for the Commercial List. The final item on that list is a basket clause: "such other commercial matters as a judge presiding over the Commercial List may direct to be listed on the Commercial List".

The Practice Direction provides that actions and applications that fall within the basket clause may not be issued from the Commercial List office, but may in certain circumstances be transferred to the Commercial List. In fact, it is possible to have basket clause matters issued on the Commercial List and

therefore avoid a motion to transfer. To do so, counsel for the plaintiff or applicant must write a letter to the judge who leads the Commercial List explaining why the matter should be heard on the Commercial List. One note of caution: there is no guarantee that permission will be granted.

Divisional Court. Rule 61.03.2(11) of the *Rules of Civil Procedure* provides that, on a motion for leave to appeal to the Court of Appeal, the moving party may serve a reply factum if the responding party's factum raises an issue not addressed in the moving party's initial factum. By operation of Rule 62.02(5), that is also the case with motions for leave to appeal an interlocutory order to the Divisional Court. Nothing in the Practice Direction applicable to Divisional Court contradicts this. However, counsel who prepare a reply factum may encounter difficulties when attempting to file the factum with the Divisional Court. That is because the Divisional Court maintains an unpublished administrative direction, pursuant to which a reply factum may not be filed without the permission of a judge. Seeking permission involves writing a letter explaining why a reply factum is necessary. The responding party may then write its own letter explaining why, in its view, the reply factum is not necessary.

Court of Appeal. Appeals to the Court of Appeal are, of course, typically decided by three-judge panels. One important exception is that only a five-judge panel can overrule a previous decision of the Court of Appeal. Yet this requirement does not appear in the *Rules of Civil Procedure* or any of the applicable Practice Directions. Instead, as the Court of Appeal explained in *Ontario (Attorney General) v. Collins*,¹ the relevant authority is section 5 of the *Courts of Justice Act*. That provision states that the Chief Justice of Ontario (or, in the Chief Justice's absence, the Associate Chief Justice) has "general supervision and direction over the sittings of the Court of Appeal and the judicial duties of the court". Importantly, the decision of the Chief Justice or Associate Chief Justice as to whether it is appropriate to assign five

judges cannot be appealed. A three-judge panel can, however, ask the Chief Justice to consider striking a five-judge panel where appropriate.²

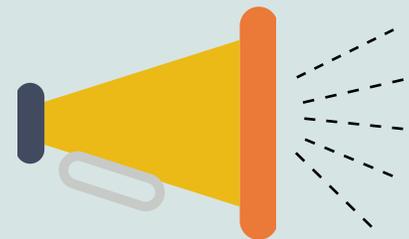
As a practical matter, a party's request for a five-judge panel can be made in a letter and/or in that party's factum. Where the party does not make such a request but it appears that the party may be challenging a previous decision of the Court of Appeal, the Court of Appeal may invite submissions from the party as to whether it is seeking a five-judge panel and, if so, why.

Practical Tips. There are a few practical (if perhaps obvious) ways to navigate "shadow" rules. First, do not wait until the deadline before commencing a proceeding, filing materials or taking some other step in a proceeding. If you give yourself a buffer period of at least a few days, you will be able to identify and comply with any "shadow" rules. Second, consider consulting a colleague if you are doing something you have never done before. Third, establish and maintain good relationships with the Registrar and other personnel in the court offices. Do not be scared of calling them if you have questions: they are almost invariably friendly and willing to help. They may even be able to help you out of a jam if it turns out you have not complied with a "shadow" rule. ■

1. *Ontario (Attorney General) v. Collins*, 2012 ONCA 76.

2. *Ibid.* at paras. 7–9.

**Advocates Across Canada—
We want to hear from you!**



Share your jurisdiction's "Shadow" rules with Keeping Tabs Readers. Contact David Campbell at david.campbell@rogerspartners.com

MICHAEL BLADES,
McInnes Cooper
Halifax



By: Kate McGrann,
Crawley MacKewn
Brush LLP

Q: Why did you become a litigator or advocate?

A: Long answer: Exiting my first year of law school, I knew the square root of nothing about practicing law. As I started my first year summer student position, I found litigation to be exciting. The subject matter of disputes was constantly changing, and there was a procedural / tactical element which fuelled my love of competition.

Short answer: The movie *My Cousin Vinny*.

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

A: Advocate.

Q: What is your year of call?

A: 2011.

Q: What is your greatest fear in practice?

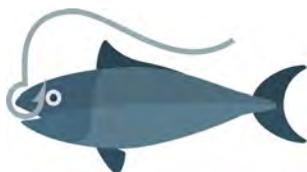
A: Allowing the practice of law to unduly interfere with my living a well-rounded life.

Q: What is your idea of perfect lawyerly happiness?

A: A busy practice consisting of interesting files, happy clients, and colleagues whom I respect and enjoy working with.

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

A: Atlantic Salmon fly fishing trips, cigars and good coffee.



Q: What is your favourite journey?

A: Every year in late June some friends and I take a week, and sometimes two, to go fly fishing in Labrador. We drive to what feels like the end of the last dirt road on earth and from there we are transported into a river by float plane. I am utterly disconnected from the outside world during that journey, and that is a phenomenal thing.

Q: Which words or phrases do you most overuse?

A: "Phenomenal"

Q: What would you consider your greatest achievement?

A: I like to think that my greatest achievement is yet to come, and that my best is not behind me. My *goal* (which in turn may well be my greatest achievement) is to continue growing a successful legal practice while I also continue to compete for Team Canada in Olympic skeet shooting. Doing so, and medalling in world cup competition, or perhaps the Olympic Games, would be my greatest achievement.

Q: What is your favourite case?

A: The next one which forces me to learn the ins and outs of something completely new to me.

Q: What do you dislike most about your appearance?

A: I have the most annoying tuft of hair on the crown of my head that will not, for the life of me, lay flat.

Q: Which talent would you most like to have?

A: Professional-level tennis skills.

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

A: I have too many people in my life that I love to run the risk of listing them. In terms of "what", I love being on the water—whether it's the ocean, a river, or a lake.

Q: What is your favourite drink?

A: Coffee (non-alcoholic). Beer (alcoholic).

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

A: George W. MacDonald, Q.C.—he is a great trial lawyer and I was very lucky to work closely with him from the outset of my career in law.

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

A: Fly fishing guide in the Gaspé region of Quebec.

Q: What is your most marked characteristic?

A: My south-shore Nova Scotian accent (which I like to think is ever-so-slight).

Q: What do you most value in your friends?

A: Their friendship even after I disappear into my work or competitive interests for a while.

Q: If you could have one superpower what would it be?

A: Teleporting. I loathe the thought of commuting and traveling from A to B.



Q: What is something that you said today?

A: "I love you"

Q: What is something someone said to you today?

A: "I'm proud of you"

Q: What is your favourite legal word?

A: "Estoppel"

Q: What is your motto?

A: "You will never out-perform your self-image". ■

WOMEN IN LITIGATION

ATLANTIC WOMEN IN LITIGATION CONFERENCE



VICTORIA CROSBIE,
MCINNES COOPER, HALIFAX

May 5, 2016 marked The Advocates' Society's first Atlantic Women in Litigation Conference, in Halifax, Nova Scotia. Panel members and attendees travelled from all four Atlantic Provinces to participate in the sold-out event. With over 120 women litigators and judges in attendance, the day was a smashing success.

Justices from all levels of court and all four provinces offered tips on a variety

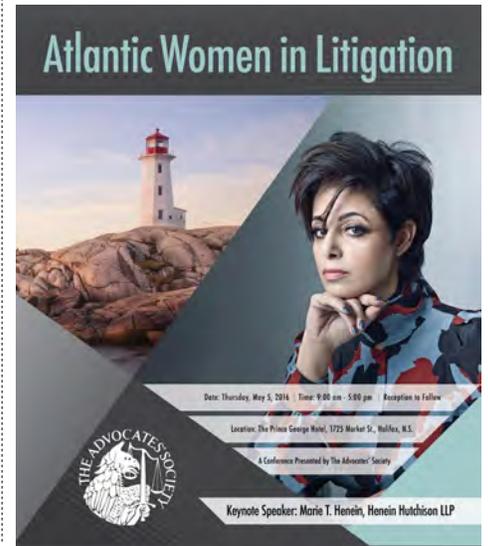
of topics, including effective oral and written advocacy—promoting clarity, simplicity, and brevity as a factum-writing mantra. Many proclaimed their undying love of a good roadmap.

Senior female litigators from big firms, small firms, government, and in-house litigation departments shared their varied legal experiences, and offered insight into how to build your profile and establish credibility at different stages of your career, how to navigate workplace politics, and the importance of embracing your own advocacy style.

Marie Henein's keynote address showcased her passion for advocacy, her sharp wit, and her belief in the importance of mentorship within our profession.

The day ended with a round of cocktails (as any good Thursday should) and the continuation of the candid conversations that took place all day between colleagues regarding

the challenges and rewards of a career in the law, why women are leaving private practice at greater rates than men, and what we can do to change those statistics. I met new people. I made new friends. I left feeling inspired and more committed than ever to making my mark as an advocate. When is the next one? ▀



Take The Lead!

Are you ready to take on a leadership role in TAS Practice Groups this year? Expressions of interest are now being accepted. Click [HERE](#) for more details



Deadline June 7, 2016

AROUND TAS

May 12, 2016, Toronto. Young Advocates mix & mingle at The Merchant Tavern



Thanks to sponsors:



May 18, 2016, Ottawa. A successful #YASCPubNight at The Waverly with a mix of over 100 lawyers and students-at-law



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MENTORING DINNER

MENTORING DINNER: A GREAT RESOURCE FOR YOUNG LAWYERS



DAN ROSMAN, J.D.
MINSTER LAW

We young advocates share at least one thing in common—we know we have a lot to learn.

Our journey to become competent and knowledgeable lawyers is not completed overnight. To develop our skills, we need time and help along the way (the proverbial

“Rome wasn’t built in a day” and “it takes a village”). These clichés are especially important for those of us who practise in small firm environments. With fewer lawyers around, we have fewer people to ask practice and career-related questions. This was my reason for attending the mentoring dinner.

The dinner was organized in a “speed mentoring format” with mentees permanently seated at our tables and the mentors rotating at every course. We spent time with every senior lawyer mentor. The food was great and the atmosphere was very friendly.

Discussions were very relevant and informative. The senior lawyers were eager to share their stories and address issues we are facing as young lawyers. Everyone at my table felt that it was a valuable experience.

Some mentees came prepared with specific questions and others were simply looking to network and gain broad insights from the senior lawyers. One consistent theme that was repeated during the evening was that our choice of career does not reward stagnation—there is learning and action required at every phase. “Get yourself out there, and here’s how you can do that” was common and excellent advice.

Events like these, run by The Advocates’ Society, are helpful in many ways. Not only can young advocates learn from experienced members of the bar, but they can also make connections and enjoy an evening with their colleagues. Everyone seemed to have a great time and I left feeling engaged and motivated. ■



May 16, 2016. Toronto mentoring dinner @ Campbell House.

Thanks to sponsors:

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Upcoming Events



Your Profession,
Your Future
(Toronto)
June 6, 2016



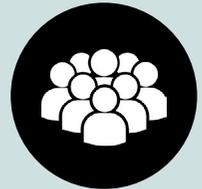
YASC Pub Night
(Barrie)
June 8, 2016



End of Term 2016
After-Party
(Toronto)
June 16, 2016



Mentoring Dinner
(London)
June 27, 2016



Fall Forum 2016
(Blue Mountain)
October 21-22, 2016



Fall Forum 2016

Today's Litigator: How To Survive And Thrive In A Changing Profession

October 21, 2016 & October 22, 2016

The Westin Trillium House, Blue Mountain, 220 Gord Canning Drive, Blue Mountain, ON

Don't be the one who hears about Fall Forum. Be the one who experiences it! Young advocates who are committed to learning, developing a strong peer network and building their practice will be in attendance for the Biennial Fall Forum. This two day program is the only destination conference dedicated to young advocates. The keynote address will be given by The Honourable Justice Thomas Albert Cromwell, *Supreme Court of Canada*. Feedback from the conference is consistently excellent, whether it is about the inspiring panels from the bench and bar, the practical mentoring round tables, the new peer network or the timely takeaways on business development. No matter what your area of practice or the size of your firm, the escape to Fall Forum will do you good.

The Advocates' Society Members: \$499 +HST | Non-Members: \$599+HST | Additional Guest: \$199 +HST

To learn more or to register visit www.advocates.ca

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Co-Chairs

Meaghan Boisvert, *Miller Maki LLP*
Erin Durant, *Borden Ladner Gervais LLP*
Shaun Hohman, *Rose LLP*
Malik Martin, *Rueters LLP*

Accommodation

Deluxe Rooms and One Bedroom Suites Both Available for \$199 (plus taxes and fees) until Sept 30, 2016. *
Reserve Early for Your Suite!
*Registration fees and travel expenses are not included in the accommodation costs

Total CPD

 5.75 Professionalism Hours and 1.25 Substantive Hours.
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