




Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

Chair Chat	YASC Interview	#FallForum2014	Toxic Torts	Upcoming Events	Cost Awards
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Chair Chat

Brent Arnold

Fall is in full colour and those who joined us at Fall Forum in Collingwood will have seen the season at its most vibrant. This year's Forum was sold out and, thanks to our enthusiastic staff, speakers, mentors, attendees and board firms who sent their juniors, it was a fun and informative two days away, meeting old and new friends and talking about "Profile Building with a Purpose." Thanks to all who took part and made it happen. YASC also supported a very successful mentoring session in Sudbury on October 17 at Colloquium 2014. Thirty young advocates left with top tips from senior members of the bench and bar, including special guest mentor, The Hon. Chief Justice Strathy.

YASC has a full agenda as we head into winter. Our next Fireside Chat (with Justices Cronk and Bellamy) takes place on November 10 and has sold out. On November 13, Kingston will host its first-ever Trivia Pub Night. Pub Nights continue with events scheduled for Toronto, Ottawa, Barrie and London. Details on these events (and more) are in this issue and also can be found on the TAS website.

We are delighted, this month, to publish the first contribution from a Keeping Tabs reader. We invite your submissions for upcoming issues, as well as your ideas for future events.

Best wishes,

Brent

Fall Forum 2014

Has it been a week already? It was great to see so many young advocates at Fall Forum. The feedback so far has been terrific. Send us your favourite photos or tweets from the conference so we can post them on the TAS website.

BIG THANKS TO CONFERENCE CO-CHAIRS

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Have something to say?

Keeping Tabs is now accepting article submissions for upcoming issues.

Contact Erin Durant, Editor:
edurant@dllaw.ca



The YASC Interview: James Renihan

By: Vanessa Voakes, *Stikeman Elliott LLP*



James Renihan, or “Ren” as he is known, was admitted to the New York Bar in 2008 and called to the Bar in Ontario in 2009. Formerly a clerk at the Court of Appeal for Ontario, Ren now practices commercial litigation at Lax O’Sullivan Scott Lisus. He has appeared before the Ontario Superior Court of Justice, the Court of Appeal for Ontario and the Federal Court of Appeal. Ren is an avid record collector who may have been a rock star in another life and who wouldn’t mind the ability to fly. He tells us that he doesn’t have a motto so, as a bit of an *advocatus diaboli*, we’ve given him one: *cogito ergo sum*.

Which word do you prefer, litigator or advocate?

Litigator. It’s more precise.

Why did you become a litigator?

Neither rock stardom nor professional philosopher seemed likely to pan out. Plus, people pay you to argue for them? Wow.

How would you describe your career so far?

I’ve been fortunate to work with very talented and supportive lawyers on some very interesting cases. So far, it’s been exactly what I hoped for and a lot of fun.

What is your idea of perfect lawyerly happiness?

Obviously, winning a big (or tough) case/motion is the best thing. But I love receiving a factum from opposing counsel and trying to think of ways to shoot holes in it while reading it for the first time.

Which living lawyer do you most admire?

Is Vinny Gambini still alive?

Rumour has it that you are always up for a good debate (Ren was once named North American Debating Champion!). What is the most interesting topic you’ve ever debated?

I’m very interested in the scope of issues for which rationality is the proper deci-

sion-making framework. While an exhortation to be reasonable or rational is appropriate in many situations (choice of school, perhaps), many people look down on such an approach in others (choice of romantic partner). The immediate problem you run into in asking the question is - what decision-making framework do I use to decide what decision-making framework to use? I’ve never debated this issue formally, but it occupies the fringes of a lot of topics.

What is your greatest extravagance in everyday life?

My record collection, which is very large and continually growing. However, I am having a baby (via my wife) and have recently been informed that the “record room” is becoming a nursery. TBD.

Which words or phrases do you think other lawyers most overuse?

Almost anything in Latin. As somebody who took three years of Latin in high school, if you are going to adopt a Latin phrase only to mispronounce it, why not just use the (readily available) English equivalent?

Which words or phrases do you most overuse?

I probably say “OMG” more than one would expect from a lawyer.

What is your favourite case?

I’m not sure I have a favourite case, but I’ve always found *Tuttle v. Buck* 119

N.W. 946 (Minn. 1909) to be very interesting. A wealthy individual opens a barber shop with low prices for the sole reason of putting the town barber out of business. The question for the court: is he a tortfeasor, or just a jerk?

What’s your favourite legal word?

Objection.

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

My game plan before law school was musician... but the odds are not good that would have panned out! I honestly don’t know what else I would want to do.

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

Flying. It’s a boring answer only because it is the right answer.

What’s the best Halloween costume you’ve ever worn?

I have had a few good ones, but one of the best was when I dressed as a squid. It was enough for me to win the “Court of Appeal Costume Contest” that year. It’s amazing what a few pairs of sheer red tights can do for you.

Do you prefer tricks or treats?

To give or receive? Because it matters.

What’s your motto?

I don’t have a motto. Do people have mottos?



#FallForum2014

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"Reach out. Ask questions. You will get advice. I can't think of an advocate who would deny their knowledge"

- The Honourable Dennis O'Connor



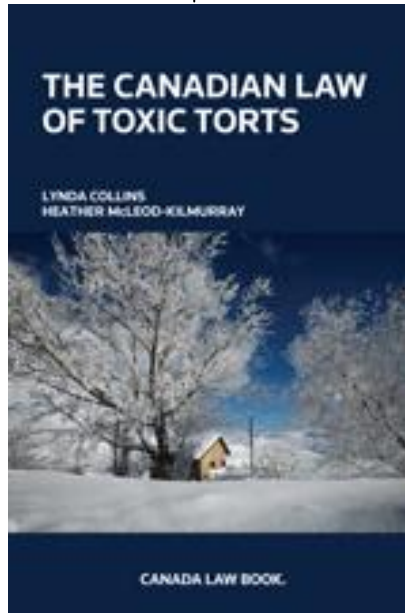
Toxic Torts - Book Review

Alexandra Mogyoros, *Siskinds LLP*

Toxic tort litigation has a long history in Canada, but until this summer there was no definitive guide. Co-authors Lynda Collins and Heather McLeod-Kilmurray have filled this void with their aptly named text, *The Canadian Law of Toxic Torts*. This text comprehensively reviews the law of toxic torts, defined as “a tort arising from environmental contamination or a toxic product.” It is intended for those who already have literacy in tort law, and will be helpful to practitioners, academics, and students.

Collins and McLeod-Kilmurray provide a valuable, thorough, and well-researched critique of the major obstacles and tensions in toxic torts, as well as recommendations for reform. The authors marry discussions on doctrine, practice, and policy consistently throughout their book. The ability to discuss these dense and complex legal issues on multiple levels is paramount as toxic tort litigation often turns on questions of policy.

The Canadian Law of Toxic Torts is organized into thirteen chapters. The first three chapters provide the context in which toxic torts arise: (i) the relationship between law and science; (ii) differences between statutory and common law standards of conduct; and (iii) the relationship between environmental and consumer protection and economic activity. A discussion of these themes is woven throughout the text. The authors then explain the largest



socio-legal issue within toxic torts, the role of science. The last “introductory” chapter of the book provides the history of toxic torts in Canadian jurisprudence. Chapters 4 through 7 address specific torts and issues that arise both doctrinally and in their application. These topics include: property torts; intentional interferences with the person; negligence; and causation. The final chapters discuss specific topics in toxic torts such as defences, remedies, and toxic torts involving government parties, class actions, and climate change as a toxic tort. The text concludes with a chapter on the future of toxic torts.

The authors draw on case law from all jurisdictions as well as work by other academics. As a generalist text, it is well suited to providing practitioners with a foundational understanding of different rights of action, and obstacles they may face. It provides translatable information that a practitioner can adapt and apply to any Canadian jurisdiction.

Although its sheer novelty gives this book an important place in Canadian legal scholarship, its Collins and McLeod-Kilmurray’s well reasoned, articulate and pragmatic proposals for reform that make this book one to read. Ultimately, the authors advocate the use tort law as a tool for positive social change, and provide readers with a strong understanding for how to do so.

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Upcoming YASC Events



Pub Nights

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Toronto

Wed, Nov 19
6:00pm - 8:30pm
Pravda Vodka Bar
44 Wellington St E

Ottawa

Thurs, Nov 27
5:30pm - 7:30 pm
Izakaya
339 Elgin St

London

Thurs, Dec 4
5:30pm - 8:00pm
Barney's
671 Richmond St

Barrie

Thurs, Dec 4
6:00pm - 8:00pm
Donaleigh's Irish Pub
28 Dunlop St E

To RSVP to your local Pub Night, click [here](#).

These events are open to members of The Advocates' Society, non-member lawyers and students-at-law.

Kingston Trivia Pub Night

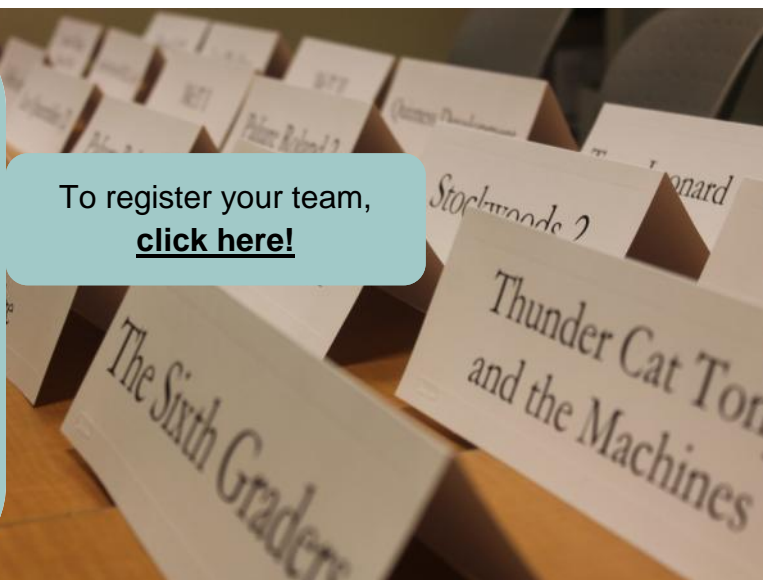
Thursday, November 13
5:30pm - 8:00pm

Kingston Brew Pub
34 Clarence St.

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Cost Awards: Are They Limiting Access to Justice or Improving its Reputation?

Nicole Simes, *MacLeod Law Firm*

A recent British Columbia Human Rights Tribunal (“BCHRT”) decision has brought the use of costs at tribunals into the spotlight once again.

In *Ma v. Dr. Ianin G. M. Cleator and another*, 2014 BCHRT 180, the Tribunal found that Ms. Ma “fabricated her complaint, pursued it to a hearing that took ten days, admitted to lying during the hearing, changed her testimony and presented a version of the facts that was neither true nor believable.” Her conduct resulted in the BCHRT ordering a punitive award against her of \$5,000. The seemingly low award was in line with cost awards from the BCHRT which rarely go above \$6,000.

This case highlights the potential value of a tribunal’s power to award costs. Many provinces have the authority to award costs where claims are frivolous or vexatious. This conduct usually includes serious impropriety, and the award is punitive not compensatory.

Although the Human Rights Tribunal of Ontario (“HRTO”) currently has the right to award costs under section 17(1) of *the Statutory Powers Procedure Act*, section 17(2) requires it to develop rules of procedure for such costs awards, which it has not done. In December 2013, Bill 147, the *Human Rights Code Amendment Act*, passed its first reading in the Ontario Legislature. If the bill were to become law, it would explicitly give the HRTO the statutory authority to award costs to successful parties appearing before it. These awards would not be limited, as they are in other provinces, to cases that are frivolous or vexatious.

The concern for many is that a system with cost recovery would limit access to justice for vulnerable applicants. For example, in scenarios of discrimination on the basis of sex in employment, awards for general damages on average range from \$5,000-\$15,000. Incidents of sex-based discrimination often occur with limited witnesses or evidence. As legal fees to defend these claims can exceed \$15,000, legitimate claimants may be discouraged from coming forward for fear that the potential justice does not outweigh the financial risk. If the HRTO starts ordering substantial-indemnity costs, vulnerable, low-paid employees may be reluctant to commence applications. The availability of cost



awards may further encourage respondents to take their chances and push matters to a hearing at the tribunal in order to recover costs incurred. This may increase the already backlogged process.

On the other hand, there is currently an environment of cynicism by employers regarding the human rights tribunal. Many employers feel that frivolous claims are brought against them because there is no risk for employees. This has sullied the reputation of justice as employers, making up a significant segment of respondents at the HRTO, perceive the system as unfair. If cost awards

prevented frivolous claims, the HRTO’s reputation, and that of the justice system, may improve.

Bill 147 does not outline the means by which the HRTO would be able to award costs. It is these details which will help ease the concerns about access to justice and the reputation of the legal system. The HRTO could revise its *Rules of Procedure* to allow for a limited right to award punitive costs for frivolous or vexatious claims, as is the case in BCHRT. Further, cost recovery at the HRTO could be restricted to a percentage of the amount claimed – as in the Small Claims Court or be proportionate to the size of the claim – as under the *Simplified Procedure Rule of Civil Procedure*. Finally, the HRTO could be given the power to impose cost consequences where a reasonable settlement offer was refused.

Hopefully, these issues will be addressed in committee or set by the HRTO in order to effectively balance access to justice with the reputation of justice.

What topics would you like to see at a mentoring dinner?



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