



Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

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Chair Chat

By: Tony Di Domenico, *YASC Chair*

As Chair of YASC, I am proud to lead a dynamic group of young advocates and have enjoyed the opportunity to meet and learn from young advocates from across Canada. This fall, I had the honour of representing YASC at three regional legal conferences: the 1000 Islands Legal Conference, hosted by the Frontenac Law Association, Colloquium, 2013, hosted by the Sudbury District Law Association and the County of Carleton Law Association's CivLit conference held at Mont Tremblant. In my travels, I had the opportunity to meet many young advocates, all of whom are passionate about the law and the profession. They want relevant continuing education and mentorship on lawyering, business development and professionalism. Young advocates across the province also desire to - and do - make meaningful contributions to the legal profession regarding access to justice, civility and court reform, among others issues.

As usual, YASC has been very busy of late. Here are some highlights. YASC hosted four successful pub nights across Ontario: Thunder Bay (October 23), Toronto (November 20), Ottawa (November 27) and Barrie (December 3). YASC has also scheduled a brand new event for 2014: a Debate Night on February 7th where lawyers will debate important issues - the serious and not so serious - with wine and great company. YASC is also working on draft recommended reforms to the Rules of Civil Procedure dealing with service by fax and email on Lawyers of Record. More details to come.

I hope you have found YASC's activities in 2013 useful for your professional development and practice. YASC's successes would not be achieved without the commitment and participation of YASC committee members, The Advocates' Society's staff, The Advocates' Society's Board of Directors and, of course, you. Thank you! On behalf of YASC, I wish you and yours a very festive, safe and injunction free holiday season. See you soon.

Trivia Challenge

What firm won the 2013 Trivia Challenge for Charity?



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 20th, 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: Yashoda Ranganathan

By: Brydie Bethell



Yashoda Ranganathan is an associate at Lenczner Slaght in Toronto. Her practice encompasses corporate and commercial litigation, employment matters, professional negligence cases and public and administrative law. She has appeared before the Ontario Superior Court of Justice and administrative boards, the Court of Appeal for Ontario and the Supreme Court of Canada. She served as Associate Commission Counsel to the Mississauga Judicial Inquiry which delivered its report in 2011.

Why did you become a litigator or advocate?

A: I was a professional actor before I started law school and being an advocate just made sense. It allows me to use my skills as a performer.

Which word do you prefer: litigator or advocate?

A: Who would choose "litigator"? I'm an advocate.

What is your year of call?

A: 2009

How would you describe your career so far?

A: Challenging, exciting and fun. (Mystifying, terrifying...depends what day you ask me).

What is your greatest fear in practice?

A: People always ask me whether my greatest fear as an actor was forgetting my lines, and I always respond that my greatest fear was walking into set pieces. Same answer applies here.

What is your idea of perfect lawyerly happiness?

A: That moment when you have the first draft of your factum down, you begin to revise it and it starts to take a shape and structure that starts to convince you of the merits of your side of the case.

Which living lawyer do you most admire?

A: I admire many of my colleagues at Lenczner Slaght, but at the moment I most admire my former colleague Brendan Gray who recently left the comfortable law firm existence, colleagues and friends, to advocate for a cause of particular interest to him at the Advocacy Centre for the Elderly.

What is your greatest extravagance in your everyday life?

A: I get my hair professionally blow dried more often than one should admit.

What is your favourite journey?

A: This one.

Which words or phrases do you most overuse?

A: "Maybe I'll just take a cab."

What would you consider your greatest achievement?

A: Applying to law school after age 30.

What is your favourite case?

A: *Jarvis v. Swan Tours*

Which talent would you most like to have?

A: Self-confidence.

Who or what is the greatest love of your life?

A: My husband, Richard Anderson.

What is your favourite drink?

A: Cosmopolitan made with organic vodka and cranberry juice by Richard Anderson.

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

A: Peter Griffin.

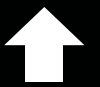
If you weren't a lawyer, what would you be?

A: A nanny for my nephew.

What is your most marked characteristic?

A: The ability to connect with others.

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What do you most value in your friends?

A: Listening without judgment (which requires a sense of humour).

If you could have one superpower what would it be?

A: Teleportation.

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

A: This is my last go around. I'm leaving this body and going straight to the Source – just you wait and see.

What is something that you said today?

A: “Is it tea time yet Jules?”

What is something someone said to you today?

A: “This is a ‘Yashoda-is-getting-better-Tea’”

What did you overhear today?

A: Two guys on a streetcar arguing over who was more crazy. I'm pretty sure it was a tie.

What is your favourite legal word?

A: *Certiorari.*

What is your motto?

A: Just surrender



Pub Night Photos- Pravda Vodka Bar, Toronto, November 20th

Mark Your Calendar!

Join us on Thursday, January 16th at Irish Embassy, 51 Yonge St., Toronto! Hosted by the Young Advocates' Standing Committee, arrive early to enjoy “Happy Half Hour” cocktails from 6:00 p.m. until 6:30 p.m., compliments of our sponsor Giffin Koerth. As always, no RSVP required. Your business card is your ticket.



Thank you to all the Young Advocates' who generously donated gift cards to support the CP24 CHUM Christmas Wish for teens in need! Together we raised \$500!

Hot Coffee

By: Sunira Chaudhri, *Levitt LLP*



As advocates fighting vigorously for our clients, often it is easy to lose perspective. And without perspective, an outrageous situation or case can be rationalized to make it seem almost legitimate and virtuous. It is thanks to these individuals that we now have in our legal canon many examples that make one sit back in bewilderment (and amusement).

The most famous of these is the case of Stella Liebeck. Mrs. Liebeck, 79 at the time, spilled a cup of McDonald's coffee onto her own lap in a parked car. Mrs. Liebeck proceeded to sue MacDonal'd's for specifying that its coffee should be served at 180-190 degrees Fahrenheit, or at a temperature that can cause third-degree burns in 2-7 seconds. Despite her own negligence by *actually spilling the coffee onto herself*, which the jury recognized by reducing her compensatory damages by 20%, she was awarded \$2.9 million. Yet MacDonal'd's was simply following the recommendations of the National Coffee Association which states that coffee be brewed at "between 195-205 degrees Fahrenheit for optimal extraction" and drunk "immediately". Further, a McDonald's consultant was able to calculate that there was only a single injury for every 24 million cups of coffee sold. This case begs the question, "At what point does negligence end and an individual's responsibility begin?"

Or take the case of Janice Bird, Dayle Bird Edgmon and Kim Bird Moran, who sued their mother's doctors and the hospital after their mother's minor medical procedure went wrong and they witnessed the doctors rushing their mother to emergency surgery. The three sisters brought an action for "negligent infliction of emotional distress". They sued not for causing distress to their mother, but for causing distress to them for having to see the doctors rushing to help their mother. This case was advanced all the way to the California Supreme Court before reason prevailed and the action was dismissed.

The frequency of these 'frivolous' lawsuits have seen an equally absurd counter-reaction by manufacturers, who have begun doing everything they can to escape any perceived liability. Specifically, manufacturers have been implementing warning labels on their products that really make you stop and think what kind of situation (or frivolous claim) brought them about. Luckily, the Michigan Lawsuit Abuse Organization runs a "Wacky Warnings" competition each year to showcase the best of the best. Past winners of the competition include such gems as a flushable toilet brush with the label "do not use for personal hygiene", a popular children's scooter with the warning "this product moves when used", and (a personal favorite) a can of self-defense pepper spray which warns users that it "may irritate eyes".

As young advocates we often wish to find an angle or establish a precedent upon which an individual's reputation can be built. If you are sitting across from a client who has just told you an outrageous and unbelievable tale yet you find yourself thinking "well maybe..." just remember the pantheon that has come before you, lest you find your name attached to a ridiculous precedent.



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R.I.P. the Costs Grid?

By: Daniel Naymark, *Lax O'Sullivan Scott Lisus LLP*

Young advocates can be excused some puzzlement over the origins of the hourly rates used in costs outlines and bills of costs, which usually bear no apparent resemblance to the actual rates charged to one's clients. Typically, rates are taken from the "costs grid", a mysterious chart setting out recommended maximum partial indemnity rates by seniority level for use in costs submissions. That may soon change, thanks to a slate of recent Superior Court of Justice rulings questioning the authority and usefulness of the costs grid.

What is the Costs Grid?

For a brief period between January 2002 and July 2005, the *Rules of Civil Procedure* contained a detailed chart setting out maximum rates for awards of costs in various circumstances, known as the "costs grid". When the *Rules* were amended in 2005, the grid was eliminated. Since then, as far as the *Rules* and the *Courts of Justice Act* have been concerned, costs are to be awarded on the basis of consideration of a number of factors, without any absolute amounts prescribed by statute or regulation.

However, at the same time as the costs grid was removed from the *Rules*, the Costs Subcommittee of the Civil Rules Committee issued an administrative advisory notice titled "Information for the Profession," containing a stripped-down version of the costs grid. The notice indicated, "It is anticipated that... courts will normally treat the rates set out [in the costs grid] as maximum rates when fixing partial indemnity costs."

As a result of the 2005 amendments to the *Rules* and the issuance of this advisory notice, the costs grid ceased to have legal force but survived as a non-binding standard. Although not legally binding, the orthodox approach in most law firms has been to use these amounts, provided they do not exceed actual rates charged.

The Anti-Grid Movement

The costs grid has faced opposition from lawyers who feel unduly limited by its maximum rates, which top out at \$350/hour for the most senior counsel, regardless of the actual rates charged or the amount at issue in a case. The grid's maximum rates are more than the actual rates charged by many lawyers but only about one-third of the rates now charged by some Bay Street litigators. Although the advisory notice indicated that "it is the intention that these guidelines will be reviewed periodically so that their currency can be maintained," the amounts in the costs grid have not changed since it was first adopted into the *Rules* in January 2002.

It appears that these complaints have begun to gain traction.

First came a line of cases adjusting the amounts in the grid for inflation since their original adoption in the *Rules*, following the ruling of Justice R. Smith in *First Capital (Canholdings) Corporation v. North American Property Group*, 2012 ONSC 1359 at para. 13.

In his August 2013 ruling in *Stetson Oil & Gas Ltd. v. Stifel Nicolaus Canada Inc.*, 2013 ONSC 5213 at paras. 22-25, Justice Newbould, a veteran Commercial List judge in Toronto, decided to "go further". Fol-



lowing a trial at which he had awarded approximately \$16 million to the plaintiff, he criticized the costs grid maximum rates as being “completely outdated and unrealistic for an action fought by two major downtown Toronto law firms.” He awarded costs of approximately \$1.6 million based on a partial indemnity rate set at 60% of the plaintiff’s lawyers’ actual rates.



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Although only three months old as of writing, the reasoning in *Stetson Oil* appears to be catching on. Justice Newbould followed up that ruling with similar decisions in *GB/Plasman Investors’ Limited Partnership v. App Holdings Management Inc.*, 2013 ONSC 6401 at paras. 13-14, in which he awarded partial indemnity costs based on 60% of actual rates and substantial indemnity costs at 90%, and in *Re Ghana Gold Corporation*, 2013 ONSC 5720 at paras. 4-6, in which he stated in *obiter* that he would have awarded costs on a rate higher than the maximums in the costs grid even after adjusting for inflation, had they been sought. In *Epoch’s Garage Limited v. Upper Grand District School Board*, 2013 ONSC 6667 at paras. 10-12, Justice O’Marra cited *First Capital* and *Stetson* and criticized the costs grid as “woefully inadequate” in granting costs on the basis of “enhanced” hourly rates.

It is perhaps too soon to sound the death knell for the costs grid. But if the momentum of recent months continues, its time may be short.



Fireside Chat

Save The Date!

Join us for the Fireside Chat Series on January 27th, 2014 at Campbell House in Toronto from 5:30 p.m. to 7:00 p.m.
To RSVP contact Rachel Stewart at rachel@advocates.ca.



Mentoring Dinner Series 2014

Facing the Fear Factor

As a junior lawyer, it’s natural to feel intimidated by more senior counsel, to feel nervous in a new setting or when presented with new challenges or tasks. Join us for an empowering evening of discussion on how to maintain your composure and hold your own in the office, at discoveries, in negotiations or at hearings using style and grace.

Join us on Thursday, February 13, 2014, from 6:00 p.m. - 8:30 p.m., at Campbell House in Toronto.

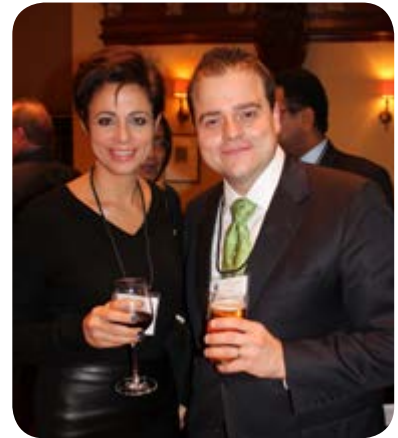
To RSVP contact Hilary Spencer at hilary@advocates.ca.



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Around TAS

President's Festive Reception, Toronto



Click here to see more photos from the President's Festive Reception.

We invite your comments and feedback. E-mail us at: jessical@advocates.ca.