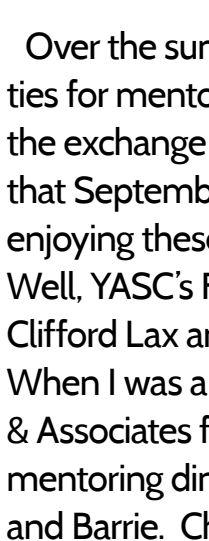




# Keeping Tabs

Monthly News from The Young Advocates' Standing Committee



## Chair Chat

Written by: **Tony Di Domenico, YASC Chair**

September still gives me that back-to-school feeling. I frequently sigh about the summer coming to an end but I am excited about new challenges and seeing old friends.

Over the summer, YASC was busy planning opportunities for mentorship, building professional relationships and the exchange of ideas that impact young advocates. Now that September has come and gone, we are in the midst of enjoying these opportunities. So what is coming up soon? Well, YASC's Fireside Chats on Advocacy Series (featuring C. Clifford Lax and Marlys Edwardh - "The Things I Wish I Knew When I was a Young Advocate...") a workshop with Keenew & Associates focused on creating an excellent transcript and mentoring dinners or pub nights in Toronto, Thunder Bay and Barrie. Check out this newsletter or TAS' website for further details regarding these and other YASC events.

I am also delighted to celebrate the recent arrival of "Best Practices - A Practical Guide to Civility", a valuable companion to the Principles of Professionalism and Civility for Advocates. Born out of the frustration of two young advocates (Daniel Schwartz and Peter Henein), YASC, in conjunction with the Institute for Civility and Professionalism and The Advocates' Society, hosted a Symposium on Civility in February 2012. Members of the bench, senior bar and junior bar were invited to participate, with the purpose of canvassing the very real problems young counsel may face, and exploring ways in which the bench can assist in changing behaviour. The result was real, practical solutions for members of the profession, as well as a guide for Judges and Masters on how to better deal with obstructive conduct, which is too often the product of an adversarial system. A link to the booklet in English and French can be found in this newsletter.

We look forward to seeing you soon.

## Trivia Challenge

Who was the recipient of the Arleen Goss Young Advocates' Award at this year's 2013 End of Term Dinner?



Tweet your answer to @Advocates\_Soc using hashtag #YASCTrivia for a chance to win a \$50 Best Buy Gift Card

Get ready for this year's YASC Trivia Challenge, happening on March 20<sup>th</sup>, 2014. Answer the trivia challenge question in each newsletter for a chance to win great prizes and YASC bragging rights!



**CONGRATULATIONS** to Chris Horkins (@chorkins), the winner of the September Trivia Challenge!

Chris correctly answered "Alan Mark's Children's Education Law Project" to the question "What project is TAS Gives Back raising funds for this" year?

Please contact the TAS office to claim your \$50 Best Buy Gift Card.

## Jury Still Out on Digital Court Recording

Written by: **Brent J. Arnold, YASC Vice-Chair**

April 2013 saw the beginning of a bold experiment in court technology with the introduction of digital audio recording in Ontario courts. Following consultation with key stakeholders<sup>1</sup> in December 2012, digital recording devices (DRDs) were installed in Toronto courts at 393, 361 and 330 University Avenue, completing a province-wide rollout program.

DRDs allow for audio recordings of court proceedings to be made available to litigants and others on an expedited basis, subject to the restrictions set out in separate but similar policies in both the Superior Court of Justice<sup>2</sup> and the Ontario Court of Justice.<sup>3</sup> The key features of the Superior Court of Justice's policy<sup>4</sup> are as follows:

### Access

- Counsel of record, litigants themselves, and members of the media may access the recordings for a fee and after execution of an undertaking.
- Members of the public may apply for an order granting access to recordings.
- Presiding, Senior Regional and Local Administrative judges have access to recordings "upon request" (among other things, this means a judge in a proceeding may access recordings from earlier stages in the proceeding even if that judge did not preside over these earlier stages).

### Restrictions on Use

- The undertaking to be signed by counsel seeking access requires counsel to acknowledge that, absent a court order to the contrary, use of the recordings is limited to "preparation in connection with the legal proceedings with respect to [the] case" and / or replacing or supplementing notes of the legal proceedings with respect to [the] case."
- Counsel may only copy / download a given recording onto a single computer. They may make a copy for staff or others on their litigation team (including experts), but those peoples' use of the recording is to be limited to the same purposes for which it is given to counsel.
- Clients may listen to a recording but only in the presence of counsel, and counsel may not give the clients a copy for their own use.

The benefits to DRDs are obvious: almost-real-time access to evidence and submissions in the course of an ongoing trial provides a valuable supplement to counsel's hand-scrawled or quickly-typed notes, without the expense of expedited transcripts. It also allows counsel to assess the impact of evidence by letting them study the tone of voice of a witness (or, for that matter, a judge) and the manner in which evidence is delivered.

Some of the drawbacks are obvious on the face of the policy and undertaking:

- Counsel will need to be careful in submissions to make in open court with respect to things said in prior appearances. Counsel speaking from memory may find themselves surprised to discover the judge has accessed recordings of prior appearances and knows the record better than counsel.
- The restrictions on use may be cumbersome for counsel and some of the obligations imposed on counsel regarding maintaining recordings are ambiguous.<sup>5</sup>

Other concerns are less obvious but have been raised by other stakeholders in the process.

To begin, the use of recorders may affect the quality of transcripts, as the installation has been accompanied by a change in the way transcripts are made. Government court reporters will oversee the in-court recording of proceedings, but the work of preparing certified transcripts will fall to contractors regulated by an administrative body.<sup>6</sup> This means the reporters creating the transcripts won't be in court to see or hear the evidence themselves, or to ask clarifying questions; rather, they'll be working in isolation with only the audio recordings. This makes it more difficult to produce an accurate transcript.<sup>7</sup> A given transcript may also be transcribed by many transcriptionists,<sup>8</sup> which increases the likelihood of errors and inconsistencies.

Further, the devices are sensitive enough to pick up "off the record" discussions between co-counsel and, potentially, between counsel and clients<sup>9</sup>, and aren't being turned off during breaks<sup>10</sup> (members may recall receiving an email from Alan Mark, President of the Advocates' Society, warning of this possibility). This means that privileged communications and settlement discussions may be recorded and accessed by the presiding judge, the media, or the public. The Ministry of the Attorney General advises that signs are being placed on counsel tables to remind counsel about the recorders, and that recordings are formatted such that it won't be possible for listeners to focus in on the feed from particular microphones to isolate such discussions from background chatter.<sup>11</sup> My own recent experience in court is that at least some counsel are not yet mindful of the signs or the new risk inherent in in-court discussions. This will likely change as anecdotal evidence of what makes it into court recordings mounts and spreads.

It will be interesting to observe the extent to which these concerns are borne out and how effectively the bar and bench will adapt to what may amount to substantial changes in the way courts operate in the face of this new technology and process.

<sup>1</sup> These included The Advocates' Society, the Ontario Bar Association, the Toronto Lawyers' Association, the Criminal Lawyers' Association, and the Commercial List Users Committee.

<sup>2</sup> Superior Court of Justice of Ontario, online: <http://www.ontariocourts.ca/ocj/en/policies/digital-court-recordings.htm>.

<sup>3</sup> Superior Court of Justice of Ontario, online: <http://www.ontariocourts.ca/ocj/legal-professionals/practice-directors/digital-audio-recordings/>.

<sup>4</sup> *Supra* note 2.

<sup>5</sup> This concern raised by The Advocates' Society. See Letter from Peter Griffin (The Advocates' Society) to Roslyn J. Levine, Executive Legal Officer of the Superior Court of Justice, and to Beverly Leonard, Director of Court Operations, Ministry of the Attorney General, Toronto Region & the Court of Appeal for Ontario, April 12, 2013, online: <http://www.advocates.ca/assets/files/TAS%20-%20SCJP%20-%20Letter%20to%20PG%20and%20Roslyn%20Levine%20and%20Beverly%20Leonard.pdf> (Griffin).

Note that the final version of the policy addresses some concerns raised by stakeholders in the consultation process.

<sup>6</sup> *Marj Bounie*, "OPSEU accuses province of contempt," *Law Times*, June 17, 2013, online: <http://lawtimesnews.com/2013/06/17/3191/headline-news-union-challenging-mag-over-new-independent-body-for-transcripts>.

<sup>7</sup> Matthew O'Mara, "Court reporting's future lies outside the courtroom," *The Financial Post*, January 30, 2013, online: <http://business.financialpost.com/2013/01/30/court-reporting-future-lies-outside-the-courtroom/>; "Separation of court recording and transcription concerning AdvocateDaily.com, online: <http://advocatedaily.com/2013/06/separation-of-court-recording-and-transcription-concerning-AdvocateDaily.com>, *ibid*.

<sup>8</sup> Griffin, *supra* note 5.

<sup>9</sup> Hicks Morley, *Raising the Bar*, September 17, 2013, online: [http://www.hicksmorley.com/images/pdf/2013/2013\\_09\\_17\\_Raising\\_the\\_Bar.pdf](http://www.hicksmorley.com/images/pdf/2013/2013_09_17_Raising_the_Bar.pdf).

<sup>10</sup> Letter from Beverly Leonard, Director of Court Operations, Ministry of the Attorney General, Toronto Region & the Court of Appeal for Ontario, to Peter Griffin (The Advocates' Society), April 16, 2013, online: <http://www.advocates.ca/assets/files/Reply%20from%20Court%20Admin%20to%20Griffin%20re%20DRDs.pdf>.

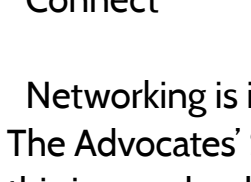
## Lasting Impressions: Your Guide to Creating an Excellent Court Transcript

A Members-only event presented by The Young Advocates'

Wednesday, October 16<sup>th</sup>, 2013

5:00 pm to 7:00 pm

The Advocates' Society Education Centre



In our normal, everyday conversations, we tend to talk on top of one another, drop our voices and use gestures to communicate our message. In today's legal proceedings, your every word is recorded, and lawyers need to keep a number of things in mind in order to create a verbatim transcript that is readable and clear. This interactive session offers the tips and tricks you need to get you on the right track, compiled from experienced court reporters, who have seen the good, the bad and the ugly! Make your mark and learn how to leave a strong and effective lasting impression. For a preview of what Kim Neesson has to say, read her [blogs](#) "Quality v. Quantity" and "A Great Transcript is Not a Given." [Register via email](#)>>>

## Started From the Bottom: Lessons from a Year in Practice

Written by: **Chris Horkins, Cassels Brock and Blackwell LLP**

I recently celebrated my one-year anniversary as an associate at my firm. While it did not flood me with congratulatory LinkedIn messages I was promised, I can certainly say I've learned a few things along the way. After all, a young litigator in this city is almost guaranteed to learn something in a year. Especially if, like me, you're fortunate enough to practice with and learn from some of the best lawyers and mentors in the city! Like Toronto rapper Drake, we've all "started from the bottom" but now, as the saying goes... "we here." Here are a few lessons I've learned in a year where nothing was the same.

### Poetic Justice

Written advocacy is king. As lawyers, every document is an opportunity to persuade and the language we use in anything is critical. The best way to be impressive to a judge, master or, perhaps more importantly, a partner in your office is with a crisply drafted piece of writing. Some of the best feedback I've received this year happened when a partner took the time to sit down and run through a mark-up of a document, just for stylistic and persuasive writing points. The most important drafting tips I've learned are (1) less is more - cut out unnecessary words, (2) use "point-first" writing and the active voice and (3) eliminate "false intensifiers" like "clearly" or "obviously" and adjectives like "egregious." Although I sometimes feel too pressed to properly sit down and wordsmith a document, it always pays off when I do take the time.

### Worst Behaviour

The vast majority of opposing counsel I have dealt with have been models of professionalism and civility. That said, we may come across difficult counsel out there looking to take advantage of a junior lawyer on the other side. Thankfully, when they do, the bench has our back. In a recent decision, Master Dash chastised a lawyer for his derisive correspondence meant to "bully" and demean the competence of a more junior opposing counsel and found that such "unprofessional, abusive and offensive" conduct favoured an award of substantial indemnity costs on the motion.<sup>1</sup> As young advocates, we should always take the high road. Familiarity with The Advocates' Society's "Best Practices: a Practical Guide to Civility" - created by YASC in conjunction with The Advocates' Society and the Institute for Civility & Professionalism - is a great place to start.

### The Motion

Even though we practice in an age where judges decry the civil bar's "motions culture", motions in many cases are inevitable. While critics characterize motions as a problem, to me they are the furthest thing. For a first-year litigator, motions, and in particular low-stakes procedural motions, are a vital opportunity to learn and hone your advocacy skills. I was told by one of my favourite law school profs that "motions are where you will cut your teeth in your first few years of practice," and, while I haven't required any emergency dental work, there's no place I've learned more this past year than on my feet in Masters court. If you have the opportunity to take a small motion, own it by prepping the materials, the factum and arguing it yourself.

### Connect

Networking is important but can also be fun. Joining active professional associations, like The Advocates' Society, and going to the right events is key. Basically, where I'm going with this is you should all come to the next YASC Pub Night on November 20th at Pravda.

### Just Hold On, We're Going Home

At times I have felt like I spent more time in my office this year than in my own apartment. While this may very well be true, I remain a firm believer in protecting time spent away from work. Unless you're getting an early start to your day, the office is not the place you want to be at 5 AM in Toronto. Planning vacation time in advance also helps make sure things don't get in the way. One of the best pieces of advice I received from a partner this year, that I have yet to follow, is "when you get back from a vacation, the first thing you should do is plan your next vacation." Carving out time for yourself helps you maintain a life outside work and avoid burning out. Most importantly, it helps you stay sane in what can otherwise be an insane life.

Thanks for reading October's very own edition of "Keeping Tabs" and, until next time... take care.

<sup>1</sup> See *Beatrice Leaseholds v. Shainhouse*, 2013 ONSC 5582, at paras. 39-40.

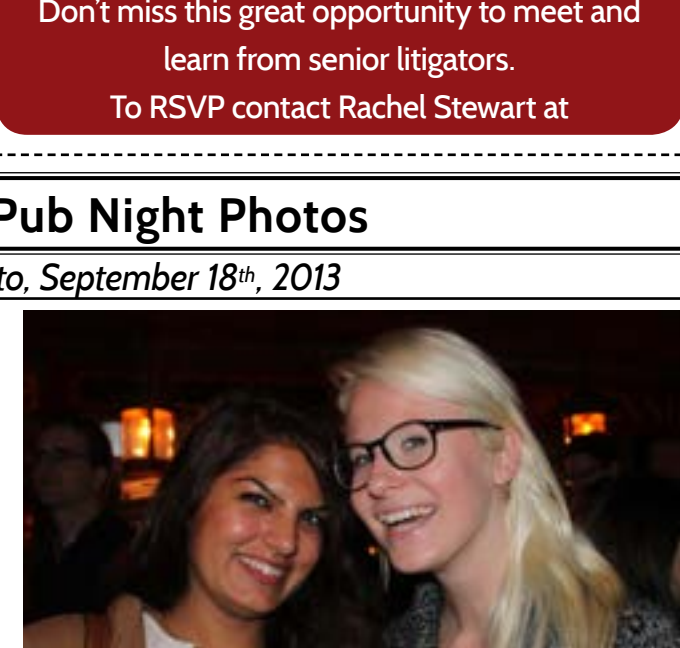


## The Things I Wish I Was a Young Advocate...

Join us for the Fall Fireside Chat Series on Advocacy on October 15<sup>th</sup>, 2013 at Campbell House in Toronto from 5:30 p.m. to 7:00 p.m.

This session will feature C. Clifford Lax, O.C., LSM and Marlys Edwardh, C.M., LSM.

To RSVP contact Rachel Stewart at [rachel@advocates.ca](mailto:rachel@advocates.ca).



## Speed Mentoring Cocktail Event

Join the Commercial Litigation Practice Group for the first speed mentoring cocktail event of the year. The program will take place on October 10<sup>th</sup>, 2013 at The Advocates' Society Education Centre, Toronto, from 6:00 p.m. to 7:30 p.m.

Don't miss this great opportunity to meet and learn from senior litigators.

To RSVP contact Rachel Stewart at [rachel@advocates.ca](mailto:rachel@advocates.ca)

## Young Advocates' Pub Night Photos

Fionn MacCool's, Toronto, September 18<sup>th</sup>, 2013



Show us your pictures from YASC events on Instagram, using the hashtag #YASCevent

## Mark Your Calendar!

Join us on Wednesday, November 20<sup>th</sup> at Pravda Vodka Bar, 44 Wellington St. E. Toronto, for our final Toronto Pub Night of 2013! 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 Griffin Koerth. As always, no RSVP required. Your business card is your ticket. Again this year, we are asking November pub night attendees to help support the CP24 CHUM Christmas Wish, by bringing gift cards for teens in need (Shoppers, Best Buy, GAP, The Bay, Old Navy, etc). We raised over \$600 for the toy drive in 2012!

Sponsored by

Join us on Wednesday October 23, 2013 at 8pm to 9:00 pm for the Thunder Bay YASC Pub Night! The event will take place at Tony and Adams, 45 Court Street South ([www.tonyandadams.com](http://www.tonyandadams.com)).

## Fall Forum 2014 - Have Your Say!

The Young Advocates' Standing Committee's Fall Forum 2014 planning is under way. Have your say by completing this short survey and play your part in creating an exceptional CPD experience for young advocates across the province! Please submit your ideas by October 11th, 2013.

[Click Here To Go To The Survey](#)

## Practice Makes Perfect

Get your practice in shape with some core conditioning for effective practice management. What do you need to have in place to get the best start? What is your time worth? Can you ever prepare? Reserve your seat today for November 5<sup>th</sup> at Campbell House and get face to face with 10 experienced litigators who will help you get on the right track.

[Click To Register Now!](#)



## Young Woman Advocates! Learn the Power of Why.

Is it time to stop obsessing over working "smarter," and begin focusing on the instinctive urge to question that's so natural for young children?

Is it possible to reignite that instinct at any age and become more innovative and productive—as well as more fulfilled in our jobs and happier in our relationships?

Join us on October 18<sup>th</sup>, 2013 at the biennial Women in Litigation Conference, at the stunning Carlu, and hear guest speaker Amanda Lang of the CBC explore the link between curiosity and success, and the power of why. [Click To Register Now.](#)

We invite your comments and feedback. E-mail us at: [jessical@advocates.ca](mailto:jessical@advocates.ca).