



# Keeping Tabs

Monthly News from The Young Advocates' Standing Committee

Dear Bad Legal | YASC Pub Night Photos | Legends of the Bar  
1,000 Islands | Sudbury Trivia 2016 | Interview | The Next Five



## CHAIR CHAT

BY: DANIEL NAYMARK,  
NAYMARK LAW



I met a group of keen new and new-ish advocates at last week's TAS New Members Breakfast. There is no shortage of upcoming YASC offerings to help ease these newbies into the profession, and to shepherd along more-seasoned-but-still-young advocates. Some events are tried and true, like pub nights (*last month in Toronto and Sudbury, November 2 in Thunder Bay!*), mentoring events (*October 13 dinner in Toronto and October 21 cocktails in Sudbury!*) and Fireside Chats (*October 24 in Toronto with Marguerite Ethier and Ian Binnie; November 3 in Ottawa with David Scott!*).

But the awkward truth is that there has been a glaring gap in YASC's offerings to date: we have failed to offer authoritative guidance to young advocates struggling to

learn their new ecosystem's rules of etiquette. Today, that gap is closed. It is my honour and pleasure to introduce *Keeping Tabs'* new advice columnist ... Bad Legal LLP. Check out *Dear Bad Legal* on page 2 for the Twitter legend's insightful and practical responses to reader questions.

At the upcoming Fall Forum (October 21–22 at Blue Mountain), we will be recognizing young advocates who have made outstanding contributions to TAS. Congratulations, and thanks, to the winners of the inaugural YASC Awards:

- o Denisa Mertiri, Thornton Grout Finnigan LLP—Outstanding Participation Award, for participation in TAS activities.
- o Maureen Edwards, Martha McCarthy & Co. and Gerard Kennedy, Osler Hoskin & Harcourt LLP—*Pro Bono* Award, for volunteering through TAS and joint TAS-PBLO *pro bono* projects.
- o Lauren Tomasich, Osler Hoskin & Harcourt LLP—Writer's Award, for contributions to TAS publications.
- o Sara Mahoney, Cavanagh LLP—Civility Award, for epitomizing the TAS Principles of Civility and Professionalism, as voted by TAS members. ■

*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.*



## DEAR BAD LEGAL

BY: BAD LEGAL LLP

Dear Bad Legal,

*It's Friday afternoon and the partner I work for just asked me to write him a factum by Monday, despite knowing it was due weeks ago. I have booked a mindfulness retreat this weekend that I am really looking forward to. How can I politely tell him I can't take this assigned work? Self-care comes first, right?*

—Mindful-Yet-Assertive Associate

Dear Mindful,

The only thing a lawyer should be mindful of is his or her work. The fact that you look forward to anything in life is already a red flag. But if you're determined to go to this retreat, pawn the assignment off on an articling student and then take credit for the work.

—Bad Legal LLP

*Dear Bad Legal,  
I'm a male junior associate expecting my first child. Should I take a paternity leave?*

—Proud Papa to Be

Dear Proud Papa to Be,

What is paternity leave?

—Bad Legal LLP 🐼



Follow @BadLegalLLP on twitter for more unsolicited advice

## YASC PUB NIGHT PHOTOS

Lawyers filled the patio on a balmy evening at The Hot House on September 8, 2016 in Toronto.



Thanks to sponsors:



## Clarence Darrow: Called to the Bar



BY: DAVID CAMPBELL,  
ROGERS PARTNERS LLP

The late Edward Greenspan Q.C. idolized Clarence Darrow (1857–1938), and apparently kept a photo of Darrow in his office. For those of you who don't know Darrow, he's hailed as America's Cicero. If you don't know Cicero, see Wikipedia.

Darrow's career is impossible to summarize in a paragraph. He practically invented labour law in an era when labour disputes meant dynamite and assassinations. An ardent opponent of the death penalty, Darrow argued over 100 capital cases, and only one of his clients was executed. And that execution was in a case where he was first retained on appeal. His closing arguments famously kept overflowing

courtrooms mesmerized for days. The Leopold and Loeb trial and the Scopes Monkey Trial were made into films in the Golden Age of Hollywood.

More fundamentally for young advocates, in his autobiography, *The Story of My Life* (1932), Darrow reflects on his first year of practice in 1878 in terms that are uncomfortably familiar nearly 140 years later.

As an aside, American attorneys aren't 'called to the bar', they're 'admitted to practise' or 'licensed to practise.' I've asked American friends about being 'called to the bar' and they reacted in the same way as if I'd referred to a car as a 'horseless carriage.'

Below you'll find the first three paragraphs from chapter 4 of Darrow's autobiography—a chapter entitled, *Called to the Bar*:

In the English expression, I had now been "called" to the bar. Lawyers are very fond of fiction; especially the English lawyers. Working a long time on obscure subjects, spending all your money, and as much of your family's as you can get, and finally passing examinations against the will and best efforts of the inquisitors, means getting "called to the bar." I now had a license to practice law, but no one had called me to practice on him. Perhaps I might digress on the brink of a new and untried world to take account of stock, as one might say.

I had no money and no influential friends. I had a rather meagre education. I had never been carefully and methodically trained, and I have felt the lack of it all my life. My law education came from a year's study at a good law school and from a year's reading under a lawyer's direction. I had never had any experience in court work or in the preparation of cases. I then knew, and have ever since been aware, that I needed specific training which I could not get. I was none too industrious, and I have never loved to work. In fact, strange as it may seem, I have never wanted to do the things that I did not want to do. These activities are what I call work. I liked to do certain things no matter how much exertion they required; I liked to play baseball, no matter

how hot the day. I liked to read books that I liked to read. I liked debating in school and out of school. I liked to "speak pieces" and was always keen to make due preparation for that, no matter what the subject might be. I always preferred diversions to duties, and this strange taste has clung to me all through life. Again and again these tendencies have kept me from turning to things that my parents and teachers have felt that I should do. In this, the parents and teachers have doubtless often been right. Doing something that one ought to do means foregoing pleasure and enduring pain, or at least boredom, in the hope and belief that one will all the more enjoy a thing in the future by abstaining from it now. Undoubtedly often this is true.

I was strong and healthy. I seemed to have a good mind. I really had a rather good education. While this education was not detailed and explicit, still it was broad and comprehensive for one of my years. I had a strongly emotional nature which has caused me boundless joy and infinite pain. I had a vivid imagination. Not only could I put myself in the other person's place, but I could not avoid doing so. My sympathies always went out to the weak, the suffering, and the poor. Realizing their sorrows I tried to relieve them in order that I myself might be relieved. I had a thoroughly independent, perhaps individual, way of looking at things, and was never influenced by the views of others unless I could be convinced that they were nearly right. I had little respect for the opinion of the crowd. My instinct was to doubt the majority view. My father had directed my thought and reading. He had taught me to question rather than accept. He never thought that the fear of God was the beginning of wisdom. I have always felt that doubt was the beginning of wisdom, and the fear of God was the end of wisdom.

Clarence Darrow, *The Story of My Life* (New York: Scribner, 1932).

If Darrow interests you, the best biography is John A. Farrell's *Clarence Darrow: Attorney for the Damned*. ■



## Lawyerly Learning in "The Gan"



BY: WARREN WHITEKNIGHT, BERGERON CLIFFORD

A boat cruise in the 1,000 Islands, spirits flowing at the afterhours "Cedar Knoll", and a judicial panel headlined by The Honourable Chief Justice George Strathy of the Ontario Court of Appeal were among the highlights at the Frontenac County Law Association's 14th annual 1,000 Islands Legal Conference on September 16 & 17, 2016. The conference, which had record attendance numbers of over 120, took place at the historic Gananoque Inn, about 30 minutes east of Kingston, on the beautiful shores of the St. Lawrence River. Shenanigans abounded, and a good time was had by all.

Oh, and we learned about advocacy, and talked about lawyering, and quite possibly haberdashery.

The conference is the largest annual event held by the Frontenac Law Association, which has been in existence since 1882. The Frontenac region is characterized by one city (Kingston), a few small towns (like Gananoque), and many little hamlets

that are merely intersections in between farming communities. The largest firms in the region would be considered boutique sized in the GTA. Most firms are sole practitioners or partnerships, and the locals like it that way. It's an extraordinarily collegial bar and bench, and for outsiders visiting the 1,000 Islands Conference it is a breath of fresh air, both professionally and literally. The region has also been home to some very prominent lawyers over time, not least of whom are former Prime Minister Sir John A. McDonald, and former Speaker of the House Peter Milliken. It is also home to Queen's University Law School, and many proud alumni continue to call it home.

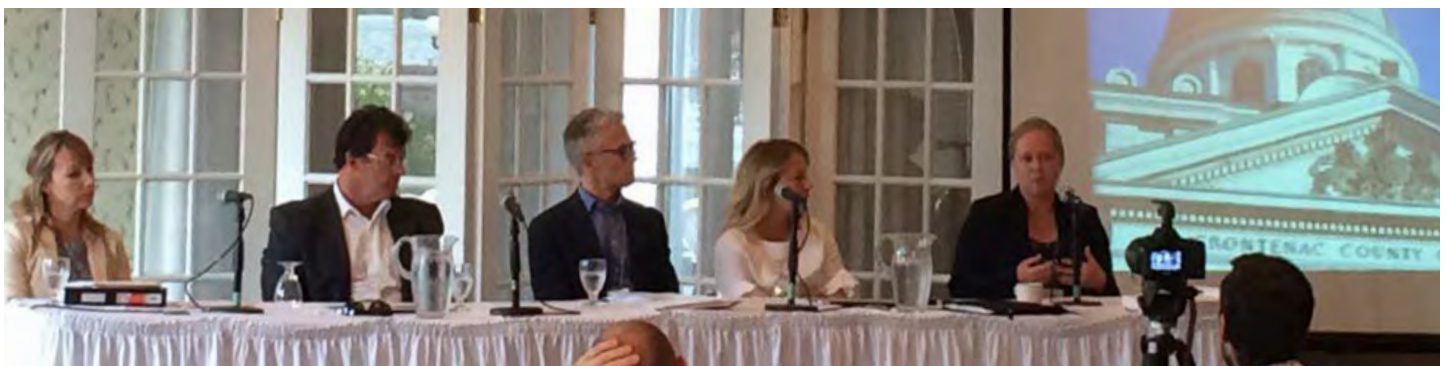
The Advocates' Society was strongly represented again this year and presented a panel and demonstration on summary judgment motions advocacy. President Bradley Berg moderated the TAS panel and mingled with the local bench and bar during the social portions of the weekend. Other TAS panel members included: Edward (Ted) Bergeron, who has a plaintiff-only personal injury firm based in Kingston (and who, much to his dismay, was assigned the role of defence counsel in the demo—egad!); Kristin Muszynski, Partner at Templeman Menninga, who practises insurance defence and family law; Heather Hansen, Partner at Martha McCarthy & Co., who practises family law in Toronto; and Erin Durant, who practises tort, labour and employment law at BLG (Ottawa). Erin is becoming somewhat of a perennial figure in the Frontenac region as she pushes TAS and YASC initiatives and social events

on the calendar in coordination with fellow YASC-er Gavin Cosgrove, who practises plaintiffs' personal injury with Ted Bergeron's firm in Kingston. Robin Black, TAS Director of Marketing and Membership, greeted new and familiar faces at the TAS booth. TAS is a prominent sponsor of the conference and Robin has become a familiar face for members of the Frontenac Law Association due to TAS's long-term sponsorship of the conference.

On behalf of the Frontenac Law Association, thank you TAS for your continued support. We look forward to seeing you back next September! 🍷



L to R - Bradley E. Berg, Erin Durant, Ben Kates



L to R - Kristin Muszynski, Edward (Ted) Bergeron, Bradley E. Berg, Heather Hansen, Erin Durant

# The Unbillables are Unbeatable

BY: MEAGHAN BOISVERT,  
MILLER MAKI LLP



Do you know which city is the only city to have hosted the Olympics three times, or which year the world wide web was introduced to the public? If you don't know the answer, don't feel bad—these questions stumped a number of the almost 40 people who attended the 2nd Annual YASC Sudbury Trivia Night on Thursday, September 15, 2016. The crowd at the event was diverse, encompassing practitioners of all ages and practice areas, including the elder statesman Mr. J. David Innis, who was called to the Bar in 1960, and who struggled a bit with the celebrity baby category. Coincidentally, the three members of the inaugural Lakehead University Class who were in attendance had no problem.

Last year's champions, The Unbillables of Miller Maki LLP, returned to the event to defend their title with the same name, though they did upgrade their t-shirts from hand painted to custom printed to reflect their winner status. Although they faced some stiff competition from the criminal bar's entry of the Bad News Barristers (including needing two tie-breakers

to determine the winner), they were once again crowned victorious to the dismay of the Miller Maki partner contingent who played under the banner of the Legal Briefs. The winning quartet was comprised of Adam Kosnick, Alex Caza, Shannon Goffin and substitute James Ross—who filled in for yours truly. Collectively, they took pride in being able to cover a lot of useless facts in a number of different categories. As for the Legal Briefs, although they fared slightly better than last year, they were still gunning for the non-existent "best dressed" award, arriving in the tightest of whities and providing lasting visual scars for all those who attended.

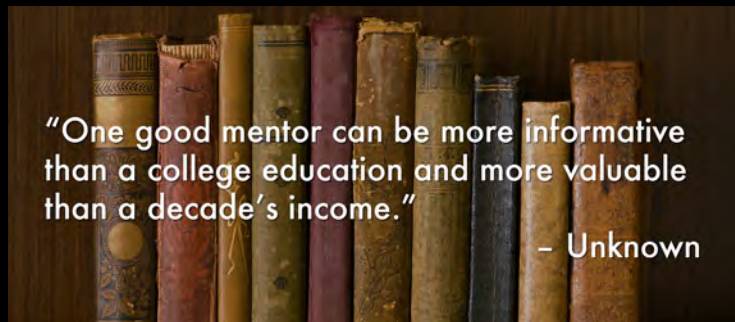
Needless to say the trivia came second to the camaraderie and friendship, which were shared over good laughs, good food and good drinks. At this time, we would like to extend a special thank you to our sponsors McKellar Structured Settlements, especially Laura Mullin who attended in person and was ever so gracious when her team was handed the Dunce Cup. The Sudbury and District Law Association also deserve great recognition for their generous contribution which made the event possible. I would also like to extend a thank you to Robin, Rachel and Jared from The Advocates' Society for all of their assistance with the logistics. Finally, Wacky Wings generously provided a great space with some top notch staff. It is with thanks to all of them that this event was truly a success. We are looking forward with great anticipation to the next trivia challenge to see if anyone can take down The Unbillables. Oh, and in case you were still wondering about the two questions asked at the top of the article, the answers are London and 1991. Cheers! ■



Thank you to Sudbury Trivia sponsors:



Sudbury and District Law Association



"One good mentor can be more informative than a college education and more valuable than a decade's income."

- Unknown

## Toronto Mentoring Dinner Series: Practice Makes Perfect

October 13, 2016 @ Campbell House

[Click here for more information](#) ►

## Interview with Gerald Chan, Stockwoods LLP

BY: SHANNON BEDDOE,  
MARTHA MCCARTHY & COMPANY LLP



1

**Q: Why did you become a litigator or advocate?**

A: I did a lot of mooting in law school and enjoyed the performance aspect of it. I found the competitive element to be a great motivator.

And the idea of fighting the good fight on someone's behalf felt meaningful.

2

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

A: Advocate. It captures all the fun parts of being a litigator.

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

A: A daily cappuccino from Sam James. I'm told the cost adds up.

3

4

**Q: What is your year of call?**

A: 2007

5

**Q: What do you like most about the practice of law?**

A: Being on my feet in court. There's nothing quite like the feeling of answering a question perfectly or extracting just the right answer in cross-examination. It may not happen as often as I'd like, but it happens just often enough to keep me in this business.

8

**Q: What is your favourite case?**

A: *R. v. Duarte*, [1990] 1 SCR 30. I do a lot of work in the area of digital privacy and *Duarte* remains as relevant as ever 26 years later. So much important search and seizure law was made in this case. Justice La Forest was great on privacy. Consider what he said on wiretapping (although he was actually quoting from Justice Harlan of the U.S. Supreme Court): "Were third-party bugging a prevalent practice, it might well smother that spontaneity—reflected in frivolous, impetuous, sacrilegious, and defiant discourse—that liberates daily life." Just fabulous.

9

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

A: Clayton Ruby. I grew up as a lawyer under his guidance. He taught me a lot about courage in advocacy and economy of expression. And his cross-examinations are something to behold.

Frank Addario. I thought I could write a punchy factum until I saw his edits.

Brian Gover. He was the first lawyer to ever teach me about trial advocacy (and how to be respectfully devastating).

6

**Q: Which talent would you most like to have?**

A: Steph Curry's shot. I could still practise law in the offseason.



7

**Q: Which living lawyer do you most admire?**

A: Seth P. Waxman. Check out his greatest hits at the US Supreme Court [here](#). Especially *Boumediene v. Buh*. Seriously.

10

**Q: What makes your litigation practice unique?**

A: I'm one of a few criminal lawyers practising in a firm composed largely of civil and administrative law litigators. And so I often live in the space of intersecting worlds. I like the overlap. Also, my practice takes me everywhere, from provincial offences court to the Supreme Court of Canada. The diversity of fora keeps the advocacy interesting.

11

**Q: What is your greatest fear in practice?**

**A:** Being unprepared for court. That, and forgetting to pack my get-up. I once landed in Ottawa the day before a Supreme Court hearing only to discover that while I had my robes, I had forgotten to pack my court pants. Luckily, Banana Republic was still open and had a pair of grey pants available in my size. Otherwise, I would have been arguing in jeans.

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

**A:** My wife and 16-month-old son. The law is a distant second (or third, depending on how you're counting).

13

**Q: What is your favourite drink?**

**A:** Coffee in the day, pinot noir at night.

14

**Q: What would you consider your greatest achievement?**

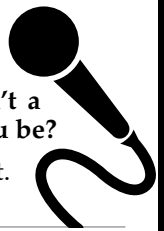
**A:** In law: *R. v. Last*, 2009 SCC 45. It was my first time on my feet at the Supreme Court and I didn't embarrass myself. We also won a new trial for our client (or trials, since the ruling was that he should have had two separate trials instead of one joint trial); and so there was a real sense that we had achieved justice.

In life: Marrying my wife.

17

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

**A:** A starving (rap) artist.



15

**Q: What is the latest non-legal book you've read?**

**A:** *Book of Rhymes: The Poetics of Hip Hop* by Adam Bradley. A must-read for hip hop heads and anyone who appreciates the musicality of language.

18

**Q: How would your colleagues describe you?**

**A:** I dare not speculate. 🍷



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**Q: What is your most distinctive characteristic?**

**A:** I like to think that I'm fairly composed and even keeled.

THE NEXT FIVE

Upcoming Events



Mentoring Dinner  
(Toronto)

Oct 13, 2016



Fall Forum  
(Blue Mountain)

Oct 21-22, 2016



Fireside Chat on  
Advocacy (Toronto)

Oct 24, 2016



YASC Pub Night  
(Thunder Bay)

Nov 2, 2016



Fireside Chat on  
Advocacy (Ottawa)

Nov 3, 2016