



ADVOCACY MATTERS

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EDITOR'S NOTE

EDITOR: PETER J. HENEIN,
CASSELS BROCK & BLACKWELL LLP

2016, you were not my favourite year. I don't want to hang out with you anymore. You are not invited to join me at one of the 10,000 holiday cocktail parties I have to attend between now and December 24th. If you were a friend on Facebook, I would unfriend you. If you were a real friend, I'd punch you in the nose.

While you've been generally an epic fail, you did bring one good thing. Just last week, I had the best meatball sandwich I've ever had in my life.

But while you've killed off many of my favourite musicians this year and shocked me with your soap opera-like twists and turns, I wanted to take a moment to acknowledge the many amazing things that the Society has done this year. Under the leadership of last term's president, Martha McCarthy and under the stewardship of our current president, Brad Berg. Here are some things we should celebrate before the year ends:

National outreach: In 2016, we grew our membership to over 5,500 people. The Society ran programs in Halifax, Calgary and Vancouver, as well as throughout Ontario.



President's Festive Reception
Toronto, 2016

Education: We ran more than 100 education events across the country.

Policy & Interventions: The Society took part in six interventions in 2016; with three at the Supreme Court of Canada (Chambres des Notaires, Lizotte, IPC Alberta). All of the interventions were successful.

So let's all raise a glass this holiday season and celebrate the fact that we are lucky to live in an amazing free country that still hangs onto principles of decency and niceness as part of its national identity.

Hug your loved ones. Heck, hug a stranger.

Thanks to the amazing Society staff, including Robin Black and Jared Ploughman, for making this monthly gossip rag happen. Thanks to all the great contributors.

Wishing you and yours a wonderful, winter holiday. ■

Peter

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ON BEING AN EVERYDAY ADVOCATE IN THE AGE OF LIES AND LIARS



ANDREW LEWIS,
PALIARE ROLAND ROSENBERG
ROTHSTEIN

Dictators and xenophobes are on the march, war stalks a rapidly heating world, He Who Must Not Be Named¹ will soon be occupying the White House, and the Word of the Year, as awarded by Oxford Dictionaries, is “post-truth”.

Oxford defines “post-truth” as: “Relating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief.” But that definition, while perhaps useful in describing a larger societal illness many thought passé, serves to obscure when describing the primary cause of that malady which is, of course, lies, the liars who tell them, and their facilitators.

Lawyers generally, and advocates specifically, deal in facts and words – the use of words to describe facts, and the parsing of and arguing over the meaning of those words. That’s what we do in our day jobs, every day. Therefore, while we are not among the most likely categories of humanity to survive a zombie apocalypse, we are unusually well-equipped to fight the rhetorical war between reason and un-reason, between truth and lies, between enlightenment and darkness. Whether we do so, or instead collaborate in the building of a post-truth society, is our choice. Indeed, a choice that faces everyone.

So, apart from the many legal and political ways in which one might directly oppose the rough beasts slouching

towards Ottawa to be born,² I have a modest proposal³: Let us not allow ourselves to trade in obfuscation. Let us resolve to call things and people what they are, rather than contribute to the normalization of the abhorrent, or to the doubleplusgooding⁴ of the bad, through soma⁵-induced euphemism. In aid of that goal, here are a few suggested words and phrases to avoid and to use in the months and years ahead:

Avoid	Use
post-truth politician	liar
falsehood	lie
authoritarian	fascist
white nationalist	racist and/or white supremacist
person who says “heil”, “Lügenpresse”, and/or does straight-arm salutes	Nazi
Alt-right	some or all of the above ⁶

Lest anyone think Canada a safe haven, we should not forget the words of the historian at the end of *The Handmaid’s Tale*, speaking at a conference in the year 2195, speculating as to the results of Offred’s attempted escape from Gilead across the border to Canada some 200 years earlier:

Was she smuggled over the border of Gilead, into what was then Canada, and did she make her way thence to England? This would have been wise, as the Canada of that time did not wish to antagonize its powerful neighbour, and there were roundups and extraditions of such refugees.⁷

This isn’t to say that America is going to go full Gilead on us any time soon.⁸ However, what happens there is coming here. Winter is coming.⁹ Post-truth is coming, and the liars, lies, racists, fascists, and, yes, the freaking Nazis seeking to usher it in, are already here. We, as advocates, who know the power of language in the service of good or ill, must oppose it. Every day. ■

1. Credit to J.K. Rowling. Apologies to Voldemort. I just can’t write, say or look at his damn name any more.

2. Credit to W.B. Yeats. Apologies to no Canadian who admires He Who Must Not Be Named (see fn.1).

3. Credit and apologies to Jonathan Swift. Yes, I know his “Modest Proposal” to eat babies was satire and not modest at all.

4. Credit and apologies to George Orwell. Yes, I know “doubleplusgood” was used as an adjective in 1984’s Newspeak, and my putting “ing” on the end converts it to a verb, sort of. Or maybe an adverb. Oh, I don’t know.

5. Credit and apologies to Aldous Huxley. Brave New World’s soma was, technically speaking, a happy pill, but you catch my drift, right?

6. See also: *Writing about the ‘alt-right’* Nov. 28, 2016, by John Daniszewski, Associated Press.

<https://blog.ap.org/behind-the-news/writing-about-the-alt-right>

7. Credit to Margaret Atwood. Apologies to her for pointing out she got one central fictional prediction very very wrong: in *The Handmaid’s Tale* American democracy failed with a bang via the machine-gunning of Congress and the President. It turns out that it probably won’t be anything quite so dramatic.

8. I’ve been wrong before.

9. Hopefully without any white walkers – *Game of Thrones’* John Snow might survive the zombie apocalypse but, like I said, lawyers won’t.

The 1st Annual Halifax Festive Reception

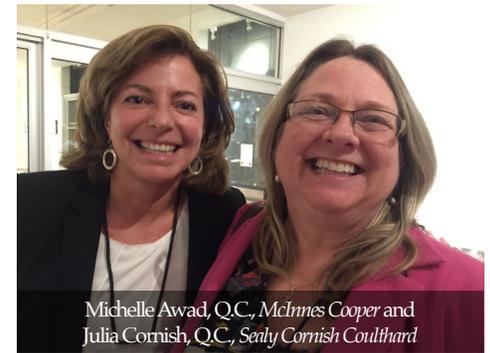


MICHELLE C. AWAD, Q.C., MCINNES COOPER
VICTORIA CROSBIE, MCINNES COOPER

What a night! On November 29, 2016 The Advocates' Society held its first Festive Reception in Halifax, Nova Scotia. Over 40 members of the bench and bar made their way to the Art Gallery of Nova Scotia to mingle with colleagues over a glass of sparkling wine and celebrate the beginning of the holiday season. There was a great mix of judges, law students, articulated clerks, and senior and junior counsel from across the city, which made for lively conversation among all those in attendance. Additionally, Halifax was thrilled to have The Advocates' Society Vice-President Sonia L. Bjorkquist offer greetings from TAS. Overall the evening was a great success, leaving all attendees looking forward to the next TAS event! 🎉



Tracey Smith and Meghan Russell from *BOYNECLARKE LLP* with TAS Vice-President Sonia Bjorkquist



Michelle Awad, Q.C., *McInnes Cooper* and Julia Cornish, Q.C., *Sealy Cornish Coulthard*

Tricks of the Trade 2017

Jan 27, 2017 @ The Carlu

'THE' conference for the personal injury bar, addressing current challenges for both plaintiff and defense counsel

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Congratulations to Allan R. O'Brien, *Nelligan O'Brien Payne LLP*

2017 Recipient of The John P. Nelligan Award
for Excellence in Advocacy

The award will be presented at a dinner in
Ottawa in Spring 2017. Details to be announced.



Advocacy Matters Puzzle Contest #2: "All the Latin I Remember from Law School"



HILARY BOOK,
LAX O'SULLIVAN LISUS
GOTTLIEB LLP

Complete the 9-letter words in each table using the 3-letter segments below each puzzle. Each segment is only used once. The first word has been completed as an example. When you are finished, the leftover segments can be rearranged to form a Latin phrase. Be the first to send all three phrases to jared@advocates.ca, and you will win a Starbucks Gift Card.

The winner of the last Advocacy Matters puzzle was Joel McCoy, *Bergmanis Preya LLP*.



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REH	RIS	VIC	ULM		

Interview with Peter Griffin, Lenczner Slaght Royce Smith Griffin LLP



Peter Griffin is a Past President of The Advocates' Society and has been a member for over 30 years. He is Managing Partner and one of the five founding partners at Lenczner Slaght. Peter is recognized by his peers as one of the top litigators in Canada, particularly in the areas of corporate commercial litigation, class actions, securities matters, insolvency, and professional and director/officer liability and has been recognized by *Canadian Lawyer* as one of Canada's 25 Most Influential Lawyers. In his down time, Peter is an avid fly fisherman and weekend farmer.



1

Q: The greatest legal mind, other than yourself?

A: Ian Binnie.

2

Q: What keeps you coming back day in, day out?

A: The uncertainty of it all.

5

Q: What gives you sanity?

A: Fishing.

Q: What drives you to madness?

A: No fish.



6

Q: Favourite culinary indulgence?

A: Cooking on a Saturday night in the country.

7

Q: Pets or no?

A: Harry, the Airedale Terrier.

8

Q: Favourite app?

A: iAnnotate.

9

Q: When you want to unwind, you...?

A: Fish.

10

Q: Best album ever?

A: Different Stars – Trespassers William.

3

Q: Where do you find inspiration on a file?

A: In complexity. Trying to simplify complexity is the biggest challenge.

Q: Favourite courtroom in the country? Why?

A: Stratford main court room. A piece of Victorian Ontario.

4

11

Q: Work? Life? Balance?

A: I view work/life/balance as levels of tolerable guilt on either end of the swing of the pendulum. The pendulum is always on the move and one does one's best to balance it out. It is never quite right.

12

Q: What's the funniest thing about being a lawyer?

A: What people say. One goes into especially a trial with a fixed view of what is going to be said and one is always surprised. Some of it is downright funny.

13

Q: What's the most important rule for you regarding email etiquette?

A: Don't answer right away.

14

Q: If you had to send one of your partners to live on a desert island, with the likely prospect that they would be eaten by the local wildlife, who would it be? Also, please identify the wildlife of your choosing...

A: Hard to say which one – perhaps send them all there and see who lasts the longest. They can vote on what eats them. ■

Arbitration Advocacy – An immersion into the nuances of arbitration practice

LAUREN TOMASICH,
OSLER HOSKIN &
HARCOURT LLP



I was once speaking with someone at a cocktail party, and we were having the “what areas does your practice focus on” chat that we’ve all had many times. When I mentioned that my practice focuses, in part, on international commercial arbitration, my cocktail companion replied, “well that’s just litigating in a different forum, so it’s not really a speciality, is it?” This individual would really have benefited from The Advocates’ Society’s latest special litigation program – Arbitration Advocacy¹. The program, led by Chairs Sarah J. Armstrong and Paul Michell, provided critical insight into the world of arbitration and explored the many nuances that come with advocating outside a courtroom. And indeed, the overarching takeaway from the program was that arbitration is not simply “litigating sitting down” – there is much more to it.

The program began with a helpful overview of the legal framework for arbitration in Canada from Ryder Gilliland, and specifically the Ontario domestic and international arbitration acts. This legislation primarily addresses the intersection between arbitration and the courts, with the overriding objective being judicial non-intervention. Ryder noted that the legislation contains very little on procedure – the procedure to

be applied in an arbitration will be crafted through negotiations between the parties with the assistance of the arbitrator(s). Alternatively, the arbitration agreement may name a set of recognized arbitration rules, or the parties may subsequently agree on a set of rules to “fill out” the process. Helpful takeaway: arbitration practitioners should ensure they are very familiar with this legislation.

Next was a session on how party dynamics affect arbitration advocacy with George Karayannides, Jane O’Neill and Myriam Seers. The panelists pointed out various interesting considerations that are unique to arbitration and can affect an arbitration dynamic. For example, the panelists spoke about how a “boardroom” atmosphere can change the nature and tenor of cross-examinations. Counsel and witnesses alike may act differently during cross-examinations when they are pouring their coffee together and chatting about their kids just moments before taking a break. This is an interesting consideration – and one with the added benefit of promoting a more collegial atmosphere in general.

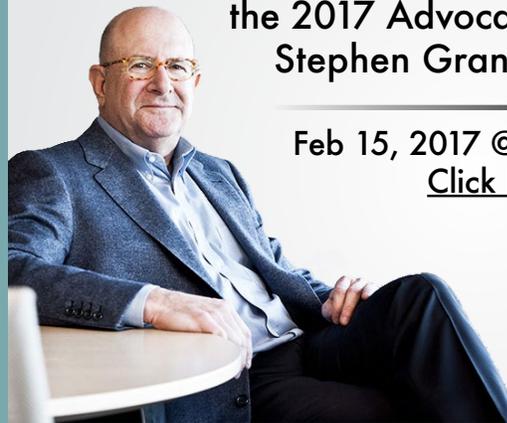
Cynthia Kuehl then gave a practical presentation on how arbitration brings about unique written advocacy considerations. For example, Cynthia described how crafting

the procedural rules at the outset of an *ad hoc* arbitration affords an early opportunity to demonstrate to the arbitrator that you, as counsel, have considered the procedural and substantive implications of arbitral rules for your case, and are advocating for ones that are tailored to address these implications. Cynthia also noted that there is wider scope for creativity in pleadings in an arbitration, and they can include things like charts, graphs, photographs, illustrations, chronologies as helpful advocacy aids. So, put your Rules of Civil Procedure away, roll up your sleeves and get creative.

The next session highlighted the importance of being alive to the unique evidentiary considerations in arbitration. The panelists (David Lederman and Jane O’Neill with Sarah Armstrong moderating) noted that evidentiary rules that are the foundation of the court process, such as the exclusionary rule against hearsay evidence, have far less of a place in an arbitration. The panelists also pointed to the IBA Rules on the Taking of Evidence in International Arbitration as providing internationally recognized evidentiary principles that can be usefully applied to arbitrations. Useful considerations for an arbitration practitioner’s toolkit!

Arbitration also engages its own set

The Advocates’ Society is honoured to present the 2017 Advocates’ Society Medal to Stephen Grant, Grant & Sadvari



Feb 15, 2017 @ The Hilton, Toronto, ON
[Click Here For Details](#)



1. Editor’s Footnote - The Arbitration Advocacy program was held in Toronto on November 25th. The Society also presented Arbitration Advocacy programs in Vancouver on November 2 (chaired by Kenneth McEwan, QC and Tina Cicchetti) and in Calgary on November 3 (chaired by David Tupper and April Grosse). Both national programs featured leading local advocates and arbitrators and guest speakers Bradley Berg and The Hon. Ian Binnie, C.C., Q.C.

ARBITRATION ADVOCACY cont...

of ethical issues, particularly given the unique position of arbitrators, being appointed by (and paid by) the parties. A panel discussion, which included Jeffrey Larry, Denise Sayer and leading international commercial arbitration and conflict of laws expert and arbitrator Janet Walker, provided wise guidance on how to navigate these issues. For example, since arbitrators are selected by the parties, it is important to carefully scrutinize the relationship that a party-appointed arbitrator has with its party appointee (and perhaps more importantly, the appointee's counsel). It is important

to research these potential connections during the arbitrator appointment process. That said, a pre-existing relationship between counsel and an arbitrator does not mean that the arbitrator will not be able to make a decision based on the merits of the case. Arbitrators have their own ethical considerations, which all respected arbitrators of course take very seriously.

Finally, it was invaluable to obtain the perspective from the arbitrators/decision makers in the final session which featured a panel of three leading arbitrators: Doug Jones, Joel Richler and Mary Jane Stitt with Paul Michell moderating. The arbitrators shared

the common perspective that a non-adversarial approach is most effective, and remarked that Canadian counsel are some of the best advocates in this regard – perhaps owing to the fact that we are polite by nature. Keep up the politeness, Canadians!

Arbitration Advocacy offered invaluable legal, strategic and practical insight in a way that was beneficial to seasoned arbitration practitioners and arbitration neophytes alike. The unique nature of arbitration implicates very different considerations than courtroom litigation – and the Arbitration Advocacy program was very effective at equipping counsel to navigate these considerations. ▀



EDUCATION PROGRAMS

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Live Webcast Option Available!

TRICKS OF THE TRADE

Jan 27, 2017 - Toronto

MOTIONS ADVOCACY

Feb 7, 2017 - Toronto

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CLASS ACTIONS ADVOCACY

Feb 14, 2017 - Toronto

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WOMEN IN LITIGATION SYMPOSIUM:

DIVERSITY IN LITIGATION

Feb 16, 2017 - Ottawa

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YASC PUB NIGHTS

Jan 11, 2017 - Toronto

Jan 18, 2017 - Barrie

WINE & CHEESE WITH THE BENCH

Feb 2, 2017 - Kingston

PRESIDENT'S RECEPTION

Feb 7, 2017 - Ottawa

PITCH PERFECT: HOW TO WIN AND KEEP WORK FROM IN-HOUSE COUNSEL

Feb 9, 2017 - Toronto

THE ADVOCATES' SOCIETY MEDAL DINNER

Feb 15, 2017 - Toronto

PRACTICE GROUPS

TOP CASES IN REGULATORY AND ADMINISTRATIVE LAW

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YASC FIRESIDE CHAT ON ADVOCACY

Jan 24, 2017 - Toronto

AN EVENING WITH THE COMMERCIAL LIST

Jan 26, 2017 - Toronto

BREAKFAST WITH LAINEY FEINGOLD

Feb 9, 2017 - Toronto

AN EVENING WITH SOAR

Feb 23, 2017 - Toronto