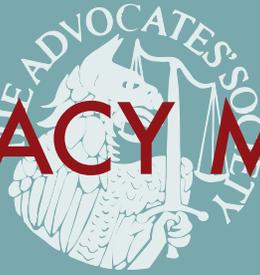


# ADVOCACY MATTERS



EDITOR'S NOTE | TAS SUBMISSIONS | TAS HIGHLIGHTS | TAS REMINDERS | ADVOCACY IN ACTION | TOP BLOG | INTERVIEW | MODERN ADVOCACY | BRIEF CASES | AROUND TAS | THE NEXT 5



**ART AND WINE AUCTION  
MAY 20, 2015  
OSGOODE HALL, TORONTO**



**#A2J WWW.ADVOCATES.CA**



## EDITOR'S NOTE



**EDITOR: PETER J. HENEIN,  
CASSELS BROCK LLP**

Welcome back to Advocacy Matters (Edition #2). You can thank us for the long-awaited appearance of some warm weather (and we officially blame the lingering winter on the old E-brief - like old man winter, we hate that guy!)..

This month, we interview the Society's V.P. and soon-to-be President, the lovely and talented Martha McCarthy.

We also report on the Commercial Practice Group Women's breakfast, offer our luddite members some advice on life in the Twitterverse, and introduce our first interactive piece of legal trivia for you legal wonks - Brief Cases.

And now for some plugs: please support the Inmate Appeal Duty Counsel Program either by making a donation or by booking your tickets for the fabulous Wine and Art Auction (May 20). For female advocates craving some collegiality (and the chance to win a shiny new thing!), get yourself signed up for this year's Breakfast Near Tiffany's (May 22) - sorry gentlemen, this is a ladies-only event. Last but not least, it's time to dust off your prom outfits and sign up for the End of Term Dinner coming up in June. They've promised 50% less speeches this year. *Res ipsa loquitur*, as they say! Info on all three events inside this issue.

Please read, enjoy, and tell your mom about us. Let's keep connected - online and in-person. And, as always, we look forward to your feedback and suggestions.

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## TAS SUBMISSIONS

The Society continues to make an impact on the development of jurisprudence through successful interventions before the courts:

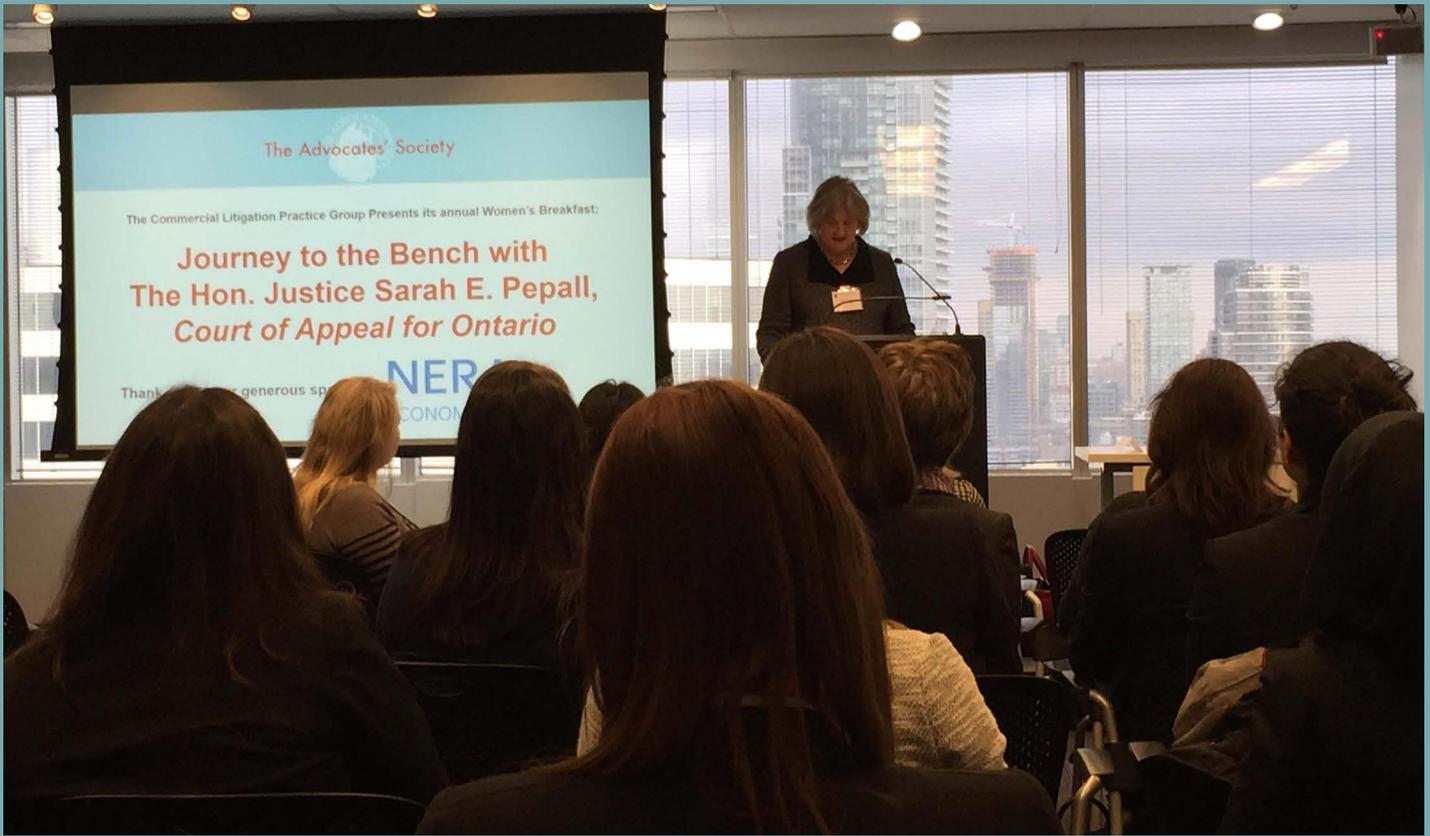
- On February 2, the Ontario Divisional Court released its decision in [Groia v. Law Society of Upper Canada](#). The Court held that the need for civility in the courtroom must be carefully balanced against the benefits of zealous advocacy. Professional misconduct must be conduct that is not only uncivil, but also risks bringing the administration of justice into disrepute. The Court also held that the reasons of judges that comment on the conduct of lawyers are admissible in a discipline process, but the use to which those reasons may be put is a separate issue.
- On February 13, the Supreme Court of Canada released its decision in [Canada \(Attorney General\) v. Federation of Law Societies of Canada](#). In holding that certain statutory provisions enacted to protect against money laundering and terrorist financing were unconstitutional as they applied to lawyers, the Court recognized that it was a principle of fundamental justice that the state not interfere with a lawyer's duty of commitment to his or her client.
- On April 14, the Supreme Court of Canada released its decision in [R. v. Nur](#). The case brought into issue the constitutionality of provisions of the *Criminal Code* mandating a minimum sentence for certain firearms-related offences. The Advocates' Society submitted that the regime was unconstitutional. The Society stressed that the regime created an imbalance of power in favour of the prosecutor, who may make a discretionary decision whether to proceed summarily or by indictment. The Court shared the Society's concerns and held that the impugned provisions were contrary to the *Charter*. A link to the Society's factum can be found [here](#).

## TAS HIGHLIGHTS

- Evidence that Wins, Vancouver (April 15) - Thank you to The Hon. Justice Ronald Skolrood, Supreme Court of British Columbia and Ken McEwan, Q.C., Hunter Litigation Chambers for co-chairing this one-day skills program.
- United Nations Training (April 16 & 17) - The Society delivered its first in-house training program for the United Nations in New York City. Thank you to faculty John Buhlman, Helen Daley, Peter Doody, Freya Kristjanson, Scott Maidment and Michael Watson for representing the Society at the UN.
- Spring Symposium (April 29) - The premier conference for civil litigators featured presentations from The Honourable Justice Thomas A. Cromwell, Supreme Court of Canada, and American College of Trial Lawyers' Christy Jones from Mississippi.
- Congratulations to all of the Society members who ran in the 2015 Bencher election. Click [here](#) to view a list of the members who were elected on April 30, 2015.

## TAS REMINDERS

- May 20 - [TAS Gives Back Art & Wine Auction](#). Join members of the bench and bar for a sensational live and silent auction in support of the Inmate Appeal Duty Counsel Program. The auction features art from renowned and emerging artists, and vintage wine from some of Toronto's best private cellars. Book your tickets today (before they sell out!) and support this worthy cause.
- May 29 - [Catzman Award for Professionalism and Civility](#) nominations deadline. This annual award recognizes individuals who demonstrate a high degree of professionalism and civility in the practice of law.
- June 18 - [AGM and End of Term Dinner](#). Join fellow Society members for a fabulous black-tie, members-only event, featuring keynote speaker Scott Turow, US attorney and best-selling author.
- View the latest advocacy positions, or post your own job openings on [The Advocates' Exchange Career Board](#).



## ADVOCACY IN ACTION



### A WOMAN ADVOCATE'S JOURNEY TO THE BENCH

BY: SARAH ARMSTRONG,  
FASKEN MARTINEAU LLP

As I rushed out the door at 7:30 a.m. on Friday, March 27, my five-year-old son did not wave goodbye. Instead, he gave me a “thumbs down”, followed by an adorably deliberate “harumph”. The chipper: “Bye-bye! Mommy go to work now!” of his almost two year old brother provided only minor relief from the familiar pang of guilt I experienced as I ran to the subway. A few short hours later, following a refreshingly candid presentation by the

Honorable Justice Sarah E. Pepall, I took comfort in the thought that an esteemed judge of the Ontario Court of Appeal may have experienced similar early morning departures, and that both she and her kids are doing just fine.

That morning, the women of the Commercial Litigation Practice Group were treated to a rare opportunity to hear from a judge of the Ontario Court of Appeal about the journey to the bench, at the group's annual breakfast program for women advocates. Justice Pepall spoke to a crowd of more than 60 women advocates about her own path to the bench, about the judicial appointment process and about life as a judge. She was frank, funny and inspiring.

Prior to her appointment to the Superior Court of Justice in 1999, Justice Pepall enjoyed a successful career as a commercial litigator and partner at McMillan LLP, where she served on the firm's compensation committee and as managing partner. She spoke honestly about the sacrifices that she and her husband made during the early busy years of their careers - including when they remarkably both served as managing partners of their respective firms - and shared personal anecdotes from her life as a busy working mom.

Justice Pepall told us that she had not, like some of her colleagues on the bench, identified a career on the judiciary as a goal early on. It was not until she was asked if she would apply for a judicial appointment that she considered a move from private practice to the bench. She clearly remembers getting “the call” and, more importantly, the gratifying discussion she had with her mother when she reported that she had been

appointed to the bench.

Justice Pepall is currently Chair of the Federal Judicial Advisory Committee for Ontario (Greater Toronto) which, together with the other regional committees, has the responsibility of assessing the qualifications for appointment of the lawyers who apply for federal appointments. Through her description of the application process and the work the committee does in assessing applications, she provided helpful insight into the often-opaque judicial appointments process, including some seemingly obvious (but apparently not always followed) advice like: “call your references before you apply to ask whether they will support your candidacy”.

For anyone considering a move to the bench as a break from the rigors of private practice, Justice Pepall made it clear that it is not a “lifestyle” move and that her workload is decidedly not lighter now than it was when she was a practicing litigator. But having learned a little about Justice Pepall over breakfast and having seen the enthusiasm with which she describes both her work and her colleagues on the bench, I doubt she would have it any other way.

Thank you to breakfast co-chairs Denise Sayer of Paliare Roland Rosenberg Rothstein LLP and Cynthia Spry of Babin Bessner Spry LLP for bringing together the women of the commercial litigation bar. The next event for women advocates is the annual [Breakfast Near Tiffany's](#), taking place on May 22<sup>nd</sup> at the Four Seasons.

## TOP TAS BLOG



### Conflicting Decisions on Whether Parallel Class Actions Constitute an Abuse of Process

BY: ASHLEY PATERSON, BENNETT JONES LLP

Two recent decisions of the Nova Scotia Court of Appeal and the Court of Queen's Bench of Alberta have come to opposite conclusions regarding whether it is an abuse of process to file the same class proceeding in multiple jurisdictions...

[Click Here To Read More](#)

#### Personal Injury Law Conference: Advancing Your Case

Tuesday, June 2, 2015 @ 1:00pm - 4:30pm  
Sheraton Ottawa Hotel, O'Connor Room, 50  
Albert St., Ottawa

Registration Now Open

Sponsored by:

**M&Kellar**  
STRUCTURED SETTLEMENTS

# Breakfast Near Tiffany's

Save the Date: Friday, May 22, 2015

Members Only – Register now



## Interview with Martha McCarthy, LSM

BY: PETER J. HENEIN, CASSELS BROCK LLP

Martha McCarthy, LSM (which stands for Law Society Medal) is the current Vice President and soon-to-be President of The Advocates' Society. Martha has practised family law since her call to the Bar in 1991 and now has her own firm, Martha McCarthy & Company. When she is not making history advocating for gay and lesbian families across Canada or looking for space in her awards trophy case, Martha can be found checking her iPhone to see if she is finally a Starbucks Gold Card member or to confirm the status of her Uber cab, to make sure she will be on time for her Scaramouche reservation. Martha loves the water - she'll take it as frozen powder on a ski hill or rippling waves on a big lake. Or a waterdog. Or Roger Waters. Or...well, you get the picture.

1

### FAVOURITE JUDGE OR MASTER?

George Walsh. The person who interrupted more, talked loudest and told the best jokes won the motion. I'm fantastic at interrupting. Also, he assigned Epstein J. (as she then was) to *M. v. H.*, which was one of the greatest blessings of my career.

2

**WHERE DO YOU FIND INSPIRATION ON A FILE?** It's never quite as fun as the intake meeting. Also, videos, photographs and love letters are critical evidentiary matters.

**FAVOURITE APP?** So many... Angry Birds, Amicus Timekeeper (docketing on iPhone, yo), Notability, Starbucks App (THE reason to have an iPhone), Uber, Songza, Glympse (parents of teens: check it), Yahoo Weather, Instagram, Dumb Ways to Die.

3

4

### WHAT GIVES YOU SANITY?

There is an inaccurate assumption in this question.

### 5 WORK? LIFE? BALANCE?

Overrated.

### BEST ALBUM EVER?

The Wall. The Roger Waters movie of same name was fantastic at TIFF this year.

6

7

### PETS OR NO?

Dogs only. Preferably several. Preferably puppies.

8

**WHEN DO THE EMAILS START FLOWING?** As soon as I'm on vacation dammit.

### THE GREATEST LEGAL MIND, OTHER THAN YOURSELF?

Lord Denning, Ronald Dworkin, Simon Chester, Phil Epstein, Malcolm Kronby and the self-reps who beat me regularly.

9

**WHEN YOU WANT TO UNWIND, YOU...?** Get outta town with the fam, either onto a ski hill or into a boat. Or girls weekend in NYC.

10

11

### THE LAW: MAGIC OR DAILY GRIND?

Both. Depends on the day, the issue, the client, the judge and opposing counsel. And whether I got my grande americano.

**WHAT DRIVES YOU TO MADNESS?** Counsel who are unprepared, or who argue facts in closing that aren't in evidence. Ask my juniors. I'm insufferable during the other person's closing.

12

13

**FAVOURITE RESTAURANT?** Scaramouche pasta bar. This is appalling to my friend Marie but it's classic, delish and named after a lawyer in a French novel.

**WHY IS THE SKY BLUE?** I dunno, but my articling student can research that for a modest fee.

14



## Following the Trend

JASMINE AKBARALI, LERNERS LLP

Twitter. It's my favourite of all the social media platforms, probably because I find it the most manageable. In this month's column, I want to explore twitter from 50,000 feet. This is for those of you who cringe at the thought of twitter, and still make references to people who "twitter" (the word is "tweet").

Twitter is a platform that allows its users to send out messages in 140 character chunks on any topic of their choosing. It's short and (sometimes) sweet. Because of the mandated brevity, tweets are often not grammatically correct. Each individual decides how far they are willing to depart from the usual grammar rules to get their tweet in under the wire. But understand that on twitter someone can safely say "I dont know", or, even "IDK", and it does not mean they are illiterate (of course, nor does it mean they are literate, so don't make grand assumptions about any pop stars you choose to follow).

Broadly speaking, you can do two things on twitter. You can follow other twitter users, and you can tweet for yourself. Today, we'll focus on following others. It's where newbies to twitter may want to start. It doesn't build your profile, but it does allow you to access information you may be interested in.

Looking at the people a twitter user follows tells you something about their interests. If you're a criminal defence lawyer, you will probably follow other criminal defence lawyers and likely also other lawyers who have things to say that are of interest to you. Perhaps

you'll follow the Treasurer of the Law Society. Perhaps you'll follow legal academics. You get the idea.

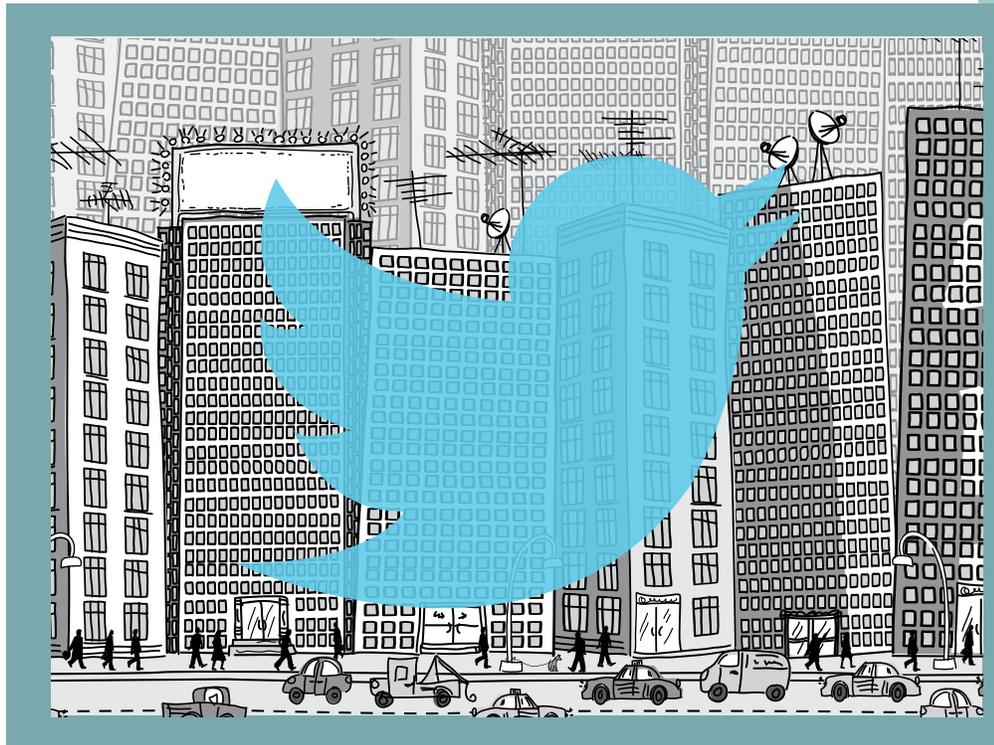
But you might also like hockey, so you would follow some sports writers. If you are interested in federal politics, you might follow some politicians, pundits and journalists. Maybe your kid's school has a twitter account that you'll follow. Maybe you sit on the board of a charity that tweets, and you'll want to follow it.

The point is, whatever your professional or personal interests, someone is tweeting about them. You can use twitter as a source of information to keep up to date on the latest developments in those areas of interest, whether it's law, politics, science, comedy, art, and so on. It's interesting to try to diversify the sources of the information that you usually access. For example, by deliberately following someone with a different perspective on an issue than yours, you can challenge your beliefs. No matter what your politics, it is interesting to follow all the political leaders. If you lean left, follow some conservative pundits, and vice versa. It exposes you to a different viewpoint and information. I really believe that doing this helps to keep our minds open and our brains nimble.

Another way of getting information on twitter is by searching hashtags. A hashtag is a phrase preceded by a "#", and can be used to link a tweet to a topic. Some hashtags are in constant use. For example, if you want to follow what's going on at Queen's Park, you can search the hashtag #onpoli (as in, Ontario politics). Someone is tweeting about #onpoli all the time. In a similar vein, there's #TOpoli for Toronto politics and #canpoli for Canadian politics.

Other hashtags are very popular for a short period of time, and can serve as an online community to comment on, process and explore events of significance. In the aftermath of the Charlie Hebdo attacks, the hashtags #CharlieHebdo and #JeSuisCharlie went viral, and was a gathering place for twitter users who did not otherwise follow each other to engage in a broader on line conversation on an important issue. Special events like the Oscars and the Olympics will have their own hashtags. Even some TAS events will have a hashtag, like #EOT2015 for TAS's annual End of Term event and Twitter contest. Searching a hashtag can thus allow you a window into a public conversation on an issue that interests you.

Sometimes hashtags are used as



commentary to a person's tweet. A tweet about the brutal winter weather might be accompanied by #WinterISurrender. I tweeted once about trying to prepare for an appeal while my kids tried out the new karaoke machine they got for Christmas. I used the hashtags #ThanksGrandma #Timing and #LetItGo to round out what I was trying to say. Get it?

You don't follow a hashtag, but you search it. Twitter then collects all the tweets with that hashtag for you to scroll through. You can choose between the top tweets on that hashtag or all the tweets, depending on the scope of what you are interested in.

In contrast, when you choose to follow someone on twitter, the platform gathers their tweets for you, along with the tweets of the others you follow, and collects them into something called your "feed". Your feed will show you tweets from the people you follow, in the order they are posted, from most recent to oldest. Generally, anything about an hour old is dated in the twitterverse. You should not feel compelled to read your feed through to its end or you will have given up your practice and any semblance of a personal life in favour of twitter. If anything is really important, people will usually repost it with "ICYMI" (in case you missed it) or you can leave your feed and go straight to another user's timeline to see what they've been tweeting about lately.

Wait, what's a "timeline"? It's the name for the record of the history of a person's tweets. Although you can set a twitter profile to private settings, most people have public twitter profiles. That means that anyone can see your timeline just by looking you up – assuming, of course, that you tweet. More on that in a later column.

I'll leave you with some law-related twitter handles that I find informative (in no particular order), in case you decide to give twitter a whirl. Most, if not all, of the people and organizations I list tweet with personality, thus delivering the information in an interesting way. You can get some good information and interesting perspectives by checking out their timelines.

[@LSUCTreasurer](#)

Janet Minor is a new addition to twitter, tweeting about the work of the LSUC

[@LonnyRosen](#)

Health lawyer tweeting about health law and current hot topics in the legal profession

[@SameerZuberi](#)

Law student at UQAM tweeting about human rights, Islamophobia and Quebec politics

[@SeanRobichaud](#)

Criminal lawyer tweeting about criminal law, developments relevant to the legal profession and politics

[@Petersankoff](#)

University of Alberta law prof tweeting about legislative and jurisprudential developments and legal education in Canada

[@BadLegalLLP](#)

Parody account making fun of the legal profession. A must-follow diversion. (Go back into Bad Legal's timeline and find the "Night Before Christmas" poem about the Chief Justice. Really.)

[@Cforcese](#)

University of Ottawa law prof, lately tweeting a lot about Bill C51. More generally he tweets about national security, international and public law and legal education

[@dtanovich](#)

University of Windsor law prof who tweets about criminal law, evidence and ethics, with a focus on critical race and feminist perspectives

[@AllanRouben](#)

A fellow appellate advocate (maybe that's why I like his tweets so much), Allan tweets about developments in Canadian law and society

[@ihull](#)

Estates and trusts lawyer who tweets about developments in his field, both legal and social

[@jesshwprince](#)

Dynamo civil litigator tweeting about law and the world

[@ADodek](#)

Ottawa law prof tweeting about the legal profession, ethics, the constitution, public law and Canadian politics

[@RobCenta](#)

Civil litigator and managing partner at Paliare Roland, tweeting about law, jazz, food and basketball

[@rhh](#)

Lawyer tweeting about law, society, food, motorcycles, photography

[@jeffreybgray](#)

The law reporter for the Globe and Mail, tweeting about Canadian legal developments and society

[@DeanSossin](#)

Osgoode Hall dean and professor, tweeting about legal, political and societal developments

[@Advocates\\_Soc](#)

Your very own association! Why wouldn't you follow it?

[@pauldalyesq](#)

Law prof at Universite de Montreal, tweeting about constitutional and administrative law (and sometimes sports and politics)

[@jordan law21](#)

Legal thinker tweeting about developments in the legal industry

[@janesouthren](#)

Reformed lawyer tweeting about law and business development, and life in general

[@AdWoodyard](#)

Tax litigator tweeting about tax and miscellaneous funny stuff

[@jakbarali](#)

And for those of you interested, this is my handle. I tweet about law, society, life and civil liberties.





## Brief Cases

TONY DI DOMENICO, FASKEN MARTINEAU LLP

Tony Di Domenico took the challenge to summarize five cases in less than ten words. Can you name the cases from Tony's briefs? Click the brief case to see the full court document.



ANSWERS: 1. R. v. Nur, 2013 ONCA 677 (CanLII), 2. R. v. Kokopenace, 2013 ONCA 389 (CanLII), 3. Parsons v. Ontario, 2015 ONCA 158 (CanLII), 4. Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10 (CanLII), 5. Gyroffly v. Drury, 2015 ONCA 31 (CanLII)



## The Catzman Award for Professionalism & Civility Call for Nominations

Nominations deadline May 29, 2015

AROUND TAS



Practice Management Essentials, April 2015



Wine and Cheese with the Bench, April 2015



On the Construction Lien Act with Master David H. Sandler, April 2015



Shining a Spotlight on Arbitrators and Mediators, April 2015



In-house training program for the United Nations in New York City, April 2015



Spring Symposium, April 2015

## THE NEXT 5

### EDUCATION PROGRAMS

**READY, SET, LITIGATE!**  
May 13, 2015 - Toronto

**COURTHOUSE SERIES 2015:  
CHALLENGING CREDIBILITY**  
May 14, 2015 - Kitchener

**COURTHOUSE SERIES 2015:  
CHALLENGING CREDIBILITY**  
May 21, 2015 - Kitchener

**EVIDENCE THAT WINS**  
May 22, 2015 - Calgary

**SECURITIES ADVOCACY**  
May 26, 2015 - Toronto

For A Full Listing of  
Education Programs [Click Here](#)

### ADVOCACY EVENTS

**MENTORING DINNER SERIES:  
WELL, THAT WAS AWKWARD**  
May 12, 2015 - Toronto

**SOLD OUT**

**PRACTICE PERKS:  
CONVERSATION OVER COFFEE**  
May 15, 2015 - Toronto

**WINE AND ART AUCTION**  
May 20, 2015 - Toronto

**BREAKFAST NEAR TIFFANY'S V**  
May 22, 2015 - Toronto

**END OF TERM DINNER**  
June 18, 2015 - Toronto

For A Full Listing of  
Advocacy Events [Click Here](#)

### PRACTICE GROUPS

**CALGARY BENCH AND BAR  
RECEPTION**  
May 21, 2015 - Calgary

**CURRENT ISSUES IN  
ADMINISTRATIVE LAW**  
June 1, 2015 - Toronto

**YOUR PROFESSION, YOUR  
FUTURE**  
June 11, 2015 - Toronto

**FAMILY LAW BENCH AND BAR  
RECEPTION**  
June 15, 2015 - Toronto

Have you connected with  
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# End Of Term Dinner 2015

— Keynote Speaker: Scott Turow, Attorney and Best Selling Author —