

# ADVOCACY MATTERS

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## EDITOR'S NOTE



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In the very first issue of Advocacy Matters (which is worth a lot if it's still in mint condition), I wrote "The Society wants to stay connected with all of its members. And so, this e-brief is for everyone – the young, the old, and those in that soft, squishy middle section of their careers."

And it does. But for now, let's leave the young and the old aside (just for now). I want to talk to those of you who are in the soft, squishy middle section of your careers to tell you about an exciting new initiative being undertaken by the Society. Our Board has struck a task force to represent the voice of those squishy, mid-career lawyers. We want to increase engagement among members of this group, to look at member retention and to provide a platform to communicate the views of this group to the Society.

So here's where you squishy lawyers come in... I need you to send me your squishy thoughts and comments



on what the Society does, and can do, for you, as well as what you want more of. Please email me directly at [phenein@casselsbrock.com](mailto:phenein@casselsbrock.com). For reals. The more input we get, the more we can tailor the Society's efforts to speak to, and on behalf of, you.

And now on with the show...

*Peter*

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- Young Advocates mingled with 30+ judges at Campbell House in Toronto for the annual Wine & Cheese with the Bench.
- Spring Symposium 2016 welcomed 200+ attendees at The Carlu for a full day of advocacy updates and networking. Exhibitors attending were Bentham IMF, Collins Barrow, DOCUdavit Solutions, Victory Verbatim, ADR Chambers, and Neesons Court Reporting Inc.
- The Atlantic Women in Litigation Conference on May 5 was a resounding success with over 100 woman advocates joining together to experience phenomenal presentations from the bench and bar, including an inspiring keynote presentation from Marie Henein.
- The Keynote speaker for End of Term Dinner 2016 was announced on May 9. Mayor Naheed Nenshi, The City of Calgary, will be sure to delight and inspire the 1,500 TAS members who will gather at the Metro Toronto Convention Centre on June 16, 2016. Book your table for End of Term [here](#).
- Missed the last issue of SCAP CHAT? Check it out [here](#) and see what TAS is up to on the advocacy and policy fronts!

## ODE TO THE TREASURER

On behalf of The Advocates' Society I would like to send sincere best wishes and thanks to our outgoing Treasurer, Janet Minor, for her many years of service to the profession.

Madam Treasurer has been no stranger to The Advocates' Society, having been a member since 1979. She served as a Director of the Sir William Campbell Foundation, which is charged with the stewardship of Campbell House - that tiny gem of a house that sits on the corner of Queen and University in Toronto.

As a Benchler, and then as Treasurer, Janet Minor never missed an opportunity to liaise with the Bar; attending and speaking at symposia hosted by the Society on topics ranging from civility in the profession to ongoing attempts to streamline the Ontario civil justice system.

She has been committed to listening to the profession across the province, and we have taken a page out of her book and are now hosting our own Regional Dinners with members of our Society.

Our Treasurer also understood the importance of honouring deserving members of our profession. We are most grateful to her for travelling to Sudbury last month to honour Jim Simmons, a distinguished member of the Bar who recently received The Advocates' Society Medal. I cannot express how humbled Jim Simmons was that so many 'from away' came to pay tribute to him at what is now being billed as the 'legal event of the year' in northern Ontario.

And finally, thank you, Madam Treasurer, for your leadership on access to justice issues and in particular, for spearheading the effort to expand the Unified Family Court in Ontario. We could not have done it without you.

We wish you much luck as you venture into the next phase of your distinguished career. You will be missed.

Martha



## Spring Tweets



JASMINE T.  
AKBARALI,  
LERNERS LLP

Every spring I feel like I get to know my neighbours again. After spending months indoors, huddled by the fire, suddenly we are all outside again – watering the lawn, playing road hockey, or just enjoying the sun – and thus the renewal of spring extends to relationships. And of course, as we invite our neighbour to join us for a drink, we also enjoy the new leaves, the flowers, the little chipmunks running around, and the sound of birds tweeting.

Wait, what? Did I say tweeting? Of course I did. Tweeting and spring go hand in hand, just like spring and renewing relationships do. So what better time to talk about twitter as a tool for building relationships?

Oh, I can hear the skeptics. They scoff, “you can’t build a relationship in 140 characters, thrown out into the wide virtual world.” Don’t listen to them. They are wrong. You can build your relationships through twitter in several ways.

First, you can engage with people you already know on twitter. Follow them. Read and reply to their tweets. Tweet at them if you come across something you think they’ll want to know about (like an article they might care about) or if you want to celebrate something they have accomplished. Message them directly if you follow each other. And – here’s a really good one - retweet their tweets to your followers. People appreciate a boost to their tweets. By retweeting, you are building good will with the original tweeter, helping them spread their message and perhaps gain new followers. You are also validating their ideas and – let’s face it – we all like a little of that.

Second, on twitter you can reconnect with people with whom you have lost touch. Years ago - too many for me to want to share the number with you - I clerked at the Supreme Court of Canada. I made friends from all across the country. Fast forward to today, and it has been difficult to keep up with everybody. Yet twitter has allowed me to reconnect with a number of the people I knew well back then. Connecting on twitter, tweeting back and forth and messaging directly has spilled over into emails, phone calls and get-togethers. As you might imagine, this is a pretty high achieving bunch, so apart from having some fun with my former clerk mates, I have also expanded my professional network. This can only be positive.

The third category of relationship-

building might seem the most radical. *You can make new friends on twitter. No, I am not kidding.* I have actually done it. And no, it’s not like internet dating. It works like this: you find somebody on twitter whose ideas interest you. You engage with them about those ideas. They engage back. Over time, you might find that you end up at the same event. “Hey,” you say, “you’re my twitter buddy”. The next thing you know, you are setting up a lunch date. The obvious caution here: twitter-first relationships have to evolve organically, or else you seem weird, which is not what you’re going for.

Like all other social media platforms, twitter doesn’t replace personal engagement, but it is another tool to keep your relationships vibrant, and one that doesn’t depend on a sunny day. Who knows? Maybe by next January you’ll be tweeting “Hey @myneighbour, coffee by my fireplace? #NewNespresso”. 🍂



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

Nominations deadline May 27, 2016

## Interview with Gordon R. Johnson, Borden Ladner Gervais LLP, Vancouver



Gord Johnson is a Partner and the Chair of BLG's Professional Committee in Vancouver. Gord practises commercial litigation and his experience includes a broad range of commercial work, including securities industry disputes, defending investment claims and dealing with disputes between investment firms. Gord is a valued skills instructor for The Advocates' Society's education programs and is a member of the Society's National Standing Committee. A self-professed luddite, Gord prefers pencil to stylus and phone to email. The only appeals Gord tends to lose are those with his teenage daughter - Gord has learned to love the cat.

1

**Q: The greatest legal mind, other than yourself?**

**A:** Decades ago I clerked for Mr. Justice Macfarlane of the BC Court of Appeal. He could take the most complex problem and condense it to a simple proposition. While counsel before him would struggle even to agree on the issues to be decided, he would see the whole situation, in context, at not much more than a glance.

4

**Q: What gives you sanity?**

**A:** Exercise.

**Q: What drives you to madness?**

**A:** Overlong multiparty email chains. I have been trying, when I see one coming, to pick up the phone. I need to do better.

5

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

**A:** Walk.

6

**Q: Favourite culinary indulgence?**

**A:** Oysters.

7

**Q: Favourite judge or master?**

**A:** Newbury, J.A. (BCCA).

8

**Q: Favourite app?**

**A:** Pencil.

2

**Q: The Law: Magic or daily grind?**

**A:** 80% grind, with the moments of inspiration being what make the grind worthwhile.

3

**Q: Work? Life? Balance??**

**A:** I was hopeless in my 30s (how many times did I rebook my trip to Europe?). I was determined to get a life in my 40s. Now I don't even think about it, I take each month as it comes.

9

**Q: Pets or no?**

**A:** No pets, except reversed on appeal by teenaged daughter. We have a cat.

10

**Q: When do the emails start flowing?**

**A:** I am on the west coast and much of my email flow is from Eastern time zones. So first thing in the morning.

11

**Q: Where do you find inspiration on a file?**

**A:** Learning about a fresh subject matter is the most exciting thing. Over the years I have had to learn topics such as the change in characteristics of concrete as it dries, the water needs of sphagnum moss and how financial institutions net out and settle currency obligations. It is always fun to pick up a new topic.

12

**Q: What's the funniest thing about your job?**

**A:** I try to find appropriate places for humor. If I find one and if people appreciate it that is great. If I attempt a joke and I am the only one who realizes I am joking that is another source of humor for me.

13

**Q: Best album ever?**

**A:** Beatles Revolver (I just saw the McCartney concert).

14

**Q: How does one truly measure the weight of the human soul?**

**A:** By never giving up. ▀

## The 15th Annual Spring Symposium: The Advocate Matters

### Highlights From An Invaluable Day of Advocacy

LAUREN TOMASICH  
OSLER, HOSKIN & HARCOURT LLP



When I saw the circular setting out the impressive lineup of speakers for the 15<sup>th</sup> Annual Spring Symposium, presented by The Advocates' Society in conjunction with the American College of Trial Lawyers, I knew it was an event that was not to be missed. It offered an opportunity to hear from highly-regarded individuals in our profession, including numerous judges, about what matters to us most: advocacy.

The program did not disappoint. I came away with fundamental practical advice from judges, the benefit of updates on recent developments in the law, a new perspective on cross-examination, and a full day of networking with many senior members of the profession. The highlights are too many to recount, but I'll share a few of the pearls of advocacy wisdom that I picked up throughout the day.

The program began with remarks from The Honourable Justice Rothstein about advocacy at the Supreme Court of Canada, although this practical advice would certainly be applicable regardless of what court one is appearing in. Justice Rothstein is always a delight to listen to, weaving humor into his invaluable guidance. He gave tongue-in-cheek advice about dealing with pesky questions from a panel of Supreme Court of Canada judges: prepare as though you won't get any questions since most of the judges are wallflowers, but if you get questions, don't answer them directly. Instead, tell them you will answer the question

you think they should have asked, or better yet, tell them their question is irrelevant. Humour only an advocate can appreciate and it resonates when you put it that way.

The advice from Justices Stratas, Gillese and Sachs on effective advocacy in a limited timeframe was similarly helpful. For example, how many grounds of appeal make for an effective argument? If the court isn't buying your first, second or third argument, chances are it isn't going to buy your eighth. Makes sense, right? Yet counsel will sometimes overload with as many grounds of appeal as possible, presumably with the objective of making it look like the lower court really messed up. The panel's advice was to focus on three strong grounds of appeal. The human brain seems to like to process lists of three, and this will allow you to take the necessary time to focus on your three strongest arguments. The advocacy triple crown.

The reviews of the developments in commercial litigation and class actions in 2015 were on point and effectively delivered. This "lightning round" style update brought me up to speed on the past year and more. Dana Peebles even snuck in an update on the "biggest" class action decision of the year – a U.S. deceptive marketing case about Subway's "footlong" subs being too short. While the evidence was weak - because everybody ate the sandwiches - the class action was awarded injunctive relief, with Subway being told to measure their subs. 10 law firms split the \$520,000 cost award – long live class action justice!

The American College keynote speaker was Elizabeth Mulvay, and she challenged us to consider turning one of the oldest cross-examination adages on its head and "work without a net". We are all taught Professor Irving Younger's principle of never asking a question in cross-examination unless you already know the answer. Ms. Mulvay gave an effective demonstration of certain circumstances where it can actually be effective to ask a question that you *don't* know the answer to: (1) if you've taken the time

to eliminate escape routes; (2) if there is only one good answer; (3) if there is no good answer; (4) if you can handle any answer you're given; or (5) if you're baited and can't avoid it. I may just break the Younger mold on my next cross. Stay tuned.

The panel featuring Kirk Baert, Laura Fric and Paul Bates offered an interesting perspective on something previously thought to be a rarity: common issues trials. The body of certification jurisprudence has evolved considerably over the course of more than two decades of class action jurisprudence. With this in mind, Laura Fric noted that if a case raises issues that are likely certifiable based on the case law, defendants could consider consenting to certification. This provides an opportunity to influence the wording of the common issues, and get to an earlier merits determination. Something for defence counsel to keep in mind.

The day ended on a high note, with Benjamin Zarnett, Alan Lenczner and Clarke Hunter discussing the Supreme Court of Canada's recent decision in *Chevron Corp v. Yaiguaje* – an important case on jurisdiction and enforcement. In *Chevron*, the Supreme Court held that there is no requirement that a real and substantial connection exist between the enforcing forum and either the judgment debtor or the dispute. Where else but at Spring Symposium can you hear about a case from three of the leading litigators involved. It was truly a privilege.

There were many other excellent speakers and worthwhile topics, and my highlight reel cannot do the program justice. I'll sign off with a plug to all you TAS members to attend Spring Symposium next year. This is an event that attracts many senior counsel but as a more junior litigator I found it hugely beneficial. I highly recommend it regardless of your vintage. ■



## THE NEXT 5

### EDUCATION PROGRAMS

#### PRACTICE MANAGEMENT ESSENTIALS

May 18, 2016 - Toronto

*Live Webcast Option Available!*

#### SUMMARY JUDGMENT MOTIONS

May 27, 2016 - Toronto

*Live Webcast Option Available!*

#### PERSONAL INJURY LAW: PRACTICAL TIPS TO WIN YOUR CASE

May 31, 2016 - Ottawa

#### HITTING YOUR STRIDE

June 1, 2016 - Toronto

#### UNDERSTANDING FINANCIAL STATEMENTS

June 3, 2016 - Toronto

*Live Webcast Option Available!*

### ADVOCACY EVENTS

#### MENTORING DINNER SERIES TIME IS ON YOUR SIDE!

May 16, 2016 - Toronto

#### YASC PUB NIGHT May 18, 2016 - Ottawa

#### YASC PUB NIGHT June 8, 2016 - Barrie

#### END OF TERM 2016 June 16, 2016 - Toronto

#### ANNOUNCING END OF TERM 2016 KEYNOTE SPEAKER MAYOR NAHEED NENSHI, THE CITY OF CALGARY

### PRACTICE GROUPS

#### SENTENCING UPDATE: A CONVERSATION BETWEEN PARLIAMENT AND THE COURTS

May 19, 2016 - Teles

#### CURRENT ISSUES IN ADMINISTRATIVE LAW

May 31, 2016 - Toronto

*Live Webcast Option Available!*

#### YOUR PROFESSION, YOUR FUTURE

June 6, 2016 - Toronto

#### FAMILY LAW BENCH AND BAR

June 22, 2016 - Toronto



ENJOY YOUR SUMMER!

## End Of Term Dinner 2016

← Keynote Speaker: Mayor Naheed Nenshi, The City of Calgary →

◀ [Click here for more information](#)

