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Welcome (Back) to Osgoode!

The long weekend has come and gone, and somehow classes have already begun! As hard as it is to dust of the books and return to the land of 8:30am classes, we are excited to see the halls of Osgoode filled with so many people again – and L&L is here to ease the transition!

The Legal & Literary Society (or L&L for short) is your primary student government at Osgoode. We deal in all things community, clubs, student services, and fun! We work with Student Caucus—which takes care of academic and advocacy issues—to make sure your experience at Osgoode is as positive as possible.

Your legal education happens in many ways—and many of them occur outside of the classroom. Our goal is give you as many opportunities as possible to engage in the legal community and the Osgoode community.

We hope that you will get involved in L&L this year; whether by taking advantage of our services, coming to the JCR on Tuesday’s for a drink, joining a club, or running for an executive position.

If you are looking for a way to get involved, consider trying out some of these:

**Clubs**

Osgoode has more than 50 student-run clubs for you to get involved in! If you don’t see a club that interests you, or there is a club that you want to start, let us know.

Check out legalandlit.ca for a list of clubs and contact information.

**Resources**

Law school is hard enough; there is no need to reinvent the wheel each year. So we have put together some resources to make it easier for you. Check out our used book exchange page (https://www.facebook.com/groups/182164014989130/) or access our summary database (http://www.legalandlit.ca/student-summaries/).
Like Going to a Knife Fight Armed with a Stick

In our final publication of the 2015-2016 academic year, there was an error made in the article "Like Going to a Knife Fight Armed with a Stick", written by Barbara Captijn. Due to an unfortunate and frankly preventable oversight, a subtitle was included with the article that should have not been there.

We sincerely regret and apologize for this error. Ms. Captijn attended bring a Self-Represented Litigant Day at Osgoode Hall and her article sheds necessary light on both the reality of being a self-represented litigant and why they need a place at the policy table. We at the Obiter see this piece as an opportunity to give someone with a very different perspective on the legal system a way to reach the Osgoode community. Additionally, we strongly believe that as many of us will one day see a self-represented litigant on the other side of a dispute, we need to make a point of learning about their experiences.

We are reprinting Ms. Captijn’s piece here and invite our readers to take the opportunity to read and learn from it.

I was pleased to be invited to Osgoode Law School’s “Bring a Self-Represented Litigant (SRL) to Law School Day” on March 14th. Thanks to Dr. Julie Macfarlane of the University of Windsor Law School and Dean Sossin of Osgoode Hall for this opportunity to interact with students and law professors, and share our experiences as SRLs. I arrived early on the day of the event and had some time to wander the halls of this prestigious law school, where photos of graduation classes dating back to the 1920’s are proudly displayed. I felt intimidated about being there, and also some regret at not knowing my late father’s graduation year to search for his photo. I spotted some of his contemporaries, some of whom later became judges, and began to think: what motivates anyone to study law—justice, fairness, love of language, societal good, making a good living…?

I was pleasantly surprised by the warm and friendly welcome we received as SRLs at Osgoode. I wondered what makes these open, kind, respectful and friendly welcome we received as SRLs at Osgoode. I felt intimate returning to the 1920’s are proudly displayed. I felt intimate with the greatest of respect, even though our levels of understanding were very different. What a breath of fresh air.

If statistics show that fifty to sixty percent of the litigants who come to court these days are SRLs, we have a serious access to justice problem. Legal opinion leaders have raised red flags about this for years. But this often leaves problems unsolved and creates psychological and financial hardship for many. But why should law firms lower their fees for ordinary citizens, if they make good incomes from large corporations and the very wealthy who account for most of their revenue?

Unfortunately, the cost of legal assistance is priced beyond the reach of most of the middle class. At hourly fees of $450-750 (ex. HST), or retainers from $30,000-$60,000, few can afford this. Add to this the cost of time spent away from work, and the emotional and financial anxiety litigation brings to entire families.

The day’s events at Osgoode included a warm welcome by the Dean, law student Hannah De Jong, and a team of student “buddies” for each SRL. We attended classes together, shared lunch, and participated in a panel discussion on the SRL experience. I feared they might see us as outsiders, non-users of their services who didn’t understand the rules of the game and caused delays in the system. On the contrary, we were treated with respect and compassion. Many students were genuinely shocked to hear about our experiences. Professors valued our input and included us in class discussions. This was done with the greatest of respect, even though our levels of understanding were very different. What a breath of fresh air.

If this problem is to be properly addressed, it should involve SRLs at the policy table. Victims of the current system need to be heard and understood. We need a collaborative approach to solve this affordability problem and widen the range of legal services to provide equal justice for all.

Our society doesn’t let those accused of violent crimes appear in court unrepresented, because there’s a fear they may not get a fair trial. Why doesn’t this apply to civil courts? Many citizens fear losing their homes or life savings trying to resolve legal disputes in the current adversarial system. Aggressive litigation strategies like withholding evidence, attacking the credibility of witnesses, frequent objections, and procedural roadblocks are all fair game in civil trials. None of this is illegal, but it isn’t fair or balanced.

If winning at all costs is the goal, aggressive litigation strategies are highly successful against SRLs. But this often leaves problems unsolved and creates psychological and financial hardship for many. The Law Society’s rules against “sharp practice” in dealing with SRLs seem to be about as useful as window-dressing.

Continued on page 10.
Canada is currently seeing a revitalized interest in the plight of refugees, which started in early September when the tragic photos of the Kurdi family’s attempt to escape Syria were widely published in the news and shared on social media. Since then, a large number of different non-government organizations, activist groups, and public intellectuals have criticized Canada’s current refugee policies, claiming that more can, and should, be done to ensure that we provide adequate support for refugees. Many of these groups have made policy suggestions to both increase the number of refugees we have agreed to take in and also to speed up the refugee application process.

Many Canadians have expressed eager support for these changes to Canada’s refugee policies. However, there is little discussion on the issues that refugees face once they actually arrive in Canada and become properly admitted as refugees. While the living conditions here are almost certainly better than the ones in their country of origin, refugees still face a number of different systemic challenges that should also be examined and criticized.

One of these challenges involves access to Canada’s healthcare system. Given the journey refugees undergo in order to escape their country of origin, many often require healthcare services soon after their arrival in Canada. However, many of them have no financial resources to pay for the care themselves given the cost of travel and their socioeconomic background.

Fortunately, the Interim Federal Health Program (IFHP) provides low-income refugees and refugee claimants with certificates that enable them to federally-funded health insurance coverage. Through this program, these at-risk populations can access a large range of basic healthcare services, such as urgent or essential healthcare, preventative care, some dental and vision care, and essential prescription medications. This federal insurance is expansive, and is similar in scope to the provincially-funded healthcare benefits that are provided to low-income, social assistance Canadians.

Despite the IFHP’s clear benefits, it is currently facing strong challenges from the federal government. In 2012, the IFHP received budget cuts that severely limited the kinds of refugees who can apply for a certificate, excluding those who were not technically admissible to Canada based on their country of origin, those who failed to file their refugee claims on time, or those who made an unsuccessful refugee claim. Additionally, the majority of the IFHP’s revised coverage focused on urgent or essential services, thus excluding preventative care like screening tests and annual check-ups.

These cuts were immediately felt by the refugee and refugee claimant populations, prompting strong responses from healthcare professionals and social activist groups. Three groups, Canadian Doctors for Refugee Care, the Canadian Association of Refugee Lawyers, and Justice for Children and Youth, sought legal action to reverse those cuts, claiming they were unconstitutional.

On July, 2014, in Canadian Doctors for Refugee Care v Canada (Attorney General), the federal government’s cuts to the IFHP in 2012 were declared invalid because they violated sections 12 and 15 of the Canadian Charter. For the section 12 ruling, the judge held that the cuts constituted cruel and unusual treatment, in particular because they imposed health- and life-endangering treatment on children. For the section 15 ruling, the judge held that it was discriminatory to withhold and limit core health care coverage for individuals based on their country of origin.

As of late 2014, the cuts were successfully reversed, returning IFHP health coverage back to a number of marginalized populations. The federal government has since expressed interests in appealing the decision, especially given the judge’s particularly novel section 12 ruling.

The 2012 cuts to the IFHP should serve as an important lesson when considering the plight of refugees once they get into Canada. Firstly, there are often formal institutional barriers that make it difficult for refugees to obtain essential services. Certainly, organizations that are concerned with the government’s treatment of refugees still worry about unequal access to jobs, shelters, and legal resources.

However, what is equally important are the social barriers that prevent refugees from being treated fairly and as deserving of respect by the broader Canadian public. Many Canadians hold prejudiced and discriminatory views about refugees, believing that these refugees are false claimants who simply want to take advantage of Canada’s healthcare system. Some treat refugees as temporary aliens, deserving our pity but not our citizenship. Still others simply ignore refugees altogether, preventing them from integrating meaningfully with Canadian society and leaving their issues unaddressed. Our social perception of refugees deeply affects our relationship with them, and are often the underlying source of larger issues. Informal beliefs, after all, can serve to justify the creation of formal institutional barriers, such as the cuts to the IFHP in 2012.

As future lawyers, it is easy to devote our attention to reform at the institutional level, where laws, regulations, and social policies affect entire populations. However, it is also important to care for individuals at the social level in order to effectively tackle issues of perception, treatment, and respect. The former guarantees that refugees have a place in Canada, but the latter ensures that they have a community.
Losing Control
Mentally Ill in Law School

Author - Anonymous Osgoode's Student

We here at the Obiter like to think of ourselves as creative. When we realized there was going to be a shortfall in submissions for the first issue, we jumped at the chance to reprint some of the favorites from the 2015-2016 year. This is one of those articles, enjoy!

The Obiter Dicta generally does not publish anonymous articles. A limited exception allows students to publish anonymously exclusively for articles about their mental health experience in law school. This exception exists only for cases where there are concerns directly regarding the risk of exposure or stigma. The Obiter Dicta Executive Board has full and final discretion over whether to publish submissions, and whether to require an author’s name for an article to be published.

- Erin Garbett
Editor-in-Chief

I'm sitting in Family Law when suddenly everything feels wrong. It's as though I shouldn't be there, in class, in law school, and everyone around me knows it. Visually, things look fuzzy and skewed, like I'm looking at things through different eyes. I begin shaking and feel tears in my eyes. Somehow, I don't know how, I manage to delay the sobbing I know is coming and I make it to the end of class. I have another class this day, but I will only be able to have control over this anxiety attack for so long before I break down, and I don't want to fail apart at school. So I go home to fail apart in private. Missing my second class that day only adds to my anxiety, making it that much harder to return to school. This cycle continues until it is near impossible for me to leave my apartment. Making the decision to shower each day is exhausting. Putting on my shoes to leave home makes me tremble in fear. My thoughts swirl obsessively - I am going to fail law school; my partner makes me cry; I am going to fail law school; my partner is going to leave me; none of my friends actually like me; I am simply not enough.

My mental health issues did not begin with law school. I have a long history of depression that began around age ten, though I did not receive an official diagnosis of chronic depression until I was sixteen. I have worked hard to manage and control my depression; I have been in therapy on and off since the age of sixteen, learning coping mechanisms to assist in those times that medication alone was not enough. By the time I began law school in my thirties, I was feeling in control and excited about the new chapter of my life.

Since I began law school I have, generally, been happier than I ever have before. It is amazing to finally discover my passion and fully commit myself to it. I had always imagined that once I was happy, certain behaviours or habits I had developed as coping mechanisms, or self-soothing, would simply fade away as they would be no longer needed. Instead, the behaviours worsened, becoming more and more uncontrollable. By the summer of 2L, what control I held over my mental state was slipping, and that summer I fell hard.

For over a year I had been delving into my mind, trying to figure out why despite feeling happier than I had in years my symptoms were worsening. In what I can only call a stunning revelation, one night I was suddenly struck by the fact that I have an eating disorder. This was intensely shocking. My partner, whom I live with, was with me at the precise moment I had this breakthrough and was immensely surprised. Apparently he had known for some time that I have an eating disorder and had never discussed it with me as I had never discussed it with him. He knows of my battle with depression and my history of therapy and medication, and assumed that I had received a diagnosis years ago. When I told my mother she responded similarly, that she has known since I was young. I was a wreck.

The following weeks were awful. I would drive to work, crying so hard I thought my head would explode, and then do my best to pull myself together so I could enter the office or the courthouse. I felt as though the real me had suddenly woken up, taken a look at what I had done to my body, and was mortified. I was desperate for help. I wanted to receive treatment at CAMH but unfortunately there was a lengthy waitlist. Unable to wait, I went to a private clinic that could see me immediately. I had several appointments there over the course of a week but it was prohibitively expensive and not possible to continue.

I began 3L a complete disaster. In October I finally had an appointment with the doctors at CAMH. Their assessment was that I do not suffer from chronic depression, but suffer from severe anxiety and obsessive-compulsive disorder, in addition to an eating disorder, and the depression I had experienced for most of my life was a result of these illnesses, rather than the underlying condition. My psychiatrist’s recommendation was that I immediately change my medication to one better suited for anxiety and OCD.

So, during the fall semester, I was weaning myself off meds and dealing with withdrawal symptoms (wanting to vomit, unable to sleep, all that fun stuff) while at the same time my anxiety and OCD, which were now completely untreated as my previous medication had somewhat moderated them, raged uncontrolled. For almost two weeks I was unable to leave my apartment. I was crying for hours on end, and when not crying I was always on the verge of tears. Reading was impossible as I could not concentrate, reading the same line or paragraph over and over again. When I was able to drag myself to class I was unable to focus on anything the professor was saying, my mind trying desperately to hold myself together until the class ended. I am sure more than one professor saw me discreetly (I hope) crying in class.

Thankfully Osgoode has phenomenal support systems for people in my situation. Without this support, I believe I would have had to drop out of law school last term, thus not graduating this spring and losing the articling position I have secured for August. I am writing this now so that other students at Osgoode know they are not alone in their struggles. I also implore those that suffer from mental illness to seek out the help and support offered by Osgoode, and York, if you have not already, so that you may be able to better succeed in law school during difficult times. I have decided to not include my name in this article, not because I am ashamed, but because despite continued efforts the stigma surrounding mental illness remains. I will probably have to advise my employer of my diagnoses, but I would like to do that on my schedule, and certainly after I begin articling. Thus, I do not want everyone to immediately know who I am. My friends will certainly know, and for others who may recognize my writing or story, I am happy to talk to you in person if you would like more information, or are in need of support.

I also want to publicly thank Osgoode, Mya Rimon, Ellen Schlesinger and all those who met with me, counselled me, and assisted in my making it through the term. Thank you. I would not still be here without you.
Human-centered design (HCD) is a design method used to develop products and services from the perspective of those who use them. It is an intentional process, but also a creative one. It involves immersing yourself in the problem you are trying to solve, working with the people experiencing the problem, experimenting with solutions, and, most importantly, lowering your defenses and opening yourself and your design team up to candid and uncensored feedback about what you are doing wrong (and hopefully some things you are doing right)!  

For the past two years, the Winkler Institute for Dispute Resolution (Winkler Institute) and the Canadian Forum on Civil Justice (CFCJ), two research institutions that are housed at Osgoode Hall Law School, have been actively involved in initiatives that apply the principles of human-centered design to the justice system. The credit for this work largely belongs to Nicole Aylwin, who is both the Assistant Director of the Winkler Institute and a Research Fellow at CFCJ.  

While we are only beginning to use the HCD process in the justice system, it is being successfully used to tackle hunger and poverty, improve patient experiences in the healthcare system, and provide solutions to long-term unemployment. What makes HCD successful? In HCD users — those who are experiencing the problem — are the experts.  

However, although there are more and more justice stakeholders experimenting with HCD, many skeptics remain. A look at the results of an ongoing HCD project that the Winkler Institute and CFC have undertaken with Yukon Courts and the Yukon Department of Justice demonstrates that using this process can lead to tangible results.  

The project began last fall with a family justice design workshop in Whitehorse through Yukon Courts and the Yukon Department of Justice. Our stakeholders (and now our partners) were interested in learning about the innovation tools they might use to help them respond to the needs of users in the family justice system.  

Over the course of two days, a workshop served as the platform for generating collaborative solutions to the problems experienced by users of the family justice system. One of the key insights emerging from this workshop, which included lawyers, community service providers, judges and members of the public, was that one of the “pain points” for family justice users — particularly those who are unrepresented — was completing the necessary forms. Forms generated stress and anxiety and were just plain confusing. Moreover, not only were the forms stressful and intimidating for the users, but filling out forms was also a point of anxiety for service providers who are often asked to assist with these forms.  

This could have been the end of it. Some interesting ideas generated, a pat on the back for hosting one of those newfangled innovation workshops. Good job to all.  

Yet the Yukon Courts were not prepared to leave the insights they had gained unused. Soon after the workshop we received a request to continue to work with the group to redesign the family law statement of claim using the HCD process. Thus began our Yukon Simplified Form Innovation Project.  

It has been a considerable (and very engaging) endeavor over the past 10 months and there is a report forthcoming. Here are some takeaways from this project, which we hope will serve as an example for others as they experiment with HCD. Stay tuned to read more about the project and our final product.  

The Canadian Forum on Civil Justice is a national non-profit organization that is dedicated to advancing civil justice reform through research and advocacy. The Winkler Institute for Dispute Resolution is a non-profit research institution dedicated to exploring and improving formal and informal methods of dispute resolution.  

This article originally appeared in slaw.ca and has been edited for publication in the Obiter Dicta.
Hello Osgoode! My name is Erin and it is my honour to introduce myself as the Obiter Dicta’s Editor-in-Chief for the 2016-2017 year. From my humble beginnings as a Staff Writer in 1L to running the editing cycle as the Managing Editor last year, I have come to love the Obiter and I am so excited to now be at the helm.

I’d like to take this opportunity in the first issue to answer some common questions we receive about writing for the Obiter Dicta, so let’s get going!

Who can write for the Obiter Dicta?

Just about anyone who is currently or used to be a part of Osgoode Hall. Professors, students, staff and alumni are all welcome to make submissions. Just check your inbox for notifications of upcoming submission deadlines and requirements.

What kind of content does the Obiter Dicta publish?

Just about anything! In addition to articles, we publish movie/album/concert/restaurant reviews, cartoons, stories, poetry, recipes, you name it! As long as what you’ve submitted isn’t offensive or otherwise inappropriate, we essentially publish everything we receive.

The only other exception relates to space considerations. Because we have a rather strict issue size, it is possible that we may not be able to publish everything we receive. If a situation arises where we have too many pieces for one issue, we will contact the excluded piece’s author to explain the situation and ensure that the piece is published in the following issue. This has yet to be a problem but it unfortunately remains a possibility.

What happens to my piece after it is submitted?

This is the part of the FAQs I was most excited about writing. Since I started my time at the Obiter, we’ve never taken the opportunity to give everyone the low-down on how articles are processed once they are received. We haven’t been very open about the editing process, and it’s come to my attention that that needs to change. So here we go! Go go gadget transparency!

Once an article is received, it is first sent to one of our four fantastic Section Editors depending on what section is the best fit (Arts & Culture, News, Opinion or Sports & Entertainment). Section Editors are our first line of defense; they look for style errors (how spaces after a period, dash length and placement, all the really thrilling stuff) spelling mistakes and simple grammar mistakes. At this stage, only light edits are done; the article looks essentially the same. Next the article moves to one of our two Copy Editors. Their main function is to catch anything the Section Editors missed.

The Obiter’s Editor-in-Chief, the Managing Editor and the Creative Director complete the final round of edits. In the final round more substantial edits may be done to fix things such as awkward phrasing, run-on sentences and passive voice. It is NEVER our intention to change your piece into something you don’t like or don’t approve of. If you have any concerns with how your piece was edited, please let us know and we will be happy to discuss republishing your piece. While the Obiter Board has final say on how a piece is edited, at the end of the day we rely on writers to fill our pages and we want to keep you as happy and eager to continue writing for the Obiter as possible!

Throughout the editing process, our current Managing Editor (the fantastic Ian Mason) is behind the scenes, coordinating everything. Did the author forget to include the picture’s source? Ian’s on it. An editor’s running late? Ian’s figuring out how to make it work.

Once all the pieces are edited, they are sent to our layout designer. After the draft layout is done, the Board reviews the draft to look for any errors or other changes that need to be made. Our Creative Director (the phenomenal Kay Wang) coordinates with the layout designer to make sure things run as smoothly as possible. Kay may also do some work on the layout design itself.

Does the Obiter publish anonymous pieces?

Generally, no we do not publish anonymous pieces. At this time, the Obiter has a very small exception carved out for articles that discuss mental health issues as they relate to law school and the legal profession. We made the decision as a Board last year to because we felt it was important to respect that there is still an existing stigma around mental health. By making that narrow carve out, we hope to encourage and protect writers who are willing to frankly and honestly discuss their struggles with mental health. So far the decision has been a great one. We published an excellent piece that received some of the year’s best feedback.

While the possibility exists for additional carve outs, we at the Obiter believe that generally requiring authors to identify themselves forces them to self-monitor and really think about what they are submitting. If you don’t want your name attached to something, should you really send it out into the world? While this many not always work—I have my regrets about publishing an article with both “butt sex” and “vulvas” in the title—it is largely successful and we’re sticking with it for now.

If you are interested in publishing something anonymously that doesn’t fall into the mental health carve out, please email us. We can’t promise we’ll publish your piece anonymously, but we definitely want to chat about it before we make that decision.

That’s it for now folks! Check your inbox for upcoming submission deadlines and meeting times. Please let us know if you have any questions about the Obiter at obiterdicta@osgoode.yorku.ca.

Stay classy Osgoode,
Erin Garbett
Editor-in-Chief
The 2015–2016 Bursary Process Explained

Over $2.3 million in bursary money distributed in the 2015 Fall process

How are the Decisions Made?

SFS reviews in detail the information provided in the bursary application. The process can be described as having two components—an objective and a subjective part.

On the objective end, SFS looks at the difference between a student’s resources and expected expenses. SFS creates an “allowable budget” which it uses as a baseline for expected expenses and requires students to provide justification if there is deviation. Also looked at is the amount of educational debt a student has, whether incurred during or before law school, and in addition, the ability of the student to meet financial commitments for the year is considered, such as how much line of credit is available.

On the subjective end, SFS looks at the written explanation from the student about his or her financial circumstances as provided in Part C of the application. SFS remarked that this section was very important in the final determination but underutilized by students. The overall financial picture is then compared to the situation of other students.

Students are also asked to answer an eclectic series of questions on subject matter such as extracurricular activities or where they grew up. The Office stresses this has no bearing on the amount determination but rather assists in determining if the amount can be taken from specific donor funds rather than from the general pool of funds.

SFS stresses there is no magic resource shortfall or debt number that triggers qualification of a certain bursary amount. The evaluation attempts to group students with similar financial situations together and varies from year to year. While there is no formal reassessment process, the Office commented that it was open to meeting with any student who wanted an explanation or to hear about unexpected financial circumstances that arise during the semester.

Is this Fair?

While any self-reporting system is subject to abuse, the process appears reasonably fair. Expenses are generally uniform because of the “allowable budget”; thus, someone paying extraordinary rent for a three-bedroom would not benefit over others, unless the expense was justified, such as the person needing three bedrooms because they also have a family. The SFS also has an expected debt amount and requires justification which protects against students benefitting from reckless spending. That said, a person could still hide resources despite the honest reporting declaration applicants are required to sign.

Conclusion

Tuition is expensive; this is not groundbreaking news. Unfortunately, with the current resources available, the bursary process is not making a significant difference in the affordability of law school for the vast majority of students. So try to remember your financial circumstances when the Alumni relations office calls for donations in five years’ time.

Special thanks to Alissa Cooper and Nadia Narcisi from Student Financial Services for providing information for this article.
10 Things You’ll Learn as a Court Reporter that You Probably Won’t Learn in Law School

There isn’t a class titled “How to Keep a Straight Face When Someone Lies to You”

There are a lot of things you likely won’t learn in law school. This is not a dig at any of our professors, their pedagogy, or even the Canadian legal education system as a whole. The issue is that education can’t replace real world experience. You don’t learn key networking skills poring though a textbook and sweating your way through an exam. You don’t get practice in dealing with pathologically dishonest clients. You don’t learn how to react when you find out that one of your administrative staff has been botching something very basic for months, if not years. There are also things we don’t necessarily have the means to analyze properly at this point, like the extent to which the lack of women in high-ranking firm positions is rooted in sexism (female law students being in the majority is a new and positive development, but a large firm is very unlikely to make a five-year call partner, regardless of gender). Only so much information can be packed into three years of law school and a year of articling, and most of us won’t have the “privilege” of watching legal examinations unfold while working as a court reporter. You have to learn some things the hard way, or be lucky enough to know someone who can pass on this hard-earned information.

On a related note, you probably don’t need to be Sherlock Holmes (or even Freddy Foreshadowing) to guess that I worked as a court reporter this summer. It was an interesting experience, and I recommend it for any first year student who has the luxury of being able to prioritize experience over money. However, since most law students won’t jump at the chance to sit through dozens of hours of examinations for barely more than minimum wage, here’s ten useful things I learned working as a court reporter.

1. Oaths don’t mean a damned thing to a lot of people. I estimate that at least half of the witnesses I recorded told multiple lies after swearing to tell “the whole truth and nothing but the truth”. One woman claimed she had no jewellery as she covered a gold necklace with her hand, which was doubly foolish because she was wearing a gold watch. I understand that “thou shall not bear false witness” is an awfully archaic way of saying “don’t lie”, but it’s not ambiguous. You don’t have to swear on a Bible, but the willingness of some people to drag a deity into their lies was stunning in its own right.

2. You’re going to be dealing with some real jerks in this business, ranging from belligerent witnesses to opposing counsel. One lawyer told me that a witness once reached across the table and shouted “[expletive] you!” when asked about his work history. One examination featured two lawyers doing everything they could to antagonize each other for 8 hours. I’m too desensitized to be easily surprised by appalling behaviour, but I was so shocked I almost quit on the spot several times.

3. You’re going to deal with some absurdly stupid people. There’s just no nice way to put it. It’d actually be kind of funny if it didn’t waste so much court time. I’ve seen people try to claim millions of dollars in injuries for a car accident that actually couldn’t happen. Some people just hit a car with a sledgehammer. Keeping a straight face takes practice, and it’s actually a necessary skill.

4. You might actually have some sympathy for these nonsense claimants, when you find out part of why they’re making such a nonsense claim. In a lot of cases, you’re dealing with immigrants who are coerced into making these claims to repay the people who arranged for their entry into Canada. They’re victims too, but it’s a hard thing to acknowledge when they’re repeatedly lying to your face long after you have them dead to rights.

5. Be courteous, if not unflinchingly friendly. Few things look worse than a witness showing hostility to a lawyer who is sincerely pleasant. One thing that comes close? Counsel showing hostility to a witness. At least keep it off the record. You’re never going to benefit from looking like a jerk.

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You’re Not Alone

By Ian Maczen Managing Editor

To say law school is a stressful environment would be both an understatement and a statement so ridiculously, blatantly obvious that you’d probably dislocate your jaw trying to say “dubhinh” emphatically enough. I’ve heard someone say “everyone in law school has an anxiety disorder: it’s called law school.” We end up balancing about 500 pages of readings a week with social and family obligations, bill payments, basic housekeeping, and for some incredibly driven and brave souls, work. And you’re also expected to add into the mix stuff like mootling or CLASP or intramural hockey (where – as a goalie – I’m trying to pull off two kinds of networking). To some extent, it’s nothing short of miraculous we don’t all snap at some point in first year and end up standing on the roof of the Ignat Kaneff building, screaming about how the government wants to steal our teeth.

It’s enough to make a sane person crazy, but what if you weren’t exactly “all there” to begin with? Enter me. I’m a big, brash guy of about 30 with an eccentric sense of humour, a forceful personality, and a voice so loud Hutch only asked me to speak up once during first semester. Though most people are too polite to say it (thanks, by the way), I’m sure most people wouldn’t mind if I shut my proverbial pie-hole more often than I do. I’ve also been open about some rather sketchy aspects of my personal history, like bar fights and years spent getting loaded with deviants. With these things in mind, it might surprise people to know that I also suffer from Generalized Anxiety Disorder and Depression.

And that’s what I want to address. This isn’t necessarily some kind of sympathetic to the vast majority of people who don’t have a psychological disorder – law school as an anxiety disorder in its own right aside. The object of this article is to assure those of you who do struggle with mental illness that you are not alone, and frankly, you are needed. Mentally ill people are overrepresented in the legal system, and those of us who have shared their experiences can be both competent and sympathetic advocates. We can also be sympathetic to clients whose legal woes are the result of one really bad day: after all, we have dozens of them every year.

Perhaps the most important thing to tell yourself is that you can make it. I’ve struggled with anxiety and depression since I was 3. The less said about my adolescence, the better. I went to rehab at 19. I keep forgetting how much of my life I’ve been kind of out of a home for reasons beyond my control. 2 months before I started law school, I came home to find my fiancée – who I’d been with for 5 years – had dumped me via note. I almost dropped out in October because I spent more time crying than reading. I couldn’t go to a torts lecture on psychological shock because I feared it would be some sort of trigger. My life was a sad joke and every day a pointless trial waiting to be adjourned for a tomorrow I didn’t care to see. I suffered.

But I kept going.

As I said, it’s important to remember that you’re not alone, not just in the sense that there are other people like you who have rough lives marked my psychiatric issues, but also in the sense that there are people waiting to help you. People want to help you.

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Like Going to a Knife Fight Armed with a Stick

Author: Barbara Captijn

(As a legal writer, blogger and consumer advocate)

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Most SRLs come to court thinking it’s all about getting at the truth. We think if the judge hears our story, justice will prevail. When you’re telling the truth, you’ve only got one story, as the saying goes. You’re not prepared for the opposing party blocking your story with objections, procedural tricks, case law, and opaque legal terminology. Being right and being able to prove you’re right in court are two different things.

It takes years of training for lawyers to acquire skills in cross-examination, research and interpretation of case law, understanding procedure, and knowing the difference between argument and evidence. SRLs seem expected to learn this within a few days or weeks. There’s an asymmetry in information and financial resources, no matter how well-prepared or well-educated the SRL is. It feels like going to a knife fight armed with a stick.

I recently accompanied an SRL to a Licence Appeal Tribunal (LAT) hearing to provide moral support. The claim was for new home construction defects, the claimant was the owner of the house, and the other party was the home builder. The suspense was high and the outcome was uncertain. We had been told it was going to take about three hours. It ended up taking all day. The owner of the house just wanted justice. The builder was just trying to save $500,000.

Where’s the incentive then for law firms to make court proceedings more cost-efficient for the middle class? If they can earn $600-$800 an hour from corporate and very wealthy clients? The taxpaying public is not served by lengthy courtroom disputes, and our court system is already over-burdened. But often, a lawyer’s performance is evaluated by how much money they bring to the firm, and promotions hinge on this.

SRLs have no funding, no lobbyists, legal advisers, media publicit, or political connections. Many members of the legal profession see SRLs as subversives or dangerous. We think there needs to be a more transparent and fair dispute resolution policy. The SRL ‘s family suffered much more than just the $500,000 that got back. There needs to be more education for the public and the courts or judges either. There needs to be a more cost-efficient technology in court proceedings more cost-efficient for the middle class.

As my late father may have said, in the undemonstrative way of parents of his generation, “I’m sure you’ll figure something out.”

10 Things You’ll Learn as a Court Reporter that You Probably Won’t Learn in Law School

6. Speak clearly and loudly. Recording devices often pick up even the slightest sound and what you say sounds like you’re whispering. It’s possible to have court reporters who don’t understand the intricacies of the case.

7. Always be prepared for the unexpected. The court reporter may be out of the hearing, on the phone, or handling something else. They are not trained to think like lawyers.

8. Self-presentation: in a word, NO. Hiring a paralegal to go up against an actual lawyer is never wise. Hiring a paralegal may not cost as much, but they don’t have the same level of training. It’s a mistake to think you can handle it yourself.

9. Make sure you thoroughly question your own client. You can’t necessarily stop someone from lying to you, but if you ask the right questions, you can avoid going into a hearing without knowing the full story.

10. In general, a court reporter learns to be a good listener. They are trained to listen and understand the nuances of the case.

Welcome (back) to Osgoode!

Remember, the 1L summary database is open access to all 1Ls! However, if you want an upper year summary the page is password protected. You need to submit a 1L summary to L&L to get access to the page.

Events

L&L provides a number of services as well, including designing and selling Osgoode clothing (you can buy it in the MDC), and making a yearbook. We also coordinate your student health plan with York University. One of the new(er) things you should know about the health plan is that it is opt-OUT. If you would like to opt out of the health plan this year please let us know. You can come by the L&L facebook.com/groups/150651345045174/)

JCR Bar nights every Tuesday, and Pub Nights every Thursday. We will send out an email each week with these events.

Services

We hope to see you at some (or all) of them! If you have any questions, comments, or concerns this year please let us know. You can come by the L&L office (Room 004FL), email us, or stop us in the halls - one of us is almost always loitering in Gowlings Hall!
What To Do With Auston Matthews?

Dr. Kenneth Lam’s Two Cents As Arm Chair GM: Part One

On 24 June 2016, Toronto Director of Player Personnel Mark Hunter—who has since been promoted to the position of Assistant General Manager—walked up to the podium at the First Niagara Center in Buffalo, New York and with the following words promptly affirmed the worst kept secret since the Maple Leafs won the draft lottery back on 30 April 2016: “Toronto is proud to announce, from Zürich, Men’s League Switzerland, from U.S. program, Auston Matthews.”

Choosing Matthews with the first overall selection in the 2016 National Hockey League (NHL) draft was the easy part, especially given the Leafs’ positional need down the middle as Toronto has not had a true number one centre since the departure of long-time Maple Leaf captain Mats Sundin following the 2007-2008 season. While there had been talks about how Finnish winger Patrik Laine—who ended up being taken by the Winnipeg Jets with the second overall selection—made a late charge that narrowed the gap between himself and Matthews as the potential top pick, Matthews appeared to be the prospect that the Leafs had targeted all along. In Toronto General Manager (GM) Lou Lamoriello’s words immediately after choosing Matthews, “Very rarely are you able to get a centre with the size and strength that he has who is a complete player. He is a two hundred foot player. We are just delighted. I think it is just great for the Toronto Maple Leafs... and our feelings are just a great future.” Indeed, Lamoriello’s response seemed to echo Calgary Flames President of Hockey Operations Brian Burke’s view before the draft lottery even took place, who remarked: “Auston Matthews is the consensus No. 1 pick, league-wide. I’m hearing this late whispering that he’s not, and I think those are teams trying to throw people off the scent. I think he’s a lock.”

Whereas selecting Matthews first overall may have been a no brainer for the Leafs so to speak, a more difficult task for Toronto was getting Matthews signed, which was done on 21 July 2016 when the two sides finalized a three-year deal that would see Matthews earn $3.775 million annually if he attains all bonuses—essentially identical to Connor McDavid and Jack Eichel’s contract. Still, the biggest unresolved question is what to do with Matthews when the season opens? To this end, allow me to present three scenarios to you along with insights.

**Scenario One:**

Assign Matthews to the American Hockey League (AHL) before or at the conclusion of training camp and have him play for the Toronto Marlies for the entire 2016-2017 NHL season. He can then learn the North American pro game before debuting with the Maple Leafs in the 2017-2018 season. However, the probability of this scenario unfolding is extremely low. Based on the fact that Matthews excelled with the ZSC Lions in the National League A (NLA) this past season on route to posting 24 goals and 22 assists for 46 points in 36 regular season games before registering 3 assists in 4 playoff games, he has already proven that he can play with men and outshine the overwhelming majority of his completion. In other words, there is only minimal yield at best by exiling Matthews to the AHL as he is NHL-ready by all accounts.

**Scenario Two:**

Give Matthews a taste of NHL actions but limit him to nine games so as to avoid burning the first year of his three-year entry-level contract. There are three variants to this possibility: (1) have Matthews start the season with the Marlies, then recall him to suit up for the Leafs at some point during the season, and then sent back down to the AHL afterwards once he played his ninth game for the Maple Leafs; (2) allow Matthews to start the season with the Leafs where he can play the first nine games of the season before dispatching him back to the Marlies whereby he can play the rest of the reason in the AHL; as well as (3) get Matthews to play for the Marlies right from the get-go and keep him in the AHL until the final nine Maple Leaf games at which time he will be called up to play for and finish the season with the Leafs. Considering that eliteprospects.com describes Matthews as a generational talent and International Scouting Services (ISS) refers to him as a franchise centre/player, Toronto will not want to upset Matthews and his agent by nickel-and-diming them for the sake of extracting nine additional games out of their future face of the franchise. Therefore, the likelihood of this scenario developing is close to nil.

**Scenario Three:**

Put Matthews into the Maple Leafs lineup for the entire eighty-two game season. Case closed. Unlike the previous two scenarios, this one is highly probable. Many scouts argued that Matthews would have challenged Eichel for the distinction of being the second overall pick in the 2015 NHL Entry Draft behind McDavid, had Matthews been born two days earlier and met the eligibility cut off date for last year’s draft. As both McDavid and Eichel played for the Edmonton Oilers and Buffalo Sabres for the whole 2015-2016 season (notwithstanding injuries) respectively and tasted success in the process, there is no reason why Matthews should not be given the same opportunity with the Toronto Maple Leafs in the upcoming 2016-2017 season. Bottom line: no teams would purposely suppress their future best player by delaying the start of his NHL career so the odds of this scenario unfolding is close to a virtual certainty. Indeed, when asked whether he is confident the eighteen year old Matthews can become a franchise number one centre in the NHL, head coach Mike Babcock responded in the following manner without hesitation, “Oh, I think so. Elite hockey sense. Big body. Elite drive. Smart guy. Comes from a good hockey family. He’s a special player.”

**Final Words:**

All-in-all, it seems that Babcock has all put penciled Matthews into the Leaf lineup for good so Leafs Nation can expect to be treated with some high-light play from the Scottsdale, Arizona native come this October. But which line would Matthews end up playing on and who would he play with as far as line-mates are concerned? Stay tune for Part Two of my article in the next issue!
The Davies summer experience?

Ask our Osgoode students.

Stuart Berger  
Class of 2016

Dajena Collaku  
Class of 2017

Eyten Dishy  
Class of 2017

Jaimie Franks  
Class of 2016

Russell Hall  
Class of 2017

Cadie Lowe  
Class of 2018

Megan Moniz  
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Jerry Duyang  
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Diana Pegoraro  
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Ghaith Sibai  
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Class of 2017

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