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Raising the Bar

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Committee Leadership

In This Issue

Featured Article

Actions for Annulment of International Arbitral Awards: Recent Trends in the French Courts

By Elsa Rodrigues

As with any alternative dispute resolution mechanism, the purpose of arbitration is to end a dispute between two or more parties without resorting to court action. For the sake of the autonomy of arbitration and its efficiency, it is therefore necessary to limit the control of national courts on the decisions taken by arbitral tribunals. This is why arbitral awards are considered as being protected from the judge's control.

However, in no circumstance should arbitration be used as a means to conceal serious offenses—such as corruption or money laundering—or cause a party to suffer a breach of one of its fundamental rights, such as the right to be heard by an independent and unbiased tribunal. To that extent, review of arbitral awards is expected and necessary.

In its quest to reach the right balance in this review process, the Paris Court of Appeal—which has jurisdiction over actions for annulment of international arbitration awards—has shown a noteworthy trend in recent years, being more inclined to apply scrutiny and to annul questionable awards.

Actions for Annulment of International Arbitral Awards Under French Law

In French international arbitration law, actions for annulment are set out in the French Code of Civil Procedure as the natural action to take against an award. Appeals are prohibited, and are available only in domestic cases, with the agreement of the parties.

An award that is annulled by the French Courts has no existence in France and *a fortiori* is not capable of enforcement within the French national territory.

In the context of an action for annulment, the Court is not allowed to review the substance of the award. The Court may only review whether one of the six grounds for annulment—exhaustively listed in the French Code of Civil Procedure, at Article 1520—is established. These grounds are:

- If the arbitral tribunal wrongfully accepted or declined jurisdiction over the matter;
- If the arbitral tribunal has not been properly constituted;
- If the arbitral tribunal ruled without complying with the mandate conferred upon it;
- If the right of the parties to be heard has not been complied with (due process has been violated);
- If the recognition or enforcement of the award is contrary to international public policy;
- If the reasoning of the arbitral tribunal is not set out in the award or if the award does not mention the date when it was handed down, or the name of the arbitrator(s) who rendered it, or has not been duly signed or has not been approved by a majority of the tribunal.

The exact same grounds, and only these, may be raised before the Paris Court of Appeal to challenge a decision ordering the recognition or enforcement of an award rendered abroad (Article 1525 of the French Code of Civil Procedure).

A major step towards arbitration primacy was taken with the Decree of January 13, 2011, reforming arbitration law in France (No. 2011-48), which states that no action (against the award itself or an order authorizing its enforcement) may suspend the immediate enforcement of an award in France (Article 1526 of the French Code of Civil Procedure). A specific action before the First President of the Court would have to be brought to request a derogatory suspension on the basis of specific circumstances—more precisely, if it is proven that the immediate enforcement of the award would severely damage the party's rights.

In a similar vein, and with the same objective of giving full effectiveness to arbitration awards and avoiding opportunistic claims, a principle well-known in common law jurisdictions has been expressly integrated into the French Code of Civil Procedure by the 2011 reform: estoppel. Article 1466 of the Code (applicable to domestic and international arbitration by reference made on Article 1506) states that "*a party that knowingly and without legitimate reason refrains from raising an irregularity in due time*

before the arbitral tribunal is deemed to have waived its right to make a claim on that basis". Therefore, the ground for annulment must be raised as soon as possible before the arbitral tribunal in order for recourse against an award to be admissible.

It clearly follows from the above that the French approach is to preserve arbitration autonomy and thus that arbitral awards must not be questioned unless serious grounds for doing so exist. Immediate and concrete recognition and enforcement should be the rule and challenging such decisions should be the exception.

Recent Findings

As a logical consequence of the above, the prospects of success of an action for annulment are quite low, as arbitration awards are considered to be quite resistant to attack.

And yet, the analysis of judgments handed down by the Paris Court of Appeal over a fairly recent period raises questions about the current judges' approach to actions for annulment.

It shows that the Court exercises an extensive review of the awards and is inclined to call awards into question.

In fact, over the last few years, the rate of awards annulled reached 20 percent, for the actions filed in 2016, and 26 percent for those filed in 2017. The trend continues as, from January to October 2018, three awards had been annulled, out of fifteen actions for annulment (20 percent).

Such statistics raise serious questions among arbitration practitioners as they challenge the classical view that the French courts will grant full autonomy to arbitration and that, as a result, annulments of awards in France are rare. To the contrary, it now appears that such annulments are to be considered unusual events no more.

One may wonder whether French judges are still "arbitration friendly". We think so.

The current situation is the result of a change in the intensity of the review of actions for annulment. This change has emerged in the context of investment arbitration, but is gradually extending to arbitrations of all kinds, as a necessary evil, in order to prevent arbitration from being used and abused by various unscrupulous and unwanted characters.

Enhancing the Reliability of Arbitral Awards

The judge in charge of annulment actions against arbitral awards sits as the judge of the award, with a view to accepting or rejecting the integration of this award into the French legal system, and not as the judge of the matter that was submitted to arbitration by the parties (1st civ. ch., *Cour de cassation*, Feb. 12, 2014, No. 10-17076). That is the reason why, in principle, the judge in charge of annulment actions is prohibited from reviewing the merits of the challenged decision (1st civ. ch., Cour de cassation, Oct. 6, 2010, No. 09-10530; 1st civ. ch., Cour de cassation, June 29, 2011, No. 10-16680).

That being said, it has long been established that, to the extent that they concern one of the grounds for annulment expressly listed (and only to that extent), no limits exist on the Court's ability to inquire as to any factual or legal circumstance regarding the said ground (1st civ. Ch., *Cour de cassation*, Jan. 6, 1987, No. 84-17274, *Southern Pacific Properties Limited v. Arab Republic of Egypt*).

In practice, when a judge is required to rule on a claim for annulment of an award, the intensity of the review will vary, depending on the ground raised by the parties bringing the claim.

As far as grounds relating to the arbitrator's jurisdiction, the constitution of the arbitral tribunal, or a breach of due process are concerned, it is acknowledged that the judge may proceed to an extensive review and take into account all relevant factual and legal circumstances. Although the court does not review the merits of the case, it is authorized to refer to any of the factual and legal circumstances of the case in order to rule on these specific issues, in the line with the abovementioned case law.

However, with respect to an arbitrator's alleged violation of his mandate and breach of international public policy, the review of the court is supposed to be merely formal.

Concerning the mandate of the arbitral tribunal, for instance, the court will review whether the parties' choice of applicable substantive law has been applied, but not whether the law agreed upon by the parties has been applied in an erroneous manner by the arbitral tribunal.

When the ground alleged is related to a breach of international public policy, the courts must only ensure that the ruling of the case does not contradict public policy and they do not review the substance of the case.

To meet this constraint, the French courts have set out the principle that the court's scrutiny shall be limited to "*blatant, effective and concrete*" breaches of international public policy (Paris, Nov. 18, 2004, *Thalès Air Défense v. Euromissile*; 1st civ. Ch., *Cour de cassation*, June 4, 2006, No. 06-15320, *SNF SAS v. Cytec Industries BV*).

Due to this prerequisite, it would be expected that the vast majority of actions for annulment brought on that basis would be dismissed, as was the case previously, and in particular in the cases cited above.

Interestingly, the court has taken a different approach in recent cases, favoring a greater review, in particular when criminal matters are at issue.

As an insightful example, in a case where there were allegations of money laundering, the court conducted a deep analysis of the case, before concluding that there were "*serious, precise and consistent"* matters in evidence that such an offense had been committed, and that the award that would lead a party to benefit from the proceeds of criminal activity would "*manifestly* [and no longer "blatantly"]*, effectively and concretely*" breach international public policy (Paris Court of Appeal, Feb. 21, 2017, No. 15/01650, *Republic of Kyrgyzstan v. Mr. Valeriy Belokon*).

In a recent case, and despite the fact that there was no link whatsoever with France, except the seat of arbitration, which was Paris, the Court of Appeal went one step further and referred to an expert analysis of foreign law (the law of Laos) to rule that the award should be annulled because the breach of foreign law would violate French international public policy (Paris Court of Appeal, Jan. 16, 2018, No. 15/21703, *MK Group v. SARL Onix*).

The Court's determination now goes as far as requiring a reopening of the debate to hear the parties and to obtain further exhibits if it deems this necessary to consider a contract allegedly entered into for corrupt purposes (Paris Court of Appeal, April 10, 2018, *Alstom Transport SA et Alstom Transport UK Ltd v. Alexander Brothers Ltd*).

In short, French courts do not tolerate that arbitration be used to support or conceal criminal practices, as it has been frequently alleged in the past. To prevent such situations from arising, the court will carry out the review that it deems necessary and, as the case may be, will annul arbitral awards.

The same strictness is applied when the court rules on allegations of a lack of independence on the part of an arbitrator. Awards are annulled when an arbitrator fails to reveal any circumstance that may create a reasonable doubt as to his or her impartiality and independence. In 2018, two awards have already been annulled on that ground (Paris Court of Appeal, March 27, 2018, No. 16/09386 and Paris Court of Appeal, May 29, 2018, No. 15/20168).

The current approach of the French courts – which some describe as too strict and intrusive – is in fact a way of purging arbitration of the criticisms that are regularly made of this dispute resolution mechanism. The trend observed is to be welcomed, since it brings greater confidence in arbitration. It seems that the French courts are intent on preserving their reputation not merely as "arbitration friendly", but as "clean arbitration friendly".

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Cloudy with a Chance of Rain

By Colleen Hayes

I think we can all agree, the first year of practicing law is pretty terrifying. You feel like you don't know anything, but that everyone around you somehow knows everything. Luckily, as you become more confident in your legal skills, that initial panic lessens. But as this initial panic lessens, it is replaced with a new anxiety—business development.

What exactly is business development? For me, my first few years of practice (like most new associates) were devoted to researching, writing, and reading the rules of Civil Procedure (over and over again) to make sure I didn't miss a deadline. But, in the last few years, I have realized the importance of business development. It can be difficult as a young attorney to find a balance between your legal work and developing business, but if we want to "make it rain" one day, what we do today will greatly affect tomorrow's forecast (pun intended). Ultimately, business development is finding what works best for you; here are some of the things I have found helpful.

1. Attend Young Lawyer Conferences

One of the things I find beneficial is attending conferences with other young lawyers. First, these conferences are a great opportunity to work on your networking skills in a low-pressure setting, but more importantly, they offer a chance to get ideas on how to develop business from other young attorneys. Plus, these conferences are designed to address issues that all young lawyers face. While this article is not an advertisement for the DRI Young Lawyers Seminar (well, it is a little), last year's DRI Young Lawyers Seminar was a program devoted to how young lawyers can build their brand. Conferences like the DRI's Young Lawyers Seminar can offer young attorneys useful insight and guidance for figuring out how to traverse this next leg of our career path.

2. Find a Mentor

Everyone always talks about the importance of finding a mentor, but it doesn't make it any less true. Finding a mentor can provide you an inside look at how to market and develop clients. As a young attorney, I have found it extremely beneficial to have a mentor—especially when it comes to business development. When I started practicing law, I didn't know what it meant to market to clients. Luckily, I work with a partner who has invited me to participate in numerous marketing events. Marketing, like deposition taking, is a skill. You get better the more you practice. So being given the opportunity to attend marketing events and meet clients, with an experienced attorney, has been invaluable. While not everyone may have the opportunity to go to marketing events, this doesn't mean you can't find an experienced attorney who would be willing to share their marketing tips and tricks with you.

3. Get Involved

Extracurriculars are still important. Being a well-rounded attorney means getting involved in non-work organizations and activities. When you join organizations, such as your local defense bar, or your school's alumni association, you get the chance to make connections with people you might not otherwise have met. Just like high school, the legal community is small, so getting involved and meeting your peers is a great way to raise your profile in the legal community.

There is, however, a caveat to getting involved. While getting involved is great, don't join organizations just for the sake of joining. Only join organizations if you are able to meaningfully commit your time to them. We're all busy with life and work, and it's very easy to become overextended, and while being a member of a lot of organizations may look good on a resume, you're likely missing out on the benefits that being a member of these organizations can offer. So don't just join, get involved.

4. Take on a Leadership Role

When you devote your time to a few key organizations, this allows you to take on leadership roles. I am lucky enough to be on the DRI Young Lawyers Steering Committee, as well as the executive committee of my city's local defense association. Taking on a leadership role, as a young attorney, presents another great opportunity to be an active participant in the legal community, as well as presents opportunities to meet other attorneys, judges, and potential clients in non-work settings.

5. Write Articles

Write. Write. Write. Writing articles is one of the best things a young attorney can do. Not only does writing help get your name out in the legal community, but it can also be a networking tool. Writing allows you to create a specialization. Your articles can demonstrate your knowledge and skill in an area of law. Whatever type of lawyer you want to be, articles can help establish your brand to your potential future clients.

6. Use Social Media

Doing everything above is good. Having people know what you're doing is better. Having a lot of people know what you're doing is best. Unsurprisingly, one of the best ways to share your achievements is through social media. One of the hardest things for me is remembering to post on my LinkedIn account. But without posting, people can't see all the great things you're involved in. So make sure you're using social media to share your articles, post pictures of your involvement in activities, and share your achievements. Let people, including potential clients, know who you are and what you're doing.

7. Network

Ultimately, everything above is just a fancy way of saying we need to network. But we need to make sure we network meaningfully. For me, this has meant remembering when I meet someone, to make sure we exchange information (always carry business cards), so I can follow-up with them. Following up can mean anything from connecting on LinkedIn to sending them an article I think they may find useful. It's all about making connections.

At the end of the day, I think what has worked for me is simply trying to find ways to put myself out there, because you never know what, one day, will make it "rain" for you.

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Sorry, but I Have to Work This Weekend

By Samuel P. Heaney

Ever had to utter those words? You are not alone. It is no secret that young professionals, especially those in the legal field, often find themselves working on weekends, late into the evenings, and at other times in which they likely would rather be doing something else. Then, the magical three words (two, based on the hyphenated adjective, but who's counting) get thrown around when describing what young professionals want most: work-life balance.

Can such a balance be achieved? It depends. The biggest factor is how one defines "work-life balance." For the purpose of this article, such a balance is one where work does not dominate the young attorney's life and the young attorney is able to do things outside of work that makes the young attorney feel both whole and refreshed.

The following factors should be considered in helping one achieve a better work-life balance.

Learn to Say No

This is much easier said than done, especially when you are fresh out of law school and understand that you really have no say when it comes to work that is assigned to you. Hell, you can be ten years out of law school and it can still be difficult to say no to work when you are already swamped. But, in an attempt to achieve some type of balance where you do not feel like you are drowning, it is important to know what you can and cannot take on. Sure, there will be some work that you cannot say no to as you may be the only one with knowledge of the case or your expertise is especially needed for the requested work; however, if the work is something that another associate or attorney in your office is capable of handling, then it would not hurt to see if that associate or attorney could do just that.

Likewise, saying no does not necessarily mean turning down work from the start. Rather, it can be accepting the work and knowing that you can delegate the work. Delegation can be difficult to grasp at first, but over time, it

will become easier and second nature. At the same time, by delegating work, you get the whole team involved instead of having additional work added to your already-full plate.

Prioritize Your Personal Life

Given the deadline-driven industry we are in, we often find ourselves putting off different matters based on their deadlines. We see that a response brief is due in ten days, so mentally we might think we have ten days to complete the work (which *is* technically true). However, there may be other "deadlines" we need to consider, such as a child's game, recital, date with a spouse, or just something on television that we would like to watch. Regardless of the specifics of the activity, it is important to consider that activity when determining when to complete work (here, the response brief). By completing the work at a time that does not conflict with the personal activity we would like to attend or participate in, we can experience a better work-life balance.

Communicate

Communication is an easy concept and something that may seem too obvious to consider. However, a lack of communication is often the reason why we might feel buried at work. By communicating with the attorneys we are working for and with, we can know exactly what is expected of us, and this extends to both the substantive work to be drafted as well as the deadlines for said work. Further, communication also pertains to working with opposing counsel. While some opposing counsel may be more difficult to work with than others, communicating with opposing counsel is important for your work-life balance as you may feel less burdened at work if you are able to extend a deadline, such as a deadline to designate experts. Whatever the case may be, communicating at work effectively (or ineffectively) can play a role in shaping your work-life balance.

Know Your Firm/Company

Brush up on your law firm's/company's policies and rules so that you know as much as you can about the ins and outs of the firm/company. For example, you or your spouse may be expecting a child. Do you know what your firm's/company's maternity and paternity policies are? Do such policies exist? Also, it is helpful to know the bonus structure of your firm/company, so you are aware how many hours you are expected to bill or what type of work needs to be completed in order to qualify for a bonus.

In addition to knowing your firm's/company's policies and rules, it is also important to understand your firm's/company's culture. Each firm and company has its own culture. Whether it is a billable hours requirement, the expectation to travel a considerable amount, or just the personalities of the lawyers in your office, all of these things can have an effect on your work-life balance. If you do not enjoy your firm's/company's culture, then there is a good chance that you dread going to work, which in turn affects your work-life balance. Likewise, the converse is true if you enjoy working with the people at your firm/company.

Take a Vacation

Vacations are a great way to reset. You have the ability to clear your mind, enjoy yourself, and experience new things. The most important thing is … do NOT make your vacation about work! Checking your phone, laptop, or iPad every five minutes while on vacation is not a vacation. Take the free time you have and enjoy yourself. After all, you earned it.

By no means is this list exhaustive, but taking the necessary steps to achieving a better work-life balance can go a long way. It also may help give you your weekends back!

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Leadership Note

The Chair's Corner: New Year, New Ideas

By Baxter D. Drennon

What good is an idea if it remains an idea? Try. Experiment. Iterate. Fail. Try again. Change the world.
– Simon Sinek

For DRI, the end of each of October signals the start of a new year. For the Young Lawyers Committee, the end of the DRI Annual Meeting in San Francisco meant new leadership. During that meeting, Josh Webb became the immediate past chair of the committee, I moved up to the chair position, Shannon Nessier was promoted to first vice chair, and Stephanie Wurdock was appointed to second vice chair. In addition, we have many new leaders throughout the Young Lawyers Committee.

Based on the work of the Young Lawyers Task Force earlier in 2018, our focus this year will be on those things that "connect, develop, and empower young lawyers so that they have a personalized platform to thrive."

What does that mean? What does that look like?

Primarily, it means providing young lawyers with information to help them develop skills in the areas of leadership, business, practice development, and personal wellness. We will do that in a couple of different ways. First, we will continue to expand the information in Raising the Bar. You can expect to see articles that will help you in these areas. Next, DRI is working to expand its library of on-demand content. Soon, that library will include on-demand videos addressing many of the "how tos" on making and thriving as a partner. (You might have also heard that DRI has started a new podcast series that includes interviews of leaders of the defense bar.) Finally, in 2018, we will offer a bi-monthly book club focused on leadership and business development. Every other month a leader in DRI will pick his or her favorite book on those topics and lead a conversation on the book.

In addition, we will continue to improve on what is already the best networking and CLE opportunity for young lawyers. The 2019 Young Lawyers Seminar will take place in Nashville, Tennessee, June 26–28, 2019. Playing on our Music City location, the programming theme of the seminar focuses on ensuring that attendees are ready for the main stage of their career. Leading a MDL, securing the big client, and giving a closing argument in a million dollar case are all skills that you can learn at the Seminar. Mark your calendar, put it in your budget, and make plans to attend the Seminar.

Finally, we want to ensure that every member of the Young Lawyers Committee has a voice. Do you have an idea on how we can better serve young lawyers? Share it with me. At best, practicing law can be trying at times. Let's work together to make it better and more enjoyable.

Baxter D. Drennon is chair of the DRI Young Lawyers Committee. He also serves DRI as a member of the Membership Committee and the 2019 Annual Meeting Steering Committee. Baxter is a partner at Wright, Lindsey & Jennings LLP in Little Rock, Arkansas, who focuses his practice on both product liability and transportation litigation. Baxter can be reached at BDrennon@wlj.com"

DRI Young Lawyers Member Spotlight

Chris Horkins

1. How and why did you first get involved with DRI?

My first mentor at Cassels was Glenn Zakaib, who I have often referred to as the "Canadian godfather" of DRI. Glenn has been actively involved in DRI since the 1980s and is one of those guys that everyone seems to know at DRI conferences. In addition to taking me under his wing and getting me involved in his class actions and product liability practice, Glenn brought me along with him and two other lawyers from our firm to the Product Liability conference in my first year and made sure there was firm budget available so that I could attend. Since then, I've attended Products every year, have

spoken at the Young Lawyers' session and have recently gotten involved in the Committee leadership. Although Glenn recently left our firm, I'll always be grateful for his mentorship and introducing me to DRI.

2. What DRI committees (other than Young Lawyers) are you most interested in, and why?

The Product Liability Committee was my introduction to DRI and is still my favourite. About a third of my practice is defending product liability claims, predominantly in the automotive sector, so that's always been the most relevant for me. After several years, my Canadian DRI compatriot Geoff Moysa finally convinced me to come to Young Lawyers, which is making a strong push.

3. What is your favorite part about being a lawyer?

As much as I enjoy crafting arguments and written advocacy, the most fun thing we do as lawyers is presenting a case in court. I've always tried to grab any opportunity, big or small, to throw on my robes (yes, we wear robes here… no wigs though) and get on my feet in court.

4. What habits or practices do you have that have helped you be successful in your legal career?

It's not really a "habit or practice" but I'm very lucky to come from a legal family with both of my parents having had a career in litigation and now sitting as judges in Toronto. Being able to talk through legal issues with them and understand how they approach a case has really helped me understand "how judges think" and how to craft arguments to be as persuasive and helpful to the court as possible.

5. What has been your biggest success in your legal career thus far?

I was recently co-counsel on a leading decision in franchise law at the Ontario Court of Appeal. I argued the appeal with Geoff Shaw, a senior partner from our firm, who asked me to take on a large portion of the oral argument before three senior justices at the Court of Appeal. We put in a ton of work to overturn a result from the court below that was causing a lot of concern in the franchise industry. It was very gratifying to see the result come back in our favour!

6. What is the most important piece of advice you have been given related to practicing law?

From a former Supreme Court of Canada Justice (I will probably butcher this in my paraphrasing): Advocacy is part technical and part motivational. You have to get the law right *and* motivate the decision maker to want to find in your client's favour. You can't win without both. Your client can be sympathetic, but if you haven't dealt with the ten appellate cases against you, you'll lose. Similarly, you can be right on the law backwards and forwards, but if the judge thinks your client is a scoundrel, they will probably find a legal avenue to find against you.

7. How have mentors helped shape your legal career?

I've had so many great mentors at Cassels. Other than Glenn, who I already mentioned, Pete Henein, who now runs our firm's Product Liability practice and is quite active in DRI, has been very supportive in pushing me to take leadership on files and getting involved with DRI. We have great partners in our firm's litigation group who, in my experience, are always looking to give associates opportunities to progress and develop as advocates.

8. When you are not practicing law, what do you enjoy doing?

I love music (all kinds, rock, hip-hop, electronic, even country) and try to get out to concerts as much as I can. I'm a diehard fan of the Toronto Maple Leafs and Raptors and am often at the Scotiabank Arena for games. I also love reading fiction and am in the middle of a several years long sci-fi and fantasy binge (just finishing Cixin Liu's *Remembrance of Earth's Past* trilogy—so good. Recommendations welcome.)

9. What is the greatest concert or sporting event you've ever been to?

Greatest concert is either Arcade Fire on Toronto Island in the summer of 2010 (the year they released *The Suburbs*), or the Tragically Hip opening the new arena in their hometown of Kingston, Ontario, in 2007 during my last year of University.

Greatest sporting event would be the Toronto Maple Leafs playing the Detroit Red Wings outdoors at the Big House in Ann Arbor, Michigan, on New Year's Day 2014. The Leafs won 3–2 in a shootout in the snow in front of 100,000 fans. Just don't ask me how the rest of that season went…

10. If a fellow DRI member were to visit your hometown, what is what thing they must do?

Get out of the downtown core! Toronto is a city of neighbourhoods and all the best stuff requires a little extra exploring to find—but it's well worth it. This isn't even a hypothetical. When DRI hosted the Commercial Litigation Seminar in Toronto a few years ago, we made sure to take some of our good DRI friends out for dinner on Ossington. If I had to give a few recommendations: Toronto Island and Trinity Bellwoods park if you come in the summer,

Kensington Market, Sam James Coffee Bar, the Art Gallery of Ontario; oh, and make sure to get an authentic Toronto-style hot dog from one of the many street vendors (the world's best)!

Chris Horkins is an associate, and as of January 1, 2019 will be a partner, in the Advocacy Group of Cassels Brock and Blackwell LLP in Toronto, Ontario, with a broad litigation practice including product liability, franchise, securities litigation, insolvency and class actions defense. Prior to joining Cassels Brock as an associate in 2012, Chris was both a summer and articling student at Cassels Brock. Chris is an active member of DRI and is currently the Marketing Chair for the Manufacturers' Risk Specialized Litigation Group of the Product Liability Committee. Chris regularly attends the DRI Product Liability and Young Lawyers seminars and has been a speaker at the DRI Product Liability Young Lawyers Breakout session. Chris can be reached at chorkins@casselsbrock.com

Membership Minute

2019 New Year Recruitment Push

By Alie Van Deman

The Young Lawyers Membership subcommittee is proud of each DRI Young Lawyers Committee member for your 2018 recruitment efforts! We are still tallying the recruitment numbers this year, but we are feeling confident that we met the 2018 recruitment goal. We are looking forward to awarding the $100 Visa gift card to the person that recruited the most new members from October 22 through December 25, 2018 (provided by Gerber, Ciana, Kelly, Brady, LLP), as well as DRI CLE credits to members for their efforts. Thank you so much for your dedication to the growth of the Young Lawyers Committee!

With the beginning of a new year, we want to get a head start on the Young Lawyers' recruitment goal for 2019. Our first recruitment push will be January 1 through March 20, 2019, and the Membership Committee has decided to start a new recruitment tradition by awarding the most successful Young Lawyer recruiter with a one-of-a-kind, priceless trophy to be admired by all other Young Lawyers. You definitely don't want to miss out on an opportunity to display this beauty, so go ahead and make a list of all the colleagues you can recruit to join DRI and the Young Lawyers Committee. As a reminder, to receive credit for a new member, remind your recruit to list your name in the "referred by" section and "Young Lawyers" to the recruiting committee section of the application. All DRI new members that you recruit—not just those that quality for the Young Lawyers Committee (admitted to the bar for five years or less)—will help you win prizes.

When recruiting, don't forget to mention that new members receive a $100 CLE credit and new young lawyer members receive a free seminar attendance certificate. A few other perks to DRI membership include discounted loan refinancing through Laurel Road, and don't forget about that trophy!

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Jumping into Therapy

By Samantha Woods

I've never been to see a therapist. And while I probably know people who have, I can't tell you who they are. It just isn't something that I've ever felt comfortable talking about. As lawyers, I think we all tend to shy away from talking with our colleagues about mental health issues. But if I'm really honest with myself, I know that our profession is not better for this type of "pretend everything is fine" behavior. In fact, studies show that lawyers struggle with various different types of mental illness at rates much higher than our non-lawyer peers. And, as a rule, the research shows that we don't talk to each other about it.

While I was aware of these statistics, I had never actually considered what role, if any, therapy could play in keeping my mental health in check. Then I traveled to San Francisco for the DRI Annual Meeting and attended the Young Lawyers presentation put on my Stephanie Wurdock and Greg Pottorff in which Stephanie and Greg spoke about ethical ways to manage stress. The entire presentation was great, and I hope you were there to see it, but one particular comment by Stephanie stuck with me in the weeks after we returned. She advised that we should all have a regular therapist. Before that, I'd never thought about having a therapist. While I do experience times of stress, I've been lucky to never experience a crisis in my life that pulled me toward therapy. Stephanie's comment, however, made me think about therapy differently. Maybe I should consider therapy for mental health maintenance—much like I go twice a year to the dentist for teeth cleaning—rather than for crisis situations. That raised other questions: How do you even go about getting a therapist? How often do you go? What do you do once you get there? So, I did some research, and this article is intended to tell you everything you need to know to jump into therapy for the first time. To my surprise, there are really only two things keeping me away from therapy: (1) picking a therapist, and (2) figuring out what the first session will be like.

First, picking a therapist. Let's be real. I'll spend plenty of money on silly things, but the idea of spending lots of money for counseling isn't appealing. If you agree with me, start with your health insurance and ask if they have a list of panel therapists that are covered. This may help defray the costs and also give you a list to start from. You can also look to a database such as the Psychology Today directory (www.psychologytoday.com/us/therapists) which allows you to search by issue, like anxiety, parenting, or substance abuse, and may also tell you if a particular practitioner is covered by your insurance. If you find someone you like that's outside your location, keep in mind that tele-therapy is also an option. Also keep in mind that most therapists do a quick 10–15 consult before the first session to assess whether the relationship is a good fit. The idea of a consult made me feel much better about finding the right therapist.

Second, don't psyche yourself out for the first visit. Over and over in my research I found that one cornerstone of therapy is that it is a client-driven relationship. You, the client, get to set the goals and expectations, and if you think about that from the outset you are more likely to get out of therapy what you want. For example, if you have a fairly simple, solution-based issue you want to discuss, your provider will do her best to help you through that issue as quickly as possible. Your provider will not keep you there just to keep you there. With that in mind, you should think about and articulate exactly what you want out of the relationship. If your goal is simply to speak about your stress levels and how they are impacting your life, then go in and say that. You aren't stuck there if you don't want to be, and you don't have to do a deep-dive into your entire life at first (at least, not unless you want to). The purpose of your session is up to you, so if you're nervous about therapy, limiting your first sessions to a concrete issue is a great way to dip your toe in.

I can't say that I'm 100 percent sold that therapy is for me and that I'm ready to go do it now, but I can say that after looking into what therapy *really* is, rather than what I imagined it to be, I'm much more likely to try it, and I hope that you are too.

Samantha Woods practices at Martin Pringle Law Firm in Wichita, Kansas focusing on civil and commercial litigation, including medical malpractice defense and products liability, as well as bankruptcy and creditor's rights. Samantha is co-vice chair of the Wellness Subcommittee and can be reached at smwoods@martinpringle.com.

Lon Johnson Obtains Summary Judgment for Insurer Facing $1.5 Million Claim

Christian, Dichter & Sluga attorney Lon Johnson, a Young Lawyers Steering Committee member, obtained summary judgment in Arizona Federal District Court for an insurer facing a $1.5 million stipulated judgment in an insurance bad faith action. In *Wilshire Insurance Company v. Yager*, No. CV-16-00192-TUC-JAS, 2018 WL 5801537 (D. Ariz. Nov. 5, 2018), the auto insurer denied coverage for a car accident because, although the vehicle was a covered auto, the driver was not listed as an insured as required by the policy. The policyholder had agreed to insure the vehicle for his friend, the vehicle owner/driver. However, the policy also required the driver to be listed as an insured. The driver's assignee argued that the driver had a reasonable expectation of coverage and also that the insurer waived or was estopped from asserting coverage defenses by initially defending the driver without reservation. The Court found that the plain language of the policy did not include the driver as an "insured," and did not create a reasonable expectation of coverage. Additionally, Arizona law did not support a finding of estoppel or waiver without evidence of prejudice caused by the delayed reservation of rights.

A Call for Contributors to Legislative Updates!

The DRI Young Lawyers Committee is seeking volunteer contributors to our 50-state legislative updates that are published quarterly in The Voice. You do not need to be a member of the Young Lawyers Committee to participate. This is a great opportunity to get published while staying up-to-date on changes in the law. Contributors from all states are welcome, especially the following: DE, ID, IA, ME, NH, NJ, NM, and NY. If you are interested or would like more information, please reach out to Matt McCluer (matthew.mccluer@bswllp.com) and Danielle Luisi (dluisi@matushek.com).

And The Defense Wins

Have you or one of your fellow young lawyers recently received an honor, a promotion, or a defense win? Contact the editors Taryn Harper (harpert@gtlaw.com) and Anna Tombs (atombs@cassels.ca) so we can share it in *Raising the Bar*!