

Moore v. Getahun: Working With Experts

Young Lawyers' Division/Civil Litigation



In-Person



Webcast

Date: Thursday, March 12, 2015 | 1:00 pm to 5:00 pm

Location: Twenty Toronto Street Conferences and Events
20 Toronto Street, 2nd Floor, Toronto

Program Chairs: **Michelle Simard**, MLS Professional Law Corporation
Adam Keeping, Jordan Battista LLP



This program contains 0.5 Professionalism Hours
This program is eligible for up to 3.5 Substantive Hours

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See first hand experts point of view!

The 2014 decision in *Moore v. Getahun* continues to generate significant discussion among litigators about the way in which lawyers communicate with experts. In *Moore*, Madame Justice Janet Wilson adopted a strict interpretation of Rule 53.03 (Expert Witnesses) of the Rules of Civil Procedure and disqualified a defence expert in light of communications with counsel.

Our panel will explore how to retain and manage experts and how to best work with an expert before and during trial. Gain practical guidance on when and how to instruct, communicate with and direct experts throughout the course of a litigation file. Join this in-depth discussion to obtain critical updates on acceptable practice standards of expert-witness evidence in Ontario.

12:30 pm Registration

1:00 pm Welcome and Opening Remarks from program Chairs

1:05 pm **DEALING WITH EXPERTS**

Retaining an Expert

Irfan Kara, Torys LLP

Grant Worden, Torys LLP

This is one of the most critical steps in litigation involving expert evidence. Retaining an expert with the right credentials is just as important as retaining an expert who will present well.

Discussion of best practices will focus on:

- how to retain an expert, including retainer letters and what to discuss at the outset
- how to instruct an expert
- deciding what materials to send an expert

1:35 pm **Material to Send the Expert**

Paul Fruitman, Lax O'Sullivan Scott Lisus LLP

Special consideration should be given to the material and assumptions given to an expert. The credibility of an expert's opinion may be challenged based on the material reviewed (or not reviewed) by the expert.

Discussion of best practices will focus on:

- deciding what assumptions to provide to the expert
- advising the expert of the obligations under Rule 53.03

2:00 pm **WORKING WITH AN EXPERT BEFORE TRIAL**

Obtaining a Preliminary Oral Opinion

William Black, McCarthy Tétrault LLP

There are strategic reasons for obtaining a preliminary oral opinion. The timing and disclosure of such opinions is also a strategic consideration in the litigation process.

Discussion of best practices will focus on:

- Communicating with the expert, including obtaining oral opinions
- Draft reports, and the extent to which counsel should be involved
- Disclosure of opinions

2:25 pm **Commenting on Draft Reports**

Shane D'Souza, McCarthy Tétrault LLP

Important dialogue occurs between counsel and experts before an expert report is finalized. Although Rule 53.03 is intended to address concerns about bias in expert reports,

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counsel should adopt certain best practices when interacting with experts.

Discussion of best practices will focus on:

- Keeping an expert's file, and advising an expert on organization, retaining communications, etc.
- Advising the expert of the obligations under Rule 53.03

2:50 pm Networking Break

3:10 pm **WORKING WITH AN EXPERT AT TRIAL**

Qualifying the Expert

Rebecca Jones, Lenczner Slaght Royce Smith Griffin LLP

Special consideration should be given to how an expert is qualified as it will determine what issues the expert can opine on.

Discussion of best practices will focus on:

- Preparing the expert for testimony, including preparation with literature and other authoritative sources
- Dealing with common expert challenges

3:35 pm **Scope of Expert Opinion and Producing Their File**

Paul Harte, Paul Harte Professional Corporation

An expert can opine on issues contained and latent in the expert's report. The scope of an expert's opinion may also be confined by how the expert is qualified. The extent of producing the expert's file is not clear. Consideration should be given to the impact of changes in draft reports on an expert's credibility and whether production should be contested.

Discussion of best practices will focus on:

- Production of expert files prior to trial
- Advising the expert of contents of file and court obligations

4:00 pm **Understanding Expert Evidence**

Barry Weintraub, Rueter Scargall Bennett LLP

When reviewing the details of the *Moore* decision, it seems clear that counsel needed to be educated on specific matters in order to properly introduce evidence and the expert's opinion. The *Moore* decision changes that dynamic, what can lawyers do to educate themselves on specifics of expert evidence?

Discussion of best practices will focus on:

- Engaging an expert to be educated on a matter
- Abiding by the *Moore* decision

4:25 pm **The Experts' Perspective: Working with Counsel**

Moderator:

Michelle Simard, MLS Professional Law Corporation

Medical Expert:

Dr. Zel Krajden, Chief of Plastic Surgery Brampton

Forensic Accountant Expert:

Melissa Joynt, ADS Forensic Accountants

Financial Analysis Expert:

Michael Dobner, PwC

Hear from our panel of experts about their experiences with counsel and what they would like from counsel in request letters and expectations before and during trial.

5:00 pm **Concluding Remarks** - Followed by Wine and Cheese Reception

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