

Anatomy of a Trial: The New Essentials



In-Person



Webcast

Date: Thursday, June 15, 2023 | 8:30 am to 4:45 pm
Reception
Friday, June 16, 2023 | 8:30 am to 1:30 pm

Location: OBA Conference Centre
20 Toronto Street, 2nd Floor, Toronto

Program Chairs: **Brian Bangay**, Desjardins General Insurance Group Inc.
Lindsay Charles, McLeish Orlando LLP
Troy Lehman, Oatley Vigmond LLP

This program contains 1 Professionalism EDI Hours
This program contains 2 Professionalism Hours.
This program is eligible for up to 9 Substantive Hours.

The OBA has been approved as an Accredited Provider of Professionalism Content by The Law Society of Ontario.



Join our stellar faculty of Superior Court judges and experienced advocates as they engage in live demonstrations of the do's and don'ts of effective and professional trial advocacy and help you understand the practical, tactical and strategic considerations that go into a jury trial.

This year, we go one step further with the real-time use of Caselines and technology insights to enhance your ability to map out your trial strategy, manage electronic and paper documents, open and close to a jury, examine and cross-examine live and virtual witnesses, and much more.

Lawyers of all levels from the new litigator who has never conducted a trial, to the seasoned veteran who has seen it all, will benefit from this incredibly practical and valuable program. Don't miss out on premier program to see trial advocacy in action and gain valuable knowledge, insight, and skills to navigate a trial from start to finish.

Day #1: June 15, 2023

8:00 am Registration and Coffee

8:30 am Opening Remarks

8:35 am **Preparing for Trial: Strategic and Ethical Considerations**

Speakers: **Frank Benedetto**, Flaherty McCarthy LLP
Melissa Miller, Howie Sacks & Henry LLP

PRE-TRIAL MOTIONS AND ISSUES

Presiding Judge: **The Honourable Darla A. Wilson**, Superior Court of Justice

8:55 am **Pre-Trial motion: Jury Questions**

Demonstrators: **Richard Halpern**, Gluckstein Lawyers
Barry Cox, Boghosian + Allen LLP

9:10 am **Pre-Trial Motion: Calling Multiple Experts**

Demonstrators: **Lindsay Lorimer**, McMillan LLP
Stacey Stevens, Thomson Rogers Lawyers

9:25 am Debrief/Commentary: **Bill Evans**, Aviva Trial Lawyers

9:35 am **Pre-Trial Issue: Requesting Accommodations from the Court**

Demonstrators: **Lara Fitzgerald-Husek**, Oatley Vigmond LLP
Karyn Shapira, Evangelista Barristers & Solicitors

- How to request accommodations for yourself or your client
- Responding to requests from opposing counsel

9:50 am Debrief/Commentary: **Bill Evans**, Aviva Trial Lawyers

10:00 am **Jury Selection**

Demonstrators: **Lara Fitzgerald-Husek**, Oatley Vigmond LLP
Karyn Shapira, Evangelista Barristers & Solicitors

Dismissed Jurors:

Sanjana Arora, OBA Student Section Executive Member
Aria Kamal, OBA Student Section Executive Member
Holly Schmid, Oatley Vigmond LLP

- Process of selecting jurors
- Common questions asked to jurors
- Challenging the juror
- Professionalism issues regarding jury selection

10:15 am Debrief/Commentary: **Bill Evans**, Aviva Trial Lawyers

10:25am Coffee and Networking Break

TRIAL PROCEDURE AND STRATEGY

10:35am **The Digital Age of Trial Prep: Tech Considerations for your Client and Witnesses**

Speakers: **Nick Todorovic**, McLeish Orlando LLP
Olivier Guillaume, Aviva Trial Lawyers

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- Packing list of technology before trial
- Tips for your courtroom setup
- Handling hiccups during trial
- Managing virtual and non-virtual notes
- Technology considerations for your client and witnesses

Opening Statements

Presiding Judge: **The Honourable Jane Ferguson**, Superior Court of Justice

10:55 am **Opening Statement of the Plaintiff**

Demonstrator: **Brenda Hollingsworth**, Auger Hollingsworth

- Themes that resonate with a jury in a liability trial
- Inoculating against defence arguments
- Walking the line: persuasive overview vs. argument
- Considerations for when the Plaintiff is deceased

11:10 am **Opening Statement of the Defendant**

Demonstrator: **Jean-Claude Rioux**, Flaherty McCarthy LLP

- Responding to Plaintiff statements vs. focusing on your own arguments
- Getting sympathy without crossing the line
- Objections during an opening statement

11:30 am Debrief/Commentary: **Geoff Adair**, Adair Goldblatt Bieber LLP

Testimony of the Independent Lay Witness

Presiding Judge: **The Honourable Jane Ferguson**, Superior Court of Justice

Witness: **Christine Fotopoulos**, Global Resolutions Inc.

11:40 am **Examination of the Independent Lay Witness**

Demonstrator: **Steve Rastin**, Gluckstein Lawyers

- How to lead the forgetful witness
- How to inoculate the witness from inconsistent statements.

12:00 pm **Cross Examination of the Independent Lay Witness**

Demonstrator: **Rasha El-Tawil**, Siskinds Law Firm

- Appropriate questions to ask a lay witness
- Dealing with changes in testimony
- Adverse witness testimony

12:20 pm Debrief/Commentary: **Barry Cox**, Boghosian + Allen LLP

12:30 pm **Networking Lunch**

Testimony of the Police Officer (Accident Reconstruction)

Presiding Judge: **The Honourable Jocelyn Speyer**, Superior Court of Justice

Witness: **Harrison Griffiths**, -30- Forensic Engineering

1:30 pm **Examination of the Police Officer**

Demonstrator: **Kristian Bonn**, Bonn Law

- How to get police notes into evidence
- Effective examination of a “quasi-expert”

1:50 pm **Cross Examination of the Police Officer**

Demonstrator: **Anita Varjadic**, Rogers Partners LLP

- Boundaries of scope of testimony – witness “overreach”

2:10 pm Debrief/Commentary: **Shanti Barclay**, Zarek Taylor Grossman Hanrahan LLP

Testimony of the Plaintiff’s Accident Reconstruction Engineer

Presiding Judge: **The Honourable Jocelyn Speyer**, Superior Court of Justice

Witness: **Marijan (Mario) Smolej**, Pario - Engineering & Environmental Sciences

2:20 pm **Examination of Plaintiff’s Accident Reconstruction Engineer**

Demonstrator: **Brian Cameron**, Oatley Vigmond LLP

- Admitting an Expert Report
- Using Caselines to navigate technical evidence and make it understandable

2:40 pm **Cross Examination of Plaintiff’s Accident Reconstruction Engineer**

Demonstrator: **Ian D. Kirby**, Gilbert Kirby Stringer LLP

- Points of attack for accident reconstruction opinions
- Effectively using prospective expert evidence to show an opinion is flawed
- Getting the opposing expert to assist with your expert’s reputation

3:00 pm Debrief/Commentary: **Shanti Barclay**, Zarek Taylor Grossman Hanrahan LLP

3:10pm Coffee & Networking Break

Testimony of the Toxicologist

Presiding Judge: **The Honourable Michael G. Emery**, Superior Court of Justice

Witness: **Dr. James Wigmore**, Forensic Toxicologist

3:20 pm **Examination of the Toxicologist**

Demonstrator: **Peter Cho**, Smiutch Injury Law

- Qualifying an expert witness
- How far can you go beyond the boundaries of your report?

3:40 pm **Cross-Examination of the Toxicologist**

Demonstrator: **Linda Matthews**, Matthews Abrogado LLP

- How to attack opinions based on a shaky foundation.

4:00 pm Debrief/Commentary: **Adam Wagman**, Howie Sacks & Henry LLP

4:10 pm **View from the Bench: EDI in the Courtroom**

The Honourable Michael G. Emery, Superior Court of Justice

The Honourable Sandra Nishikawa, Superior Court of Justice

Join our panel of esteemed judges as they discuss the importance of EDI in the courtroom and practical strategies

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for counsel to support each other in inclusive ways even when they are on opposite sides of the legal matter.

4:40 pm Questions & Answers

4:45 pm End of Day 1/Reception

Day #2: June 16, 2023

8:00 am Registration and Coffee

8:30 am Opening Remarks

8:35 am **Practical & Ethical Considerations When Using Jointly Retained Expert Witnesses**

Speakers: **Krista Groen**, Strigberger Brown Armstrong LLP

Shady Attalla, J.S. Held ULC

Sam Kotsi, J.S. Held ULC

- Effective use of joint expert witnesses
- Selecting a joint expert
- Retainer issues that arise
- Ethical communication with joint witnesses

Testimony of the Defendant

Presiding Judge: **The Honourable John R. McCarthy**, Superior Court of Justice

Witness: **Logan Cooper**, Cooper Mediation

9:00 am **Examination of the Defendant**

Demonstrator: **Jacqueline L. King**, Shibley Righton LLP

- How to inoculate an unsympathetic Defendant
- How to inoculate prior inconsistent statements

9:20 am **Cross Examination of the Defendant**

Demonstrator: **David MacDonald**, McLeish Orlando LLP

- Prior inconsistent statements
- The Rule of *Browne and Dunn*

9:40 am Debrief/Commentary: **Michael Shannon**, Morse Shannon LLP

Testimony of Child Witnesses

Presiding Judge: **The Honourable John R. McCarthy**, Superior Court of Justice

Witnesses: **Bennett Dawson**, Oatley Vigmond LLP

Jacqueline Gelfenbein, Oatley Vigmond LLP

- Special considerations and accommodations for child witnesses
- Dealing with prior inconsistent statements with children

9:50 am **Examination of Child Witness #1**

Demonstrator: **Heidi R. Brown**, Bogoroch & Associates

10:00 am **Cross Examination of Child Witness #1**

Demonstrator: **D. Lynn Turnbull**, Rachlin & Wolfson LLP

10:10 am **Examination of Child Witness #2**

Demonstrator: **Heidi R. Brown**, Bogoroch & Associates

10:20 am **Cross Examination of Child Witness #2**

Demonstrator: **D. Lynn Turnbull**, Rachlin & Wolfson LLP

10:30 am Debrief/Commentary: **Michael Shannon**, Morse Shannon LLP

10:40 am Coffee & Networking Break

Testimony of the Coroner

Presiding Judge: **The Honourable Michael K. McKelvey**, Superior Court of Justice

Witness: **Stephen Moore**, Moore Mediations

10:55 am **Examination of the Coroner**

Demonstrator: **Karim N. Hirani**, Zuber & Company LLP

- How to introduce a participant witness

11:15 am **Cross Examination of the Coroner**

Demonstrator: **Charles Painter**, Dolden Wallace Follick LLP

- Effective examination of the coroner going outside his scope of practice
- Moving to strike the jury on the basis that the expert provided opinion evidence not contained in his report.

11:35 am Debrief/Commentary: **Stephen G. Ross**, Rogers Partners LLP

Testimony of the Defence's Accident Reconstruction Engineer

Presiding Judge: **The Honourable Michael K. McKelvey**, Superior Court of Justice

Witness: **Raffi Engeian**, -30- Forensic Engineering

11:45 am **Examination of the Defence's Accident Reconstruction Engineer**

Demonstrator: **Jim Davidson**, Will Davidson LLP

- Ethical issues re: virtual witnesses
- Responding to the other side's case and expert

12:05 pm **Cross Examination of the Defence's Accident Reconstruction Engineer**

Demonstrator: **R. Steven Baldwin**, Baldwin Law

- Using hypotheticals with an expert effectively

12:25 pm Debrief/Commentary: **Stephen G. Ross**, Rogers Partners LLP

Closing Statements

Presiding Judge: **The Honourable Michael K. McKelvey**, Superior Court of Justice

12:35 pm **Closing Statement of the Defendant**

Demonstrator: **Michael Burgar**, Smockum Zarnett LLP

- Addressing unfavourable evidence
- Anticipating the Plaintiff's closing
- Tying the opening to your closing

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12:55 pm **Closing Statement of the Plaintiff**

Demonstrator: **Alfred M. Kwinter**, Singer Kwinter

- The use of emotion
- Addressing statements from the Defendant's closing vs. sticking to what you have prepared

1:15 pm Debrief/Commentary: **Stephen G. Ross**, Rogers Partners LLP

1:25 pm Questions and Answers for Day 2

1:30 pm Program Concludes

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