

## Anatomy of a Trial: Demonstrations and Debriefs *Insurance Law Section*



In-Person



Webcast

**Date:** Thursday, May 10, 2018 | 8:30 am to 4:30 pm  
Reception  
Friday, May 11, 2018 | 8:30 am to 1:30 pm

**Location:** 20 Toronto Street Conferences & Events  
20 Toronto Street, Toronto, ON M5C 2B8

**Program Chairs:** **Brian M. Bangay**, Desjardins Claims Legal Department  
**John A. McLeish**, McLeish Orlando LLP  
**Audrey P. Ramsay**, Blouin, Dunn LLP  
**Philippa G. Samworth**, Dutton Brock LLP

This program contains 3 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.*



Lawyers who know how to conduct trials tend to achieve the best out-of-court settlements for their clients. Even with trials disappearing, you can master this skill. Lawyers of all levels from the new litigator who has never conducted a trial, to the seasoned veteran, will gain the best techniques for conducting a jury trial or appearing at an administrative tribunal hearing.

You will learn how to handle documents, open and close to a jury, examine and cross-examine witnesses, and much more. A stellar faculty of trial judges from the Superior Court of Justice and experienced trial advocates will demonstrate these skills, and help you understand the tactical and strategic considerations that go into a trial. From demonstrations to debriefs, this program is a must for litigators of all levels, and trial experience. Join us to observe trial advocacy in action.

Register now and gain valuable knowledge, insight, and skills to navigate a trial from start to finish.

### **Thursday, May 10, 2018:**

8:00 am Registration and Coffee

8:30 am Opening Remarks  
**Audrey P. Ramsay**, Blouin Dunn LLP

8:35 am **Documents You Must Prepare Before Trial**  
Moderator: **John A. McLeish**, McLeish Orlando LLP  
**The Honourable Justice Todd L. Archibald**,  
Superior Court of Justice  
**The Honourable Justice Stephen E. Firestone**, Superior  
Court of Justice  
Discuss your professional responsibility to create file  
checklists to organize your trial prep, and towards opposing  
counsel and the court in the preparation and exchange of  
key documents.

9:20 am **How to Start the Trial**  
Presiding Judge: **The Honourable Justice Todd L.**  
**Archibald**, Superior Court of Justice  
**Brian M. Bangay**, Desjardins Claims Legal Department  
**Lindsay A. Charles**, McLeish Orlando LLP

- Establishing a good rapport with the judge
- What documents to give the judge and when
- Handling documents received pursuant to a summons
- Alerting the judge to potential problems

- Discussing witness lists and scheduling of witnesses
- Motion to exclude witnesses and amend the statement of claim
- Handling the jury panel and picking a jury

Commentary: **The Honourable Justice Todd L. Archibald**, Superior Court of Justice  
**Brian M. Bangay**, Desjardins Claims Legal Department

10:05 am Coffee and Networking Break

10:20 am **Opening Address to the Jury on Behalf of the Plaintiff**  
Presiding Judge: **The Honourable Justice Stephen E. Firestone**, Superior Court of Justice  
Demonstrator On Behalf of Plaintiff: **Troy H. Lehman**,  
Oatley, Vigmond Personal Injury Lawyers LLP (Barrie)

- What is the goal of your opening?
- Establishing trust with the jury
- Talking into the judge's charge
- A good opening – what you can and cannot do
- What happens when an improper opening is delivered

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Goals: **D. Keith Smockum**, Smockum Zarnett LLP  
 Commentary: **The Honourable Justice Todd L. Archibald**,  
 Superior Court of Justice  
**The Honourable Justice Stephen E. Firestone**, Superior  
 Court of Justice

10:50 am **Opening Address to the Jury on Behalf of the Defendant**  
 Presiding Judge: **The Honourable Justice Stephen E.**

**Firestone**, Superior Court of Justice  
 Demonstrator On Behalf of Defendant: **Todd J. McCarthy**,  
 Flaherty McCarthy LLP (Whitby)

- Establishing trust with the jury
- Dealing with issues of liability as an attempt to reduce them
- Focusing on admissions that should be made
- Narrowing the scope of the case

Goals: **D. Keith Smockum**, Smockum Zarnett LLP  
 Commentary: **The Honourable Justice Todd L. Archibald**,  
 Superior Court of Justice  
**The Honourable Justice Stephen E. Firestone**, Superior  
 Court of Justice

11:15 am **Direct Examination of Plaintiff**

Presiding Judge: **The Honourable Justice Mark L. Edwards**,  
 Superior Court of Justice

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

- Humanizing the plaintiff
- When is leading permitted and desirable?
- Inoculating against harmful evidence
- Refreshing memory and the use of documents
- Procedure for admitting and marking exhibits
- Making and responding to objections

Goals: **Wendy Moore Mandel**, Thomson Rogers  
 Commentary: **The Honourable Justice Mark L. Edwards**,  
 Superior Court of Justice

12:00 pm Lunch (Boxed)

1:00 pm **Cross Examination of Plaintiff**

Presiding Judge: **The Honourable Justice Mark L. Edwards**,  
 Superior Court of Justice

Demonstrator: **James E. Dunn**, Blouin, Dunn LLP

- How to ask a question and control the witness
- Challenging the credibility of the plaintiff via medical records and surveillance
- Procedure for impeaching credibility using discovery transcripts

Goals: **Paul Tushinski**, Dutton Brock LLP  
 Commentary: **The Honourable Justice Mark L. Edwards**,  
 Superior Court of Justice

1:45 pm **Professionalism Concerns: Witnesses and Jurors**

Moderator: **Audrey P. Ramsay**, Blouin, Dunn LLP

Panel: **The Honourable Justice Jamie K. Trimble**, Superior  
 Court of Justice

**Wendy Moore Mandel**, Thomson Rogers

**Paul Tushinski**, Dutton Brock LLP

Examine the professionalism issues that arise when dealing  
 with jurors as well as witnesses giving evidence. Review  
 best practices when addressing the court during trial.

2:00 pm **Examination in Chief of Plaintiff's Treating Doctor**

Presiding Judge: **The Honourable Justice Jamie K. Trimble**,  
 Superior Court of Justice

Demonstrator: **Sloan H. Mandel**, Thomson Rogers

Witness: **Paul Torrie**, Global Resolutions Inc.

- Proving the credentials of the doctor
- Showing the treating doctor has a more informed opinion than defence assessors
- Handling the incomplete report
- Dealing with information the treating doctor does not have

Goals and Commentary: **Russ Howe**, Global Resolutions  
 Inc.

2:30 pm **Cross-Examination of Plaintiff's Treating Doctor**

Presiding Judge: **The Honourable Justice Elizabeth A.**  
**Quinlan**, Superior Court of Justice

Demonstrator: **David A. Zuber**, Zuber & Company LLP

Witness: **Paul Torrie**, Global Resolutions Inc.

- Showing why the opinion is flawed
- Getting the doctor to defer to the opinions of defence specialists
- Cross-examining on surveillance and points you do not intend to prove

Goals and Commentary: **Jim B. Davidson**, Will Davidson LLP

3:00 pm Coffee and Networking Break

3:15 pm **Tactics and Strategies that Impress the Trial Judge**

Moderator: **Catherine A. Korte**, McCague Borlack LLP

Panel: **The Honourable Justice Jamie K. Trimble**, Superior  
 Court of Justice, **The Honourable Justice Elizabeth A.**

**Quinlan**, Superior Court of Justice

Canvass the tactical and strategic considerations of  
 conducting a jury trial and how to conduct it with civility,  
 integrity, and honesty while also demonstrating respect for  
 the administration of justice.

4:15 pm Question and Answer Session

4:30 pm Reception

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## Friday, May 11, 2018:

8:00 am Registration and Coffee

8:30 am Opening Remarks

### 8:35 am Examination in Chief of Plaintiff's Accountant

Presiding Judge: **The Honourable Mr. Justice Thomas J. McEwen**, Superior Court of Justice

Demonstrator: **Thomas P. Connolly**, Connolly Obagi LLP (Ottawa)

Witness: **Gary Principe**, Principe Nafekh Ltd.

- Making it easy to understand for the jury
- Exhibits that are required
- The use of general statistics
- How to avoid over-reaching

Goals and Commentary: **Jacqueline L. King**, Shibley Righton LLP

### 9:05 am Cross-Examination of Plaintiff's Accountant

Presiding Judge: **Honourable Mr. Justice Thomas J. McEwen**, Superior Court of Justice

Demonstrator: **Linda Matthews**, Matthews Abogado LLP

Witness: **Gary Principe**, Principe Nafekh Ltd.

- How to show that the factual underpinnings are flawed
- Putting alternative scenarios to the accountant
- Showing that the plaintiff is over-reaching

Goals and Commentary: **Jacqueline L. King**, Shibley Righton LLP

### 9:30 am Issues When Preparing for and Conducting a Trial

Moderator: **John A. McLeish**, McLeish Orlando LLP

Panel: **The Honourable Mr. Justice Thomas J. McEwen**, Superior Court of Justice

**Tina H. Lie**, Paliare Roland Rosenberg Rothstein LLP

**Linda J. Wolanski**, Bogoroch Associates LLP

Explore issues facing a lawyer when they prepare for and conduct a trial with respect to confidentiality, conflict of interest, managing client expectations and dealing with expert witnesses. Examine how much you can shape your expert's opinion, woodshedding clients and witnesses, cooperating with opposing counsel, misstating evidence and asking improper questions.

10:15 am Question and Answer Session

10:30 am Coffee and Networking Break

### 10:45 am Examination in Chief of Defence Doctor

Presiding Judge: **The Honourable Grant R. Dow**, Superior Court of Justice

Demonstrator: **William Jesseau**, Smockum Zarnett LLP

Witness: **Richard Horak**, Global Resolutions Inc.

- Showing how qualified the doctor is
- Demonstrate why his or her opinion should be preferred
- How to handle the fact that the doctor is non-treating

Goals and Commentary: **Michael P. Taylor**, Zarek Taylor Grossman Hanrahan LLP

### 11:10 am Cross-Examination of Defence Doctor

Presiding Judge: **The Honourable Grant R. Dow**, Superior Court of Justice

Demonstrator: **Adam Wagman**, Howie, Sacks & Henry LLP

Witness: **Richard Horak**, Global Resolutions Inc.

- Attacking the qualifications
- Highlighting the defence doctor as a "hired gun" and what is earned doing assessments
- Demonstrating why the treating doctor's opinion should be preferred
- Obtaining agreement on key issues

Goals and Commentary: **Michael P. Taylor**, Zarek Taylor Grossman Hanrahan LLP

### 11:35 am Closing Arguments on Behalf of Defendant

Presiding Judge: **The Honourable Madam Justice Giovanna Toscano Rocco**, Superior Court of Justice

Demonstrator: **James M. Regan, Q.C.**, Regan Desjardins LLP

- What is permitted
- Using trial transcripts to your advantage
- Not misstating evidence

Goals and Commentary: **James L. Vigmond**, Oatley Vigmond Personal Injury Lawyers LLP (Barrie)

### 11:55 am Closing Arguments on Behalf of Plaintiff

Presiding Judge: **The Honourable Madam Justice Giovanna Toscano Rocco**, Superior Court of Justice

Demonstrator: **Elizabeth A. Quigley**, Connolly, Obagi LLP (Ottawa)

- How to start and end your argument
- The use of emotion
- Driving damages
- Capitalizing on evidence the defence did not call

Goals and Commentary: **James L. Vigmond**, Oatley Vigmond Personal Injury Lawyers LLP (Barrie)

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12:15 pm **Practicable Application of Trial Skills to the LAT**

**Janet S. Young**, Dutton Brock LLP

**Eric K. Grossman**, Zarek Taylor Grossman Hanrahan LLP

- Do you do openings?
- Examining a witness within a limited time-frame
- Adjudicator vs. Jury
- Managing documents at the LAT

12:45 pm **Post Verdict Concerns**

Presiding Judge: **The Honourable Madam Justice Giovanna**

**Toscano Roccamo**, Superior Court of Justice

Demonstrators:

For Defendant: **James M. Regan, Q.C.**, Regan Desjardins LLP

For Plaintiff: **Elizabeth A. Quigley**, Connolly, Obagi LLP (Ottawa)

- Quantifying the jury's damages
- Calculating interest and costs
- Dealing with the deductible, offers to settle and collateral benefits
- Motions for judgment

Commentary: **Susan E. Gunter**, Dutton Brock LLP

1:15 pm **Question and Answer Session**

1:30 pm **Program concludes**

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