

## Anatomy of a Trial: A Deeper Dive Into Jury Trials

### Insurance Law Section



In-Person



Webcast

**Date:** Monday, April 29, 2019 | 8:30 am to 4:30 pm  
Reception  
Tuesday April 30, 2019 | 8:30 am to 1:30 pm

**Location:** Toronto Region Board of Trade  
77 Adelaide Street West, Toronto, ON M5X 1C1

**Program Chairs:** **Audrey P. Ramsay**, Blouin, Dunn LLP  
**Troy Lehman**, Oatley Vigmond LLP  
**Lindsay Charles**, McLeish Orlando 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.*

Don't miss out on the second year of this premier program! Join us for a comprehensive examination of the best techniques for conducting a jury trial. This year we dive deeper into the necessary skills and best practices required for success in the courtroom. Lawyers of all levels from the new litigator who has never conducted a trial, to the seasoned veteran, will benefit from this incredibly practical and valuable program.

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.

### Monday April 29, 2019:

8:00 am Registration and Coffee

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

8:35 am **Pretrial Conference**  
Presiding Judge: **The Honourable Kim A. Carpenter-Gunn**, Superior Court of Justice  
Speakers: **Van Krkachovski**, McCague Borlack LLP  
**Barbara MacFarlane**, Legate & Associates

- Tips from the bench and bar on ensuring that the pretrial conference is effective and efficient
- Confidentiality and authority to settle
- When do you cross the line as a fearless advocate
- Avoiding cost sanctions

8:55 am **The Ethical Preparation of a Witness for Trial**  
Demonstrator: **Erin Murray**, Oatley Vigmond LLP  
Witness: **Nick Todorovic**

- Coaching without crossing the line
- Tips and techniques for prepping your witness properly
- Anticipating and dealing with weaknesses

Commentary: **Rikin Morzaria**, McLeish Orlando LLP

9:10 am **Professionalism Concerns: Avoiding Solicitor Negligence**  
Presiding Judge: **The Honourable Kim A. Carpenter-Gunn**, Superior Court of Justice  
Moderator: **Audrey P. Ramsay**, Blouin, Dunn LLP  
Speakers: **Robin Moodie**, Moodie Mair Walker LLP  
**Jennifer Ip**, LAWPRO

- Common mistakes when settling
- Conduct during a trial – potential liability for costs
- Withdrawal of retainer just before trial
- Key practice management tips for trial preparation

9:35 am **Electronic Trials (E-Trials)**  
Moderator: **Troy Lehman**, Oatley Vigmond LLP  
Speakers: **Joseph Obagi**, Connolly Obagi LLP  
**Brent Arnold**, Gowling WLG (Canada) LLP

- When is an E-Trial appropriate
- Software and technological considerations
- The Electronic Notebook
- How to ensure opposing counsel and the Bench are comfortable with proceeding in this manner

10:00 am Coffee and Networking Break

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## 10:15 am Opening Addresses to the Jury

Presiding Judge: **The Honourable Heather A. McGee**,  
Superior Court of Justice  
Demonstrator On Behalf of Plaintiff: **Jim Vigmond**, Oatley  
Vigmond LLP  
Demonstrator on Behalf of the Defendant: **Stephen Moore**,  
Blaney McMurtry LLP

- What is the goal of your opening?
- Telling your client's story
- Proper use of demonstrative evidence
- Inoculation against weaknesses in your case
- Limits of an opening address

Commentary: **Barbara MacFarlane**, Legate & Associates

## 10:50 am Examination in Chief of Plaintiff

Presiding Judge: **The Honourable Heather A. McGee**,  
Superior Court of Justice  
Demonstrator: **Richard Bogoroch**, Bogoroch & Associates LLP  
Witness: **Nick Todorovic**

- 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

Commentary: **Maia Bent**, Lerner LLP

## 11:25 am Cross-Examination of Plaintiff

Presiding Judge **The Honourable Heather A. McGee**,  
Superior Court of Justice  
Demonstrator: **Todd McCarthy**, Flaherty McCarthy LLP  
Witness: **Nick Todorovic**

- Dealing with a difficult witness
- How to impeach using prior statement
- Procedure for impeachment using transcript

Commentary: **Maia Bent**, Lerner LLP

## 12:00 pm Lunch (Boxed)

## 12:45 pm Challenging the Admissibility of Expert Evidence

Presiding Judge: **The Honourable Jamie K. Trimble**,  
Superior Court of Justice  
Demonstrator on Behalf of Plaintiff: **David Lackman**,  
Gluckstein Personal Injury Lawyers Professional  
Corporation  
Demonstrator on Behalf of Defendant: **Lori Visconti**, Black  
Sutherland LLP

- How to conduct a Voir Dire on admissibility
- Challenging admissibility vs. attacking weight
- Timing of the challenges

Commentary: **Rikin Morzaria**, McLeish Orlando LLP

## 1:05 pm Examination in Chief of Tavern Standards Expert

Presiding Judge: **The Honourable Jamie K. Trimble**,  
Superior Court of Justice  
Demonstrator: **Sloan Mandel**, Thomson, Rogers  
Witness: **Steven Summerville**, Stay Safe Instructional  
Programs

- How to introduce factual basis opinion
- Dealing with objections to evidence – similar fact evidence

Commentary: **Keith Smockum**, Smockum Zarnett LLP

## 1:25 pm Cross-Examination of Tavern Standards Expert

Presiding Judge: **The Honourable Jamie K. Trimble**,  
Superior Court of Justice  
Demonstrator: **Linda Matthews**, Matthews Abogado LLP  
Witness: **Steven Summerville**, Stay Safe Instructional  
Programs

- Attacking the foundation of the opinion
- Challenging the witness on being an advocate
- How to aggressively cross without looking like a bully

Commentary: **Keith Smockum**, Smockum Zarnett LLP

## 1:45 pm Examination in Chief of Toxicologist

Presiding Judge: **The Honourable Paul R. Sweeny**, Superior  
Court of Justice  
Demonstrator: **D. Joel Dick**, Howie, Sacks & Henry LLP  
Witness: **Dr. Michael Ward**, Forensic Information Services  
Inc.

- Making technical evidence understandable
- How far can evidence go beyond the scope of the report?

Commentary: **Jacqueline King**, Shibley Righton LLP

## 2:25 pm Cross-Examination of Toxicologist

Presiding Judge: **The Honourable Paul R. Sweeny**, Superior  
Court of Justice  
Demonstrator: **Wayne Morris**, Dutton Brock LLP  
Witness: **Dr. Michael Ward**, Forensic Information Services  
Inc.

- Challenging the expert with learned literature
- Getting admissions from the other side's witness to support your case
- Getting it on the record and preserving the record for appeal

Commentary: **Jacqueline King**, Shibley Righton LLP

## 2:50 pm Coffee and Networking Break

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## 3:05 pm Examination in Chief of Accident Reconstruction Expert

Presiding Judge: **The Honourable Mark L. Edwards**,  
Superior Court of Justice  
Demonstrator: **Heidi Brown**, Bogoroch & Associates LLP  
Witness: **Jamie Catania**, 30 Forensic Engineering

- Expert use of demonstrative evidence
- Making technical evidence understandable
- Transitioning between topics

Commentary: **Karyn Shapira**, Evangelista, Barristers & Solicitors

## 3:30 pm Voir Dire on Animation of Collision

Presiding Judge: **The Honourable Mark L. Edwards**,  
Superior Court of Justice  
Demonstrator on Behalf of the Plaintiff: **Shanti Barclay**,  
Zarek Taylor Grossman Hanrahan LLP  
Demonstrator on Behalf of the Defendant: **Brian Bangay**,  
Desjardins General Insurance Group Inc.

- Admissibility of demonstrative evidence
- Challenges regarding animations
- Timing of the voir dire to avoid disruption of the jury

Commentary: **Karyn Shapira**, Evangelista, Barristers & Solicitors

## 3:50 pm Cross-Examination Accident Reconstruction Expert

Presiding Judge: **The Honourable Mark L. Edwards**,  
Superior Court of Justice  
Demonstrator: **Brian Bangay**, Desjardins General Insurance  
Group Inc.

Witness: **Jamie Catania**, 30 Forensic Engineering

- How to attack the foundation of the opinion
- Showing how the opinion is flawed

Commentary: **Karyn Shapira**, Evangelista, Barristers & Solicitors

4:20 pm Question and Answer Session for Day 1

4:30 pm Reception

## Tuesday April 30, 2019:

8:00 am Registration and Coffee

8:30 am Opening Remarks

## 8:35 am Professionalism and Civility at Trial

Moderator: **Lindsay Charles**, McLeish Orlando  
Speakers: **The Honourable Paul M. Perell**, Superior  
Court of Justice

**Linda Rothstein**, Paliare Roland Rosenberg Rothstein LLP  
**Peter Griffin**, Lenczner Slaght Royce Smith Griffin LLP

- How to ensure professionalism and civility carry through the trial from its preliminary stages to its completion
- The costs of incivility

## 9:05 am Examination in Chief of Bartender

Presiding Judge: **The Honourable Grant R. Dow**, Superior  
Court of Justice  
Demonstrator: **Sabrina Lucenti**, Dooley Lucenti Barristers &  
Solicitors  
Witness: **Jocelyn Tatebe**, Dutton Brock LLP

- How to refresh a witness' memory
- Marking documents for identification vs. marking them as exhibits

Commentary: **Tina Radimisis**, Jewell Radimisis Jorge LLP

## 9:30 am Cross-Examination of Bartender

Presiding Judge: **The Honourable Grant R. Dow**, Superior  
Court of Justice  
Demonstrator: **J. Patrick Brown**, McLeish Orlando LLP  
Witness: **Jocelyn Tatebe**, Dutton Brock LLP

- Examine effective use of policies and standards
- Dealing with changes in testimony
- Use of exhibits to impeach the witness

Commentary: **Tina Radimisis**, Jewell Radimisis Jorge LLP

## 9:55 am Admissibility of Hearsay Evidence

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

Speakers: **Alfred Kwinter**, Singer Kwinter  
**Kim McCartney**, Aviva Canada Inc.

- Hearsay dangers and exclusions
- Lining up evidence exempted from the hearsay rule

## 10:20 am Examination in Chief of Defence Engineer

Presiding Judge: **Justice Calum MacLeod**, Superior Court of  
Justice

Demonstrator: **Anita Varjadic**, Rogers Partners LLP  
Witness: **Harrison Griffiths**, 30 Forensic Engineering

- Use of demonstrative evidence
- How to respond to the other side's case
- The use of the hypothetical question

Commentary: **Roger Chown**, Carroll Heyd Chown LLP

### 10:45 am **Cross-Examination of Defence Engineer**

Presiding Judge: **Justice Calum MacLeod**, Superior Court of Justice

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

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

- Attacking the qualifications of the expert based on independence and bias
- Treating the other side's expert as your own – varying the hypothetical question
- Getting opposing expert to assist your expert's reputation

Commentary: **Roger Chown**, Carroll Heyd Chown LLP

### 11:10 am Coffee and Networking Break

### 11:25 am **Dealing with Experts in an Ethical Manner**

Presiding Judge: **The Honourable Jessica Kimmel**, Superior Court of Justice

**Richard Halpern**, Thomson Rogers

- Communicating with expert witnesses before retainer
- Communicating with experts re: draft report
- Permissible conduct and communication with experts before and during testimony
- Dealing with the opposing side's expert

### 11:50 am **Closing Arguments on Behalf of the Defendant Driver**

Presiding Judge: **The Honourable Dale Fitzpatrick**, Superior Court of Justice

Demonstrator: **Sheldon Gilbert**, Gilbert Kirby Stringer LLP

- What is permitted
- Not misstating evidence
- The use of demonstrative evidence

Commentary: **Karim Hirani**, Zuber & Company LLP

### 12:10 pm **Closing Arguments on Behalf of Plaintiff**

Presiding Judge: **The Honourable Dale Fitzpatrick**, Superior Court of Justice

Demonstrator: **Richard Shekter**, Shekter Dychtenberg LLP

- How to start and complete your argument
- The use of emotion
- The use of rhetorical devices

Commentary: **Karim Hirani**, Zuber & Company LLP

### 12:30 pm **Drafting the Jury Charge/Rendering the Verdict**

Presiding Judge: **The Honourable Dale Fitzpatrick**, Superior Court of Justice

Speakers: **Greg Abogado**, Matthews Abogado LLP

**Jim Davidson**, Will Davidson LLP

- How counsel may assist the trial judge
- What is expected from counsel when the judge calls upon you
- How to make objections to the Charge
- Preserving the record
- Ethical dealings with the Trial Judge

### 12:50 pm **Post Verdict Considerations**

**Stephen G. Ross**, Rogers Partners LLP

- Deductibility of statutory accident benefits before trial-matching approach is out and silos are in (*Cadieux v. Cloutier* 2018 ONCA 903)
- Assignment of future statutory accident benefits (*Carroll v. McEwen* 2018 ONCA 902)

### 1:20 pm Questions and Answers

### 1:30 pm Program concludes

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