

Divine Discoveries: Building a Great Case

Young Lawyers Division

Date: Friday, March 1, 2019 | 1:30 pm to 5:00 pm

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

Program Chairs: **Tahir Khorasane**, Wakelin & Associates
Paul Lomic, Lomic Law



In-Person



Webcast



Professionalism Hours: This program contains **1h 00m**
Substantive Hours: This program is eligible for up to **2h 30m**

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

A good discovery will help you prepare your client for trial and understand your opponent's case. A great discovery will force your opponent to settle, and at the very least, set you up for a less stressful and better organized trial. Get practical tips from the pros on how to be great (if not divine) at this half-day program on key elements such as preparation, e-discovery, credibility, and undertakings. Whether you are a new lawyer preparing for your first discovery, or a seasoned veteran looking to improve your technique, this program will help you hone your skills.

1:00 pm Registration and Coffee

1:30 pm Welcome and Opening Remarks

1:35 pm **Examining Discovery: An Overview of the Discovery Process, and the Law**

Sam R. Sasso, Ricketts Harris LLP

- What is the purpose of discovery and how does it fit into the litigation process?
- Important case law you should know
- Key topics that must be covered
- Managing your case to facilitate your discovery

2:00 pm **Preparing Yourself and Your Client for Discovery**

Patricia J. Forte, Miller Thomson LLP

Ivan M. Merrow, Miller Thomson LLP

- What should you look out for when reviewing the file?
- Setting your goals/checklist
- Effectively preparing your witness
- Which representative of the party (client) should you use as a witness?
- When should you seek to discover another representative of the opposing party?
- Understanding the importance of "going with the flow" when examining
- Preparing your client for the ethical issues of disclosure
- When to examine non-parties
- Effectively using expert reports to ask questions
- Asking for findings, opinions, and conclusions
- How do you successfully use witness statements?
- How can you leverage surveillance?

2:30 pm **Undertakings and the Inevitable Refusals Motion**

Master Joan Haberman, Superior Court of Justice (Retired)

- Determining the strategy of the questioner
- Obtaining information from former employees
- Obtaining information from third parties/witnesses
- Best efforts/reasonable efforts
- How should you handle unrepresented litigants?
- Undertakings and Refusals Motions
- Rule 5.1-6 and 7.2-11 of the *Rules of Professional Conduct*

3:00 pm Networking Break

3:20 pm **Affidavits of Documents, Privilege and Confidentiality**

Amanda McLachlan, Bennett Jones LLP

- Preparing the affidavit of documents and building your case
- Sufficiently instructing/protecting your client
- Your role as counsel in document preservation
 - Rule 2.07 of the *Rules of Professional Conduct*
- Attacking your opponent's affidavit of documents
- What you need to know about privilege and confidentiality
- How to particularize privileged documents in Schedule B to the Affidavit of Documents
- Relevance under the January 1, 2010 amendments to the *Rules of Civil Procedure*
- Do you need to produce witness statements?

3:40 pm **e-Discovery: The Fundamentals**

Susan B. Wortzman, McCarthy Tétrault LLP

- Examining the e-Discovery Guidelines and OBA precedents
- Discovery plans
- What should you ask for from the opposing party?
- Determining whether they have given it all up, or whether you need to dig for more
- When should you engage outside help?
- Use of e-Discovery information/documents at trial

4:05 pm **Discovery Techniques**

Kenneth Jull, Counsel, Gardiner Roberts LLP

Emily Y. Fan, Lerner LLP

Gain practical guidance on how to conduct a discovery examination. Discussion will also include how to use discoveries to set up an impeachment at trial and best practices for young lawyers.

PROGRAM REGISTRATION IS ONLINE www.oba.org/pd

Questions? pd@oba.org

4:40 pm **Professionalism and Ethical Traps When Dealing with
Difficult Situations - an interactive Q&A**

Moderator: **Tahir Khorasane**, Barrister and Solicitor

Emily Y. Fan, Leners LLP

Kenneth Jull, Counsel, Gardiner Roberts LLP

Susan B. Wortzman, McCarthy Tétrault LLP

Come prepared with questions! Panelists will respond to questions from the audience on topics such as:

- How should you effectively deal with obstreperous opposing counsel?
- Dealing with your client's inconsistent statements
- Discovery considerations for individuals with special circumstances (e.g. from another cultural background, difficulties with English, etc.)

5:00 pm Program Concludes

PROGRAM REGISTRATION IS ONLINE www.oba.org/pd

Questions? pd@oba.org