

Divine Discoveries: Building a Great Case

Civil Litigation / Young Lawyers Division



In-Person



Webcast

Date: Friday, March 6, 2020 | 1:30 pm to 5:00 pm

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

Program Chairs: **Lia Bruschetta**, Osler, Hoskin & Harcourt LLP
Ivan Merrow, Glaholt Bowles LLP

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

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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**

Niklas Holmberg, Lax O'Sullivan Lisus Gottlieb
Lena Wang, Glaholt Bowles 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**

Lara Jackson, Cassels Brock & Blackwell LLP
Zohar Levy, Fasken Martineau DuMoulin 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, Confidentiality and E-Discovery Fundamentals**

Chantelle Cseh, Davies Ward Phillips & Vineberg LLP
Ahmad Mozaffari, Senior Counsel, Litigation, CIBC
Jennifer Thompson, Osler, Hoskin & Harcourt LLP

- Preparing the affidavit of documents and building your case
- Discovery plans
- Sufficiently instructing/protecting your client
- Examining the e-Discovery Guidelines and OBA precedents
- Your role as counsel in document preservation
- 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*
- Use of e-Discovery information/documents at trial
- Do you need to produce witness statements?

4:05 pm **Discovery Techniques**

Sandra Astolfo, WeirFoulds LLP

Michael Fenrick, Paliare Roland Rosenberg Rothstein 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.

- Key techniques, lessons learned, and strategies to implement for an effective examination for discovery
- How should you effectively deal with obstreperous opposing counsel?
- Dealing with your client's inconsistent statements
- Examinations for discoveries in the context of trial
- 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