

Anatomy of a Trial: Successful Trial Strategy Insurance Law Section



In-Person



Webcast

Date: Thursday, October 28, 2021 | 8:30 am to 4:30 pm
Reception
Friday, October 29, 2021 | 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.
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 third year of this premier program! Join us for a comprehensive examination of the best techniques for conducting a jury trial. This year we take it one step further and focus on high level trial strategy, providing you with 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 think strategically when mapping out the course of your trial, manage 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.

Don't miss out on this incredibly popular program to gain valuable knowledge, insight, and skills to navigate a trial from start to finish.

Thursday, October 28, 2021 Day #1:

8:00 am Registration and Coffee

8:30 am Opening Remarks
Troy Lehman, Oatley Vigmond LLP

8:35 am **Preparing for Trial: Strategic and Ethical Considerations**
Presiding Judge: **The Honourable Justice Todd L. Archibald**,
Superior Court of Justice
Speakers: **Linda Rothstein**, Paliare Roland Rosenberg
Rothstein LLP
Jerome Morse, Morse Shannon LLP

- Making the decision to go to trial
- Dealing with a difficult client ethically and effectively
- Cooperating with difficult opposing counsel professionally and effectively

8:50 am **Pre-Trial Motion: Admissibility of Hearsay Evidence**
Presiding Judge: **The Honourable Justice Todd L. Archibald**,
Superior Court of Justice
Speakers: **Richard Halpern**, Gluckstein Lawyers
Wayne Morris, Dutton Brock LLP

- Dealing with key evidence from a missing witness
- What necessity and reliability mean

9:10 am **Opening Statement of the Plaintiff**
Presiding Judge: **The Honourable Justice Michael Doi**,
Superior Court of Justice
Demonstrator: **Brian Cameron**, Oatley Vigmond LLP

- Themes that resonate with a jury
- Inoculating against defence arguments
- Walking the line: persuasive overview vs. argument

9:30 am **Opening Statement of the Defendant Driver**
Presiding Judge: **The Honourable Justice Michael Doi**,
Superior Court of Justice
Demonstrator: **David Boghosian**, Boghosian & Allen LLP

- Getting sympathy without crossing the line
- Referencing the amount claimed – proper or not?

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

10:00 am Coffee and Networking Break

10:15 am **Direct Examination of the Plaintiff's Engineer**
Presiding Judge: **The Honourable Justice Darla A. Wilson**,
Superior Court of Justice
Demonstrator: **Meghan Hull Jacquin**, Howie, Sacks & Henry
LLP
Witness: **Tom Flynn**, MEA Forensics

- Expert evidence that a jury can understand
- Painting a picture with demonstrative evidence

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Questions? pd@oba.org

10:35 am Cross Examination of the Plaintiff's Engineer

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

Demonstrator: **Todd McCarthy**, Flaherty McCarthy LLP

Witness: **Tom Flynn**, MEA Forensics

- Using the language in the report against the expert
- Building your theme with opponent's evidence

10:55 am Debrief/Commentary: **Gillian Kerr**, McCarthy Tétrault LLP

11:05 am Direct Examination of Plaintiff's Wife

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

Demonstrator:

Witness:

- Effective use of lay witness evidence to build a case
- Painting a picture of the needs of the plaintiff

11:25 pm Cross-Examination of Plaintiff's Wife

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

Demonstrator: **Erin Durant**, Borden Ladner Gervais LLP

Witness:

- Use of surveillance to impeach
- Building your theme through the witness

11:50 am Debrief/Commentary: **Gillian Kerr**, McCarthy Tétrault LLP

12:00 pm Lunch (Boxed)

1:00 pm Panel: How to Preserve the Trial Record

The Honourable Justice Kathryn N. Feldman, Court of
Appeal for Ontario

Chris Paliare, Paliare Roland Rosenberg Rothstein LLP

- How to properly preserve the trial record
- Tips from the court
- Getting things on the record professionally and ethically

1:25 pm Examination of the Family Physician

Presiding Judge: **The Honourable Justice Graeme Mew**,
Superior Court of Justice

Demonstrator: **Joseph Cescon**, McLeish Orlando LLP

Witness: **Jennifer Ip**

- Effective use of the treating "expert"
- How far can you go with "treating opinions"?

1:45 pm Cross-Examination of the Family Physician

Presiding Judge: **The Honourable Justice Graeme Mew**,
Superior Court of Justice

Demonstrator: **D. Keith Smockum**, Smockum Zarnett LLP

Witness: **Jennifer Ip**

- Painting the witness as an advocate
- Using doctor's notes against them

2:05 pm Debrief/Commentary: **Gillian Kerr**, McCarthy Tétrault LLP

2:15 pm Examination of Plaintiff Neurologist

Presiding Judge: **The Honourable Justice Graeme Mew**,
Superior Court of Justice

Demonstrator: **Alf Kwinter**, Singer Kwinter

Witness: **Lara Fitzgerald**

- Highlighting experience of your expert
- Use of demonstrative evidence and descriptive language
- Amplifying/explaining opinion in the report

2:30 pm Cross-Examination of Plaintiff Neurologist

Presiding Judge: **The Honourable Justice Graeme Mew**,
Superior Court of Justice

Demonstrator:

Witness: **Lara Fitzgerald**

- Attacking the assumptions underlying the opinion
- Highlighting gaps in information

2:45 pm Debrief/Commentary: **Lori Visconti**, Black Sutherland LLP

2:55 pm Coffee and Networking Break

3:05 pm Examination of Plaintiff Future Care Expert

Presiding Judge: **The Honourable Graeme Mew**, Superior
Court of Justice

Demonstrator: **Barbara MacFarlane**, Legate Personal Injury
Lawyers

Witness: **Mira Miller**, Carol Bierbrier & Associates

- Presenting care reports in an effective manner
- Setting up cross-examination of defence expert

3:25 pm Cross-Examination of Plaintiff Future Care Expert

Presiding Judge: **The Honourable Graeme Mew**, Superior
Court of Justice

Demonstrator: **Keegan Boyd**, Borden Ladner Gervais LLP

Witness: **Mira Miller**, Carol Bierbrier & Associates

- Attacking impartiality
- Highlighting aggressive recommendations

3:45 pm Debrief/Commentary: **David Morin**, Will Davidson LLP

3:55 pm Examination of Plaintiff Economic Loss Expert

Presiding Judge: **The Honourable Graeme Mew**, Superior
Court of Justice

Demonstrator: **David Lackman**, Gluckstein Lawyers

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

- Presenting "dry concepts" without losing the jury
- Effective use of charts and demonstrative aids

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4:10 pm **Cross-Examination of Plaintiff Economic Loss Expert**
Presiding Judge: **The Honourable Graeme Mew**, Superior Court of Justice
Demonstrator: **Ian Kirby**, Gilbert, Kirby Stringer LLP
Witness: **Gary Principe**, Principe Nafekh Ltd.

- Attacking attackable areas
- Highlighting areas where the expert does not have expertise

4:20 pm Debrief/Commentary: **Daniel Reisler**, Reisler Law PC

4:25 pm Question and Answer Session for Day 1

4:30 pm Reception

Friday, October 29, 2021 Day #2:

8:00 am Registration and Coffee

8:30 am Opening Remarks
Lindsay Charles, McLeish Orlando LLP

8:35 am **Examination of Defendant Driver**
Presiding Judge: **The Honourable Justice Jamie K. Trimble**, Superior Court of Justice
Demonstrator: **Van Krkachovski**, McCague Borlack LLP
Witness:

- Building sympathy through a story
- Painting a picture through your witness

8:50 am **Cross-Examination of Defendant Driver**
Presiding Judge: **The Honourable Justice Jamie K. Trimble**, Superior Court of Justice
Demonstrator: **Michael Bugar**, Smockum Zarnett LLP
Witness:

- Impeaching on prior statements
- Using other evidence against a defendant

9:05 am Debrief/Commentary: **Frank Del Giudice**, Longo Lawyers

9:10 am **Motion to Strike the Jury**
Presiding Judge: **The Honourable Justice Jamie K. Trimble**, Superior Court of Justice
Demonstrators:
Ryan Breedon, Breedon Litigation
Chet Wydrzynski, Dolden Wallace Folick LLP

- Effectively arguing a motion at trial
- Striking (or keeping) a jury in a complex case

9:40 am Debrief/Commentary: **Frank Del Giudice**, Longo Lawyers

9:50 am **Examination of Defence Neuro-Psychologist**
Presiding Judge: **The Honourable Justice Grant R. Dow**, Superior Court of Justice
Demonstrator: **Anita Varjadic**, Rogers Partners LLP
Witness: **Dr. Hiten Lad**, LAD & Associates

- Significance of failed validity issues
- Walking the line of attacking the plaintiff without accusing him/her of lying

10:10 am **Cross-Examination of Defence Neuro-Psychologist**
Presiding Judge: **The Honourable Justice Grant R. Dow**, Superior Court of Justice
Demonstrator: **Jonathan Lisus**, Lax O'Sullivan Lisus Gottlieb
Witness: **Dr. Hiten Lad**, LAD & Associates

- Cross examining on bias ethically and effectively
- Attacking expert based on missing documents
- Building up your experts through your opponents

10:20 am Debrief/Commentary: **Heather Vaughan**, Benson Percival Brown LLP

10:25 am Coffee and Networking Break

10:35 am **Examination of Life Expectancy Expert**
Presiding Judge: **The Honourable Justice Michael G. Emery**, Superior Court of Justice
Demonstrator: **Greg Abogado**, Matthews Abogado LLP
Witness: **Phil Nafekh**, Principe Nafekh Ltd.

- Explaining through evidence why it matters
- Making statistics understandable

10:55 am **Cross-Examination of Life Expectancy Expert**
Presiding Judge: **The Honourable Justice Michael G. Emery**, Superior Court of Justice
Demonstrator: **Barbara Legate**, Legate & Associates LLP
Witness: **Phil Nafekh**, Principe Nafekh Ltd.

- Pointing out consequences of expert being wrong
- Cross-examining on learned literature

11:15 am Debrief/Commentary: **Michael Taylor**, Zarek Taylor Grossman Hanrahan LLP

11:20 am **Examination of Defence Future Care Expert**
Presiding Judge: **The Honourable Justice Michael G. Emery**, Superior Court of Justice
Demonstrator: **Carole Jenkins**, Carole Jenkins Law Professional Corporation
Witness: **Carol Bierbrier**, Carol Bierbrier & Associates

- Highlighting cost effective alternatives
- Putting the plaintiff's claims into perspective

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11:40 am **Cross-Examination of Defence Future Care Expert**

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

Demonstrator: **Richard Bogoroch**, Bogoroch & Associates
LLP

Witness: **Carol Bierbrier**, Carol Bierbrier & Associates

- Highlighting unreasonable comments in the report
- Undermining the credibility of the process of assessment

12:00 pm Debrief/Commentary: **Frank Benedetto**, Flaherty McCarthy
LLP

12:05 pm **Proper and Ethical Closings: Avoid Crossing the Line**

The Honourable Justice Mark L. Edwards, Superior Court
of Justice

Jacqueline King, Shibley Righton LLP

Richard Bogoroch, Bogoroch & Associates LLP

- Common mistakes that are made
- How to be ready to recognize mistakes made by your
opponent

12:20 pm **Closing Statement of the Defendant**

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

Demonstrator: **Steve Ross**, Rogers Partners LLP

- How to effectively apply evidence to your themes

12:40 pm **Closing Statement of the Plaintiff**

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

Demonstrator: **Jim Vigmond**, Oatley Vigmond LLP

- Tying the closing to what was said in the opening

1:00 pm Debrief/Commentary:

1:05 pm **Panel on View from Appellate Court**

Tom Curry, Lenczner Slaght LLP

Shantona Chaudhury, Pape Chaudhury

- Trial lessons learned on appeal

1:30 pm Questions and Answers

1:35 pm Program concludes

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