

Divine Discoveries: Building a Great Case

Civil Litigation / Young Lawyers Division



Webcast

Date: Wednesday, March 24, 2021 | 9:00 am to 12:30 pm

Location: Webinar

Agenda: 9:00 am Webinar Commences
12:30 pm Webinar Concludes



Professionalism Hours: This program contains a total of 1 hour

Substantive Hours: This program contains 2 hours and 30 minutes

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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, with particular focus on virtual discoveries in the time of COVID-19. 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.

Program Chairs: **Nidhi Punyarthi**, The Corporation of the City of Brampton
Ivan Merrow, Glaholt Bowles LLP

9:00 am Welcome and Opening Remarks

9:05 am **Examining Discovery: An Overview of the Discovery Process, and the Law**

Sherry A. Kettle, Miller Thomson LLP (London)

Joyce Tam, Thomas Gold Pettingill 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
- Important considerations for virtual discoveries

9:30 am **Preparing Yourself and Your Client for Discovery**

Keegan Boyd, Borden Ladner Gervais LLP

Lida Moazzam, Claims Legal Counsel, Desjardins

- 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: ethics related to disclosure, honesty, and virtual examination considerations
- 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?

10:00 am **Undertakings and the Preventable Refusals Motion**

Margot Leduc Pomerleau, MBC Law Professional Corporation (Ottawa)

Amelia Yiu, Elm Law Professional Corporation

- 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*

10:30 am Health Break

10:50 am **Affidavits of Documents, Privilege, Confidentiality and E-Discovery Fundamentals**

Duncan Fraser, noticia LLP (Ottawa)

Rebecca Shoom, Lerner LLP

- Preparing the affidavit of documents, using electronic affidavits 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?

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Questions? pd@oba.org

11:35 am **Discovery Techniques**

Reena Goyal, McCarthy Tétrault LLP

Warren WhiteKnight, Bergeron Clifford LLP (Kingston)

Gain practical guidance on how to conduct a virtual 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
- Anticipating and overcoming issues that may arise when remote and distanced
- Strategies to handle 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

12:30 pm Program Concludes