

Anatomy of a Trial: Successful Trial Strategy

Insurance Law Section



In-Person



Webcast

Date: Thursday, June 23, 2022 | 8:30 am to 4:30 pm
Reception
Friday, June 24, 2022 | 8:30 am to 1:35 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, June 23, 2022 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 Darla A. Wilson**, Superior Court of Justice
Speakers: **Nina Bombier**, Lenczner Slaght
• 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 Darla A. Wilson**, Superior Court of Justice
Demonstrators: **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 Darla A. Wilson**, 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 Darla A. Wilson**, 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: **Sudevi Mukherjee-Gothi**, Pallett Valo LLP

10:00 am Coffee and Networking Break

PROGRAM REGISTRATION IS ONLINE www.oba.org/pd

Questions? pd@oba.org

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

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

Presiding Judge: **The Honourable Justice Darla A. Wilson**,
Superior Court of Justice
Demonstrator: **Jean-Claude Rioux**, 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: **Van Krkachovski**, McCague Borlack
LLP

11:05 am Direct Examination of Plaintiff's Wife

Presiding Judge: **The Honourable Justice Darla A. Wilson**,
Superior Court of Justice
Demonstrator: **Brenda Hollingsworth**, Auger Hollingsworth
(Ottawa)
Witness: **Merella Botros**, Oatley Vigmond LLP

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

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

Presiding Judge: **The Honourable Justice Darla A. Wilson**,
Superior Court of Justice
Demonstrator: **Erin Durant**, Durant Barristers
Witness: **Merella Botros**, Oatley Vigmond LLP

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

11:50 am Debrief/Commentary: **Tina Radimisis**, Jewell Radimisis
Jorge LLP

12:00 pm Lunch (Boxed)

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

Tina Lie, Paliare Roland Rosenberg Rothstein LLP
James Dunn, Beard Winter LLP

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

1:25 pm Examination of the Family Physician

Demonstrator: **Barbara Legate**, Legate Injury Lawyers
Witness: **Christine Fotopoulos**, Global Resolutions

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

1:45 pm Cross-Examination of the Family Physician

Demonstrator: **D. Keith Smockum**, Smockum Zarnett LLP
Witness: **Christine Fotopoulos**, Global Resolutions

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

2:05 pm Debrief/Commentary: **Laura Hillyer**, Martin & Hillyer

2:15 pm Examination of Plaintiff Neurologist

Demonstrator: **Alf Kwinter**, Singer Kwinter
Witness: **Lara Fitzgerald-Husek**, Oatley Vigmond LLP

- 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

Demonstrator: **Linda Matthews**, Matthews Abogado
Witness: **Lara Fitzgerald-Husek**, Oatley Vigmond LLP

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

2:45 pm Debrief/Commentary: **Laura Hillyer**, Martin & Hillyer

2:55 pm Coffee and Networking Break

3:05 pm Examination of Plaintiff Future Care Expert

Presiding Judge: **The Honourable Justice Audrey Ramsay**,
Superior Court of Justice
Demonstrator: **Evelyn ten Cate**, Fosters Law
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 Justice Audrey Ramsay**,
Superior Court of Justice
Demonstrator: **Catherine Korte**, McCague Borlack LLP
Witness: **Mira Miller**, Carol Bierbrier & Associates

- Attacking impartiality
- Highlighting aggressive recommendations

3:45 pm Debrief/Commentary: **Peter Reinitzer**, Will Davidson LLP

3:55 pm Examination of Plaintiff Economic Loss Expert

Presiding Judge: **The Honourable Justice Audrey Ramsay**,
Superior Court of Justice
Demonstrator: **Judith Hull**, McKenzie Lake LLP
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 Justice Audrey Ramsay**,
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: **Kate Cahill**, Thomson Rogers

4:25 pm Question and Answer Session for Day 1

4:30 pm Reception

Friday, June 24, 2022 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 Mark L. Edwards**,
Superior Court of Justice
Demonstrator: **Jill Alexander**, Aviva Trial Lawyers
Witness: **Charles Jung**, Oatley Vigmond LLP

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

8:50 am **Cross-Examination of Defendant Driver**
Presiding Judge: **The Honourable Justice Mark L. Edwards**,
Superior Court of Justice
Demonstrator: **Michael Bugar**, Smockum Zarnett LLP
Witness: **Charles Jung**, Oatley Vigmond LLP

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

9:05 am Debrief/Commentary: **Shanti Barclay**, Zarek Taylor
Grossman Hanrahan LLP

9:10 am **Motion to Strike the Jury**
Presiding Judge: **The Honourable Justice Mark L. Edwards**,
Superior Court of Justice
Demonstrators:
Ryan Breedon, Breedon Litigation
Karim Hirani, Zuber & Company LLP

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

9:40 am Debrief/Commentary: **Barbara MacFarlane**, MD 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. Kyrsten Grimes**, PH.D., C. Psych

- 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: **Robin Moodie**, Moodie Mair Walker
Witness: **Dr. Kyrsten Grimes**, PH.D., C. Psych

- 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: **Elizabeth Bowker**, Stieber Berlach
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: **Philip 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: **David Zuber**, Zuber & Company LLP
Witness: **Philip Nafekh**, Principe Nafekh Ltd.

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

11:15 am Debrief/Commentary: **Frank Benedetto**, Flaherty McCarthy
LLP

11:20 am **Examination of Defence Future Care Expert**
Presiding Judge: **The Honourable Justice Michael G. Emery**,
Superior Court of Justice
Demonstrator: **Barry Cox**, Boghosian & Allen LLP
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: **Rasha El-Tawil**, Siskinds 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**

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

Jacqueline King, Shibley Righton LLP

Maia Bent, Lerner 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 Graeme Mew**,
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 Graeme Mew**,
Superior Court of Justice

Demonstrator: **Loretta Merritt**, Torkin Manes LLP

- Tying the closing to what was said in the opening

1:00 pm Debrief/Commentary: **Jacqueline King**, Shibley Righton LLP

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

The Honourable Peter Lauwers, Court of Appeal for
Ontario

Paul Steep, McCarthy Tétrault LLP

- Trial lessons learned on appeal

1:30 pm Questions and Answers

1:35 pm Program concludes

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