

Expert Evidence in Personal Injury Cases

Winning Strategies and Techniques

Judges, expert witnesses and top counsel will teach you how to select and prepare witnesses and how to adduce or counter expert evidence. They will cover:

- When expert evidence is needed in personal injury cases
- Using experts retained by the accident benefit carrier in the tort claim
- Admissibility and reliability
- The most effective ways to lay the foundation for expert testimony
- The extent of the expert's duty to the court
- How counsel can avoid crossing the line between properly "educating" the expert and improperly "tainting" him/her
- Identifying expert bias
- How many experts' reports? Sensible cost-benefit approaches and defending your choices
- How to control your expert
- When and how to argue that the other side's expert has assumed an advocacy role

Learn from demonstrations with experts in neuropsychology, psychiatry and forensic engineering

"Found the program very effective...Best thing was seeing the variety of experts and the various techniques employed by counsel in examining experts"

Michael Blinick, McCague Borlack LLP



DATE & TIME

April 10, 2013
9:00 a.m. - 4:45 p.m. EDT/EST

LOCATION

Osgoode Professional
Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

CHAIRS

Michael I. Bugar
Adair Morse LLP

Dale V. Orlando
McLeish Orlando LLP

Webcast
Available





Expert Evidence in Personal Injury Cases

Winning Strategies and Techniques

**Do you have the skills
you need to get the
best results?**

The critical elements of any personal injury case – liability and damages – are grist for intense arguments, often resolved on the basis of whatever expert evidence is available. As the technical knowledge of experts is always increasing, the evidentiary challenges involved in their reports and oral testimony demand deeper understanding by both plaintiffs’ and defence counsel. In addition, revisions to the Rules of Civil Procedure and the common law aim to counter the presence or perception of expert bias, along with the risk that counsel will go too far in “educating the expert”.

With so many potential pitfalls in this key area, it’s critical to understand how to most effectively adduce, exclude or refute expert evidence while fully meeting one’s obligations as an officer of the court.

Opening with a survey of key cases, this *Osgoode Professional Development* program will move into demonstration examinations/cross-examinations followed, in each instance, by an interactive “panel debrief” discussion. Counsel, judges and experts will draw on many years of experience to show what works and why. The panels will highlight key points in the demonstrations along with essential principles and practice points.

Expert Evidence in Personal Injury Cases: Winning Strategies and Techniques will provide you with practical knowledge you’ll carry with you into all your future negotiations, discoveries and trials.

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chairs

Michael I. Burgar, Adair Morse LLP
Dale V. Orlando, McLeish Orlando LLP

Faculty

John J. Adair, Adair Morse LLP
Dr. Arthur Ameis, FRCPC
The Hon. Justice Mary Lou Benotto
Superior Court of Justice (Ontario)
C. Kirk Boggs, Lerner LLP
Russell Brownlee, B.Sc., M.A.Sc., P.Eng., FITE
Giffin Koerth Inc.
The Hon. Justice Mark Edwards
Superior Court of Justice (Ontario)
The Hon. Justice Bruce Glass
Superior Court of Justice (Ontario)
The Hon. Justice Glenn A. Hailey
Superior Court of Justice (Ontario)

Richard C. Halpern, Thomson Rogers
The Hon. Justice Peter Howden
Superior Court of Justice (Ontario)
Adam R. Little, Oatley Vigmond LLP
Todd J. McCarthy, Flaherty Dow Elliott
& McCarthy LLP
S. Wayne Morris, Dutton Brock LLP
Rikin Morzaria, McLeish Orlando LLP
Alan L. Rachlin, Rachlin & Wolfson LLP
Dr. Hal Scher, C. Psych., CCRC
Clinical Neuropsychologist

8:30 Registration and Continental Breakfast

9:00 Chairs' Welcome and Introductory Remarks

9:10 Foundational Cases You Need to Know

John J. Adair, Adair Morse LLP

- What the cases say about the trial judge's gatekeeper role
- Letting it all go to weight
- Experts' duty to the court
- The latest on Form 53
- Using expert reports at trial
- Production of draft reports/affidavits

9:45 Practical Considerations in Choosing, Retaining and Educating Experts

Michael I. Burgar, Adair Morse LLP

Dale V. Orlando, McLeish Orlando LLP

The most pertinent and practical challenges facing plaintiffs' and defence counsel, such as:

- "Fair, objective and non-partisan" (Rule 4.1.01): how is expert bias identified?
- Rule 53: just how much of a difference does it make?
- What an effective briefing memo/checklist should contain
- Ensuring materiality/proportionality
- Items which any expert report must address
- The requirement of delivery well in advance of the pretrial conference
- How to control your expert (and what happens if you don't)
- How many expert's reports?
- Sensible cost/benefit approaches
- Ensuring materiality/proportionality
- Defending your choices
- Educating experts re: their statutory and common-law duties
- Identifying the assumptions upon which an opposing opinion is based
- How to effectively present/challenge the qualifications of the other side's expert
- When and how to argue that the other side's expert has assumed an advocacy role
- Professional responsibility issues in choosing, retaining and educating experts

10:30 Refreshment Break

10:45 Judges Interviewed: Where Counsel Go Right and Wrong with Experts

The Hon. Justice Bruce Glass
Superior Court of Justice (Ontario)

The Hon. Justice Peter Howden
Superior Court of Justice (Ontario)

S. Wayne Morris, Dutton Brock LLP

12:00 Luncheon

Understanding Key Experts

Success in handling expert witnesses and their reports isn't achieved on the fly. Counsel need to understand:

- The expert's role and methodology
- The assumptions that experts make
- The basic science behind their disciplines
- Areas of controversy within those disciplines
- Common mistakes that counsel make in dealing with specific kinds of experts
- The expert's perspective on what lawyers should always keep in mind

The following demonstrations and discussions will provide you with valuable insights and tips you can apply when handling expert witnesses, while addressing related key issues. Each demonstration will be followed by an interactive debrief involving the judge, expert and counsel involved in the demonstration.

12:45 Demo-and-panel #1: The Neuropsychologist

Presiding Judge

The Hon. Justice Glenn A. Hainey
Superior Court of Justice (Ontario)

Counsel

Rikin Morzaria, McLeish Orlando LLP

Alan Rachlin, Rachlin & Wolfson LLP

Expert

Dr. Hal Scher, C. Psych., CCRC, Clinical Neuropsychologist

2:00 Demo-and-panel #2: Forensic Engineering Expert

Presiding Judge

The Hon. Justice Mary Lou Benotto
Superior Court of Justice (Ontario)

Counsel

Adam R. Little, Oatley Vigmond LLP

C. Kirk Boggs, Lerners LLP

Witness

Russell Brownlee, B.Sc., M.A.Sc., P.Eng., FITE
Giffin Koerth Inc

3:10 Refreshment Break

3:20 Demo-and-panel #3: CAT Expert (Physiatrist)

Presiding Judge

The Hon. Justice Mark Edwards
Superior Court of Justice (Ontario)

Counsel

Richard C. Halpern, Thomson Rogers

Todd J. McCarthy, Flaherty Dow Elliott & McCarthy LLP

Witness

Dr. Arthur Ameis, FRCPC

4:45 Program Concludes

Registration

Please complete all registrant information.

Expert Evidence in Personal Injury Cases

I will attend: On site Via webcast (single viewer)

Unable to attend? Please contact us to order the program archive and/or materials.

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\$695 plus 13% HST for a total of \$785.35.

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available for both on site and webcast participants. Visit www.osgoodepd.ca for details. Please inquire about financial assistance and CPD credits.

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Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Date & Time

April 10, 2013
9:00 a.m. - 4:45 p.m. EDT/EST

Please arrive a half hour early for sign-in and material pick-up. Dress is business casual.

Location

Osgoode Professional Development
Downtown Toronto Conference Centre

1 Dundas St. W., 26th Floor
Toronto, ON M5G 1Z3

Did You Know?

This course counts towards *Osgoode's* new Certificate In Personal Injury Law and Practice, since it doubles as Module 2 of the Certificate program.

Module 1 (April 3, 2013) deals with Client Management, Module 3 (April 17) with Discovery and Mediation, Module 4 (April 23) with Trial Preparation, and Module 5 (May 13) with Trial Advocacy.

For more information about the Certificate, please visit www.osgoodepd.ca.

"[Best thing was the] excellence of lawyers, judges and experts"

"Very impressive list of speakers and lawyers... the package is well put together"



CPD Credits

LSUC (ON) CPD (experienced member only): 7.0 CPD Hours (7.0 Substantive, 0.0 Professionalism); Quebec/BC/Manitoba/New Brunswick/NWT/Nunavut/PEI and Saskatchewan: 6.5 CPD/MCLE credit hours towards professional development requirements; NSBS CPD: 7.0 credit hours; NY CLE Board (on-site participants only): 7.5 credit hours in the Area of Professional Practice for transitional and non-transitional lawyers. Also eligible for CLE/Insurance Premium Credits Program offered by the Law Society of PEI and for Alberta CPD credit with the Law Society of Alberta. Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

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