

Now in
its 16th year!
This is a must
attend event for
all litigators.

THE 2022 CIVIL LITIGATOR'S SURVIVAL GUIDE TO EVIDENCE

*“The selection of speakers and
the depth of their knowledge
is unparalleled.”*

Get an up-to-date understanding of the key evidentiary principles that are essential to build your case, whether or not it proceeds to trial.

- How to manage virtual proceedings, including how to conduct successful electronic trials
- Strategies to avoid common mistakes in gathering or preparing evidence on motions and applications (including summary judgment motions)
- Proven approaches when challenging a claim of privilege
- Strategies when applying the rules of evidence to mediations and arbitrations
- Practical approaches to ethical/professional dilemmas
- How to ensure your electronic evidence is admissible

PLUS! Get tactical tips and insights from the Bench on how to approach evidentiary problems and find solutions. Featuring:

The Hon. Justice Alison Harvison Young
Court of Appeal for Ontario

The Hon. Justice Cory A. Gilmore
Superior Court of Justice (Ontario)

The Hon. Justice Michael Tulloch
Court of Appeal for Ontario

The Hon. Justice Jessica Kimmel
Superior Court of Justice (Ontario)

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

The Hon. Justice Ria Tzimas
Superior Court of Justice (Ontario)

PROGRAM CHAIR

Jacqueline L. King, C.S.
Shibley Righton LLP

REGISTRATION OPTIONS

• **Friday, January 21, 2022:**
9:00 a.m. – 4:30 p.m. ET
Online, Live

OR

• **Friday, February 25, 2022:**
9:00 a.m. – 4:30 p.m. ET
Online Replay

Can't make the date?

*Registration includes 120-day
unlimited, online access to the
recorded program.*

Register today at:

[osgoodepd.ca/
evidenceguide](https://osgoodepd.ca/evidenceguide)

The 2022 Civil Litigator's Survival Guide To Evidence

With relatively few cases proceeding through trial these days, legal professionals increasingly lack the courtroom experience that equates to a thorough understanding of the laws and best practices concerning evidence. As a litigator, it is essential to keep current in this important area.

Now in its 16th year, this annual, must-attend *OsgoodePD* program will equip you with an enhanced understanding of evidentiary principles and relevant cases, enabling you to identify and confront evidentiary issues with greater authority and confidence.

Designed for those with any level of litigation experience, join leading members of the Bench and bar and get the tools you need to give you the edge in settlement discussions, negotiations, discoveries, motions, pretrials and trials.

Topics Include

- Judges Roundtable: Commonly encountered evidentiary conundrums and their solutions
- Admissibility of evidence in 2022 and beyond: What works and what doesn't?
- Overcoming evidentiary issues on motions and applications
- Recent developments in hearsay, prior inconsistent statements and the rule in *Browne v Dunn*
- Approaches and considerations for evidence in mediations and arbitration
- The current state of solicitor-client and litigation privilege
- Ethical and professional issues relating to evidence
- Using expert evidence: Perspectives from both sides of the Bench
- Advice from the Bench: Strategies when presenting evidence at trial

Who Should Attend

- Civil litigators (plaintiffs' and defendants' counsel)
- In-house litigation counsel
- Litigation law clerks
- Litigation Paralegals

Register today at:

osgoodepd.ca/evidenceguide

Agenda

9:00 a.m.

Program Chair's Welcome and Introductory Remarks

9:05 a.m.

The Admissibility of Evidence – What Works? What Doesn't?

Sandra Barton, Gowling WLG

What makes evidence admissible? An annual update focusing on recent case law, emerging issues and practical tips, dealing with:

- How to ensure your electronic evidence is admissible
- Relevance and materiality: their meaning and practical implications under current law
- How pleading technique influences how a judge will think about relevance and materiality in a particular case
- Arguing prejudicial vs. probative value
- Tactics for maximizing the weight of your evidence
- How to use virtual documents and business records to bolster your case

9:45 a.m.

Evidentiary Issues on Motions and Applications: Overcoming Problems and Presenting Properly

Rahat Godil, Fasken Martineau DuMoulin LLP

Geoff R. Hall, McCarthy Tétrault LLP

A discussion on the current evidentiary issues surrounding motions and applications, including:

- Motions vs. applications: the key differences and their role in determining the evidence you need
- Strategies for effective written motions and applications
- How to avoid common mistakes in gathering or preparing evidence on motions and applications (including summary judgment motions)
- Tips on how to gather evidence for a motion during a virtual case-conference

10:20 a.m.

Break

10:35 a.m.

Hearsay, Prior Inconsistent Statements and the Rule in *Browne v. Dunn*: Critical Update

Emily Fan, Lerner LLP

Jacqueline King, C.S., Shibley Righton LLP

How have the courts interpreted hearsay in virtual proceedings over the past year? This session will refresh your understanding of critical concepts and discuss emerging issues. Topics to be discussed include:

- Proven techniques when introducing or responding to a prior inconsistent statement
- Recent applications of the rule of *Browne v. Dunn* and impact on admissibility
- What should counsel consider in specific situations?
- Looking ahead – cases on the docket for 2022

11:15 a.m.

Evidence on Mediations and Arbitrations: Special Considerations in Dispute Resolution

The Hon. Todd Archibald, Archibald Mediation & Arbitration Solutions Inc.

Megan Keenberg, Van Kralingen & Keenberg LLP

Special considerations must be applied to evidence in these distinctive modes of dispute resolution – namely mediation and arbitration. Topics include:

- Evidence and the arbitral process
- Recent examples of the applicability of the rules of evidence
- Admissibility vs weight
- Hearsay, best evidence and the rules of common sense
- Recent application of the rule in *Browne v. Dunn* in the arbitral context
- Rules applicable to expert evidence

11:45 a.m.

The Current State of Solicitor-Client and Litigation Privilege

Robert Bell, Lerner LLP

An update on evidentiary issues surrounding privilege, including:

- Proven strategies for challenging a claim of privilege
- Tools for protecting confidential corporate information
- Concerns relating to the disclosure of expert evidence and third-party information

- The exceptions to solicitor-client privilege and when the privilege is waived
- Dealing with the accidental disclosure of privileged documents
- Litigation privilege: its persistence after litigation ends
- Limitations on the privilege attached to mediation and settlement discussions

12:15 p.m.

Lunch Break

1:00 p.m.

Judges Roundtable: Commonly Encountered Evidentiary Conundrums and Their Solutions

The Hon. Justice Michael Tulloch

Court of Appeal for Ontario

The Hon. Justice Jessica Kimmel

Superior Court of Justice (Ontario)

The Hon. Justice Sandra Nishikawa

Superior Court of Justice (Ontario)

This highly anticipated annual panel will let you hear directly from the decision makers. This is your chance to get your questions answered and engage with the judges. A selection of challenging situations (including the potential impact at the Court of Appeal) and practical solutions, drawn from such areas as:

- Evidence in virtual proceedings
- Applying the best evidence rule in relation to documents
- Evidence on summary judgment motions
- Affidavits and witness statements: when to choose one over the other
- Gathering evidence from persons outside the jurisdiction
- Getting around the business records exception in the *Evidence Act*
- Using electronic forms of evidence

1:50 p.m.

Using Expert Evidence: Perspectives from Both Sides of the Bench

The Hon. Justice Alison Harvison Young, Court of Appeal (Ontario)

Sheila Block, Torys LLP

Updates and recent case law on expert evidence, including:

- Techniques for handling experts in a virtual trial
- Determining the admissibility/reliability of expert evidence

- Tips on qualifying opinion evidence
- Which sources may be “inherently suspect”?
- Difficulties encountered (and surmounted) in challenging experts

2:25 p.m.

Break

2:40 p.m.

Ethical and Professional Issues Relating to Evidence

Ranjan Das, Berkow Youd Lev-Farrell Das LLP

Brian Greenspan, Greenspan Humphrey Weinstein LLP

Frank Walwyn, WeirFoulds LLP

This session will explore commonly encountered fact situations that raise ethical and professional issues, with practical advice on how to address them in a manner consistent with your roles as advocate for your client and as officer of the court.

3:40 p.m.

Advice from the Bench: Evidence and the Trial

The Hon. Justice Peter Cavanagh, Superior Court of Justice (Ontario)

The Hon. Justice Cory A. Gilmore, Superior Court of Justice (Ontario)

The Hon. Justice Ria Tzimas, Superior Court of Justice (Ontario)

Chantelle Cseh, Davies Ward Phillips & Vineberg LLP (moderator)

Get trial advice directly from the decision-makers. This panel of judges will discuss what to do and what not to do in the courtroom, providing their unique perspective and practical tips on different evidentiary matters including, unfavourable evidence (oral and documentary), crafting compelling openings and closings, conducting successful electronic trials, dealing with electronic evidence, and more.

4:30 p.m.

Program Ends

“Speakers were very engaged and interesting. Good combination of legal and practical advice.”

Chair

Jacqueline L. King, C.S.
Shibley Righton LLP

Faculty

**The Hon. Justice
Alison Harvison Young**
Court of Appeal for Ontario

**The Hon. Justice
Michael Tulloch**
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The Hon. Todd Archibald
Archibald Mediation & Arbitration
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McCarthy Tétrault LLP

Megan Keenberg
Van Kralingen &
Keenberg LLP

Frank Walwyn
WeirFoulds LLP

Registration Details

Fee Per Delegate: \$695 + TAX
Newly Licensed*: \$347.50 + TAX

**This fee applies to newly licensed professionals within the past 2 years*

Fees include attendance and electronic program materials. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details. Please inquire about financial assistance.

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.

Cancellations and Substitutions

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






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