

THE 17TH ANNUAL CIVIL LITIGATOR'S SURVIVAL GUIDE TO EVIDENCE

This is a
must attend
event for all
litigators!

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

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

“Interesting sessions with practical tips.”

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.

Hear from both sides of the Bench and get insightful tips and advice on how to approach challenging evidentiary problems and find practical solutions.

- Tactics to avoid common mistakes in gathering or preparing evidence on motions and applications (including summary judgment motions)
- How to handle hearsay objections and rulings
- Proven approaches to make an impact through visual aids/demonstrative evidence during mediations
- Strategies for handling experts before and during trial

Featuring:

The Hon. Justice David Brown
Court of Appeal for Ontario

The Hon. Justice Charles Chang
Superior Court of Justice (Ontario)

The Hon. Justice Eileen Gillese
Court of Appeal for Ontario

The Hon. Justice Peter Lauwers
Court of Appeal for Ontario

The Hon. Justice Sandra Nishikawa
Superior Court of Justice (Ontario)

The Hon. Justice Julie Thorburn
Court of Appeal for Ontario

The Hon. Justice Jamie Trimble
Superior Court of Justice (Ontario)

The Hon. Justice Michael Tulloch
Court of Appeal for Ontario

The Hon. Justice Susan Vella
Superior Court of Justice (Ontario)

PROGRAM CHAIR

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

REGISTRATION OPTIONS

January 20, 2023:
9:00 a.m. – 4:40 p.m. ET
Online (Live)

February 24, 2023:
9:00 a.m. – 4:40 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 17th Annual 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 you keep current in this crucial area.

Now in its **17th 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 all levels of litigation experience, get the practical tools you need to shape your litigation strategy, giving you an edge in both settlement discussions and the courtroom.

Over one day, you will get perspectives from both sides of the Bench and learn what works and what doesn't. These proven tactics can be immediately put into practice in your next settlement, negotiation, discovery, motion, pretrial or trial.

Topics Include

- Judges Roundtable: Commonly encountered evidentiary conundrums and their solutions
- Admissibility of evidence: Perspectives from both sides of the Bench
- Recent developments in hearsay, prior inconsistent statements and the rule in *Browne v Dunn*
- Overcoming problems with evidentiary issues on motions and applications
- Special considerations for evidence in mediations and arbitrations
- The current state of solicitor-client and litigation privilege
- How to use expert evidence
- Best evidence to reach settlement
- Ethical and professional issues relating to evidence
- Evidence advice from the Bench: Trials vs. appeals

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

8:45 a.m.

Login

9:00 a.m.

Program Chair's Welcome and
Introductory Remarks

9:05 a.m.

The Admissibility of Evidence – Perspectives
from Both Sides of the Bench

The Hon. Justice Peter Lauwers

Court of Appeal of Ontario

Robert Bell

Lerners LLP

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

- Recent changes to the Rules of Civil Procedure
- 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
- Strategies for introducing expert reports

9:35 a.m.

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

The Hon. Justice Michael Tulloch

Court of Appeal of Ontario

Jacqueline L. King, C.S.

Shibley Righton LLP

This session will refresh your understanding of critical concepts and discuss emerging issues. Topics to be discussed include:

- Hearsay objections and rulings – when should you object and when should you insist on a ruling?
- Proven techniques when introducing or responding to a prior inconsistent statement
- Recent applications of the rule of *Browne v. Dunn* and impact on admissibility
- Hearsay evidence on appeal

10:05 a.m.

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

The Hon. Justice Susan Vella

Superior Court of Justice (Ontario)

Gary Luftspring

Ricketts Harris LLP

Don't miss this focused discussion on the current evidentiary issues surrounding motions and applications. Hear multiple perspectives on how to handle the following problems and evidentiary issues, 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 case-conference

10:35 a.m.

Break

10:50 a.m.

Evidence on Mediations and Arbitrations: Special Considerations in Dispute Resolution

Lisa Munro

Lerners LLP

Kathryn Podrebarac

Podrebarac Mediation

Learn key distinctions in how to treat evidence in multiple modes of dispute resolution – namely mediation and arbitration. Topics include:

- Evidence in mediation briefs
- Making an impact through visual aids/demonstrative evidence
- 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
- Rules applicable to expert evidence

11:20 a.m.

The Current State of Solicitor-Client and Litigation Privilege

Kimberly Potter

Fasken Martineau DuMoulin LLP

Get the latest 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

11:40 a.m.

Evidence Law Top Tips and Tricks

The Hon. Justice Julie Thorburn

Court of Appeal for Ontario

William C. McDowell

Lenczner Slaght LLP

Get the top tips and tricks litigators need to know about evidence law from the experts. Receive pragmatic advice you can immediately apply to your practice, with a take-home tip sheet provided for future reference.

12:10 p.m.

Lunch Break

12:55 p.m.

Judges Roundtable: Commonly Encountered Evidentiary Conundrums and Their Solutions

The Hon. Justice Eileen Gillese

Court of Appeal for Ontario

The Hon. Justice Charles Chang

Superior Court of Justice (Ontario)

The Hon. Justice Jamie Trimble

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 on summary judgment motions
- Applying the best evidence rule in relation to documents
- Affidavits and witness statements: when to choose one over the other
- Getting around the business records exception in the *Evidence Act*
- Admitting additional evidence on appeal

1:40 p.m.

How to Use Expert Evidence

Sheila Block

Torys LLP

Sarah Shaikh

General Counsel, Public Prosecution Service of Canada

Updates and recent case law on expert evidence, including:

- Techniques for handling experts before and during 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

2:10 p.m.

Best Evidence to Reach Settlement

H. Michael Rosenberg

McCarthy Tétrault LLP

A large number of civil disputes are settled before trial. Learn about processes, procedures and best practices to obtain the best evidence for your case in a timely manner so you can settle early.

2:40 p.m.

Break

2:55 p.m.

Ethical and Professional Issues Relating to Evidence

Geoff R. Hall

McCarthy Tétrault LLP

Hossein Moghtaderi

Filion Wakely Thorup Angeletti LLP

Michael H. Morris

Senior General Counsel, Department of Justice, National Litigation

Justin W. Yuen

Barrister & Solicitor

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.

3:55 p.m.

Evidence Advice from the Bench – Trials vs. Appeals

The Hon. Justice David Brown

Court of Appeal of Ontario

The Hon. Justice Sandra Nishikawa

Superior Court of Justice (Ontario)

Get advice directly from the decision-makers! This panel of judges will discuss the differences in handling evidence at trial vs. appeal, providing their unique perspective and practical tips on topics including:

- Unfavourable evidence (oral and documentary)
- Appropriate trial and appeal evidence etiquette
- Hearsay objection rulings at trial (and the impact on appeal)
- The right way to produce a book of documents

4:40 p.m.

Program Ends

Chair

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

Faculty

The Hon. Justice David Brown
Court of Appeal for Ontario

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“Great speakers.
Great topics.”

Robert B. Bell
Lerners LLP

Sheila Block
Torys LLP

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Filion Wakely Thorup Angeletti LLP

Michael H. Morris
Senior General Counsel
Department of Justice
National Litigation

Lisa Munro
Lerners LLP

Kathryn Podrebarac
Podrebarac Mediation

Kimberly Potter
Fasken Martineau DuMoulin LLP

Sarah Shaikh
General Counsel,
Public Prosecution Service
of Canada

Justin W. Yuen
Barrister & Solicitor

Registration Details

Early-bird price: \$695 + TAX (until October 31st)

Early Bird – Newly Licensed*: \$347.50 + TAX

Regular rate: \$795 + TAX

Regular – Newly Licensed*: \$397.50 + 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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