

# THE 18<sup>TH</sup> ANNUAL CIVIL LITIGATOR'S SURVIVAL GUIDE TO EVIDENCE

A must  
attend event  
for all  
litigators!

*“This symposium is material, relevant, and necessary for anyone appearing before courts, boards and tribunals. Hearing from an esteemed panel of justices is invaluable.”*

Sandeep Bandhu, Principal at Brickhouse Legal Services PC

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.

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

**PLUS!** Don't miss **TWO invaluable Judges Panels** featuring prominent judges from both trial and appellate courts, along with a Q&A on **“Why Evidence Matters”** with **The Honourable Michael H. Tulloch**, Chief Justice of Ontario

## PROGRAM CHAIR

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

## REGISTRATION OPTIONS

January 18 – 19, 2024:  
1:00 p.m. – 5:00 p.m. ET  
Online (Live)

OR

February 29 – March 1, 2024:  
1:00 p.m. – 5:00 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 18<sup>th</sup> Annual Civil Litigator's Survival Guide to Evidence

The appropriate and strategic use of evidence can make or break your case. As a litigator, it is crucial that you have a thorough and up-to-date understanding of the laws and best practices concerning evidence to enable you to identify and confront evidentiary issues with greater authority and confidence.

Now in its **18<sup>th</sup> year**, this **annual, must-attend** OsgoodePD program, designed for those with all levels of litigation experience, will equip you with an enhanced understanding of evidentiary principles and relevant cases and the practical tools you need to shape your litigation strategy.

Over **two half-days**, you will get perspectives from both sides of the Bench and learn what works and what doesn't in both settlement discussions and in the courtroom, along with proven tactics that you can immediately put into practice in your next case.

## Topics Include

- Judges Panel: Tackling evidentiary problems and how to best solve them
- Practical tips and relevant case law in hearsay evidence, prior inconsistent statements and the rule in *Browne v. Dunn*
- How pleading techniques influence how a judge will think about relevance and materiality
- Overcoming problems with evidentiary issues on motions and applications
- Proven strategies for challenging a claim of privilege
- How to use expert evidence
- Special considerations for evidence in mediations and arbitrations
- Ethical and professional issues relating to evidence
- Judges Roundtable: Advice from the Bench

## Who Should Attend

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

Register today at:

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

## Agenda

Day One – January 18, 2024

1:00 p.m.

Program Chair's Welcome and Introductory Remarks

**Jacqueline L. King**

Shibley Righton LLP

1:05 p.m.

Hearsay Evidence: Updates and Practice Tips

**The Hon. Justice Peter Lauwers**

Court of Appeal of Ontario

Practical knowledge and advice on hearsay evidence, including dos and don'ts, relevant case law, best practices, including:

- What is hearsay and common exceptions
- Hearsay objections and rulings – when should you object and when should you insist on a ruling?
- What should counsel consider in specific situations?
- Hearsay evidence on appeal

1:45 p.m.

Admissibility of Evidence

**Robert Bell**

Lerners LLP

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

- How to ensure your 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

2:25 p.m.

"Why Evidence Matters" – Q&A with Chief Justice of Ontario Michael H. Tulloch

**The Hon. Michael H. Tulloch**

Chief Justice of Ontario

2:45 p.m.

Break

3:00 p.m.

### Evidentiary Issues on Motions and Applications: Perspectives from Both Sides of the Bench

**The Hon. Justice John R. McCarthy**

Superior Court of Justice (Ontario)

**William C. McDowell**

Lenczner Slaght LLP

Don't miss a discussion between a judge and senior litigator 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 case-conference

3:40 p.m.

### The Latest on Privilege

**Maureen Littlejohn**

Davies Ward Phillips & Vineberg 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

4:10 p.m.

### Judges Panel: Tackling Evidentiary Problems and How to Solve Them

**The Hon. Justice Julie Thorburn**

Ontario Court of Appeal

**The Hon. Justice Susan Vella**

Superior Court of Justice (Ontario)

A selection of current challenging situations (including the potential impact at the Court of Appeal) and practical solutions, based on what these judges are seeing in their courtrooms. Past topics have included:

- 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

- Gathering evidence from persons outside the jurisdiction
- Getting around the business records exception in the *Evidence Act*
- Using electronic forms of evidence
- Admitting additional evidence on appeal

5:00 p.m.

**Day One Concludes**

### Day Two – January 19, 2024

1:00 p.m.

### The Rule in *Browne v. Dunn* and Prior Inconsistent Statements

**The Hon. Justice David M. Brown**

Ontario Court of Appeal

- Recent applications of the rule of *Browne v. Dunn* and impact on admissibility
- Proven techniques when introducing or responding to a prior inconsistent statement
- Effects of improper use of rules and what counsel should do

1:40 p.m.

### Expert Evidence

**The Hon. Justice Cory A. Gilmore**

Superior Court of Justice (Ontario)

**Yael Bienenstock**

Torys LLP

The latest strategies and practical advice on expert evidence from a judge and senior litigator, including:

- How to decide if you need an expert
- Techniques for handling experts before and during trial
- How to successfully cross examine expert testimony
- What is effective/ineffective expert testimony?
- What concerns arise when an expert is testifying?
- What should counsel consider in preparation of examination in chief and cross?

2:20 p.m.

### Evidence in Mediations/Arbitrations

**The Hon. Todd L. Archibald**

Archibald Mediation and Arbitration Solutions Inc.

**Lisa Munro**

Lerners LLP

Distinctions in how to treat evidence in these unique 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

- The applicability of the rules of evidence
- Admissibility vs weight
- Hearsay, best evidence and the rules of common sense
- Rules and procedure applicable to expert evidence

2:55 p.m.

**Break**

3:10 p.m.

### Ethical and Professional Issues Relating to Evidence

**Geoff R. Hall**

McCarthy Tetrault LLP

**Lorne Sabsay**

Sabsay Lawyers

**Sarah Shaikh**

General Counsel, Public Prosecution Service of Canada

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.

4:10 p.m.

### Judges Roundtable: Advice from the Bench

**The Hon. Justice Charles Chang**

Ontario Superior Court of Justice

**The Hon. Justice Heather McGee**

Superior Court of Justice (Ontario)

**The Hon. Justice Jamie Trimble**

Ontario Superior Court of Justice

Get advice directly from the decision-makers!

This panel of judges will discuss their biggest dos and don'ts for litigators when it comes to evidence. Providing their unique perspective and practical tips on topics such as:

- Unfavourable evidence (oral and documentary)
- Dealing with electronic evidence
- The return to in-person trials
- Hearsay objection rulings at trial
- The right way to produce a book of documents

5:00 p.m.

**Program Concludes**

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

## Chair

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

“Great speakers.  
Great topics.”

## Faculty

The Hon. Michael H. Tulloch  
Chief Justice of Ontario

The Hon. Todd Archibald  
Archibald Mediation and  
Arbitration Solutions Inc.

The Hon. Justice David M. Brown  
Court of Appeal for Ontario

Robert B. Bell  
Lerners LLP

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Superior Court of Justice (Ontario)

Lorne Sabsay  
Sabsay Lawyers

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

Sarah Shaikh  
General Counsel, Public Prosecution  
Service of Canada

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

“Interesting sessions with practical tips.”

## Registration Details

Early-bird price: **\$695 + TAX (until October 31<sup>st</sup>)**

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

Regular rate: **\$895 + TAX**

Regular – Newly Licensed\*: **\$447.50 + TAX**

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

Fees include attendance and electronic program materials. Group discounts are available. Visit [www.osgoodepd.ca/group-discounts](http://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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