



THE 2017 GUIDE TO

# RECENT DEVELOPMENTS AND COMPLEX ISSUES IN EVIDENCE IN FAMILY PROCEEDINGS

**Evidence** is the keystone to every family law proceeding – it is critical that counsel have the knowledge and skills to perform at their best.

Join us for a review of some of the most current and important evidentiary issues in Family Proceedings, presented by a faculty of acknowledged experts.

- Presenting evidence at trial
- Voice of the Child Report
- Social Media Evidence
- Criminal Evidence in Family Law Proceedings
- Electronic Evidence, Surveillance and Illegally Obtained Evidence

**PLUS:** Don't miss the **Live Demonstration:** *Effective Examination and Cross Examination of a Therapist.*

Register today at:

[osgoodepd.ca/evidence-in-family-law](http://osgoodepd.ca/evidence-in-family-law)

## Program Chairs

**Richard Niman**

Niman Gelgoot and Associates LLP

**Kristin Normandin**

Normandin Chris LLP

## Program Details

DATE AND TIME

**October 25, 2017**

**9:00 a.m. to 1:00 p.m. EDT**

**In Person or Webcast**

LOCATION

**Osgoode Professional  
Development**

1 Dundas St. West, 26th Floor  
Toronto, ON

ONLINE REPLAY

**November 20, 2017**

# Recent Developments and Complex Issues in Evidence in Family Proceedings

Evidence issues are a part of every family law proceeding. Ensuring you have a current understanding of evidentiary issues particular to your matter is critical for any professional practicing in this area.

From children's evidence, surveillance, electronic and illegally obtained evidence to social media, criminal evidence, and evidence on motions, there are unique challenges with each new decision and legislative amendment. Family law practitioners need the very latest information to represent their clients effectively.

## Topics Include

- Emerging Issues in Voice of the Child Reports
- Social Media Evidence in Family Law Proceedings
- How you can and cannot make use of criminal evidence in a family proceeding
- Making your case at trial: tips from counsel, judge and arbitrator on the best way to present your case
- Evidence on motions – what you need to know
- How and when to use Electronic and Surveillance Evidence

## Who Should Attend?

- All Lawyers who practice Family Law

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## Agenda

**8:30 a.m.**

**Registration and Continental Breakfast**

**9:00 a.m.**

**Welcome and Introductory Remarks from the Chairs**

**Richard Niman**, Niman Gelgoot and Associates LLP

**Kristen Normandin**, Normandin Chris LLP

**9:05 a.m.**

**Evidence at Trial: Making Your Case**

**The Honourable Mr. Justice**

**David L. Corbett**, Ontario Superior Court of Justice

**Gary S. Joseph**, MacDonald & Partners LLP

**Patrick D. Schmidt**, Thomson Rogers Lawyers

**Gerald Sadvari**, Grant Crawford Watson LLP

- What makes a great trial lawyer?
- The most important evidentiary issues for trial counsel to know
- Advocacy tips to counsel
- Thoughts on compelling arguments (and the less compelling)

**9:45 a.m.**

**Current and Developing Issues In Children's Evidence**

**Alfred A. Mamo**, McKenzie Lake Lawyers LLP

- The emergence of the "Voice of the Child Report": how it should be done and by whom
- How and in what circumstances will the court use a Voice of Child Report?
- The importance of the factual context when deciding if the court should hear directly from a child - *C.M.G. v. D.W.S.* (2015)
- Is the court creating false expectations if the wishes of the child are beyond the power of the court to deliver? *Kerr v. Erland* (2014)
- When will the court admit into evidence surreptitious recordings of the child? *Scarlett v. Farrell* (2014); *Fiorito v. Wiggins* (2015)

**10:05 a.m.**

### **Criminal Evidence in Family Law Cases: The Key Issues Every Family Lawyer Needs to Know**

**Richard Niman**, Niman Gelgoot and Associates LLP

- How you can and cannot make use of criminal evidence in the family proceeding
- When is a *Wagg* motion available and how to use it
- Requesting disclosure from the police
- Issues of “lawyer as witness” in the criminal context
- *Evidence Act* protections for questioning and trial and related issues
- Evidentiary precautions to avoid jeopardizing the criminal proceeding for the accused or the victim

**10:25 a.m.**

### **Refreshment Break**

**10:40 a.m.**

### **Electronic Evidence, Surveillance & Illegally Obtained Evidence: Admissible or Not?**

**Linsey Sherman**, Sherman Family Law & Mediation

- What is the impact of section 184 of the *Criminal Code* in the context of family law proceedings and illegally obtained recordings?
- When electronic evidence is illegally obtained: steps to take in dealing with the evidence and how counsel should proceed
- Is the illegally obtained evidence admissible in the family law proceeding?
- Other methods of obtaining electronic evidence and how to introduce into court
- Do’s and Don’ts of Surveillance Evidence
- Ethical issues to consider
- The Courts’ reactions

**11:00 a.m.**

### **Demonstration: Effective Examination and Cross-Examination of a Therapist**

**OCL Clinician: Steven M. D’Souza**, MSW, RSW, Provincial Manager, Clinical Services, Office of The Children’s Lawyer

**Counsel: Dan L. Goldberg**, General Counsel, The Office of the Children’s Lawyer  
**Stephen Cotas**, Epstein Cole

**Judge: The Hon. Mr. Justice Stanely B. Sherr**, Ontario Court of Justice

Using a fact scenario developed for this program, top experts will take this therapist Through a brief examination-in-chief and cross-examination, focusing on evidentiary issues/tips on how to handle and predict an expert’s testimony, including:

- How to effectively qualify a therapist
- Techniques to advance the theory of your case: using the evidence
- How to handle your witness
- The proper way to attack the opposing side’s case through effective cross-examination
- Ways of dealing with a difficult witness
- Ethical considerations all practitioners need to understand

**12:00 p.m.**

### **Emerging Evidentiary Issues in Family Proceedings**

**George Karahotzitis**, Thomson, Rogers

- A review of the most current evidentiary issues in Family Proceedings

**12:20 p.m.**

### **Evidence on Motions: Key Principles and Required Evidence**

**Maxine M. Kerr**, Barrister & Solicitor

- The importance of proper affidavit evidence: enabling the Court to deal with cases justly
- Relevance, argument, bald assertions, hearsay and speculation: how to spot the issues and how to deal with them

- In what circumstances will the court allow a departure from the clear and Mandatory language of R.14 (20)??
- Conflicting evidence and issues of credibility: an update on *Ierullo*
- Evidence on a motion for summary judgment: key principles; required evidence; Recent amendments to Rule 16 giving the court significant fact-finding powers and when those expanded powers are to employed

**12:40 p.m.**

### **Social Media Evidence in Family Law Proceedings**

**Erin Chaiton-Murray**, Fogelman Law

- Do’s and Don’ts of Social Media Evidence
- Ethical issues to consider
- When and how to use such evidence

**1:00 p.m.**

### **Program Concludes**



## Chairs

**Richard Niman**  
Niman Gelgoot and  
Associates LLP

**Kristin Normandin**  
Normandin Chris LLP

## Faculty Includes

**Erin Chaiton-Murray**  
Fogelman Law

**Stephen Cudas**  
Epstein Cole LLP

**The Honourable Mr.  
Justice David L. Corbett**  
Ontario Superior Court  
of Justice

**Dan L. Goldberg**  
General Counsel, The  
Office of the Children's  
Lawyer

**Andrea Jones, MSW,  
RSW, Provincial Manager  
(A), Clinical Services,  
Office of the Children's  
Lawyer**

**Gary S. Joseph**  
MacDonald & Partners LLP

**George Karahotzitis**  
Thomson Rogers Lawyers

**Maxine M. Kerr**  
Barrister & Solicitor

**Alfred A. Mamo**  
McKenzie Lake  
Lawyers LLP

**Richard Niman**  
Niman Gelgoot and  
Associates LLP

**Gerald Sadvari**  
Grant Crawford  
Watson LLP

**Patrick D. Schmidt**  
Thomson Rogers Lawyers

**Linsey Sherman**  
Sherman Family Law  
and Mediation

**The Honourable Justice  
Stanley B. Sherr**  
Ontario Court of Justice

## Registration Details

### Fee per Delegate

**\$345 plus HST**

Fees include attendance, program materials, continental breakfast and break refreshments. 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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