

# THE CIVIL LITIGATOR'S SURVIVAL GUIDE TO EVIDENCE 2019

*One of the best I've attended in a long time.*

Jill M. Knudsen, Macdonald Sager Manis LLP

Ensure that you have an up-to-date grasp of the evidentiary principles that apply whether your case settles or proceeds to trial.

- How to avoid common mistakes in gathering and presenting evidence on motions and applications (including summary judgment motions)
- How to ensure that the evidence you present is both relevant and material
- Techniques for maximizing the weight of your evidence
- Overcoming difficulties in challenging experts and opinion evidence
- Key cases in solicitor-client and litigation privilege
- Using documents and business records to bolster your case
- How to introduce or respond to a prior inconsistent statement
- Realistic approaches to evidentiary conundrums and ethical/professional dilemmas

Register today at:

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

## Program Chairs

Jacqueline L. King  
Shibley Righton LLP

Douglas B. B. Stewart  
Dentons Canada LLP

## Date and Time

April 15, 2019  
9:00 a.m. – 4:30 p.m. EDT  
In Person or Webcast

Online Replay:  
May 30, 2019  
9:00 a.m. – 4:30 p.m. EDT

## Location

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

# The Civil Litigator's Survival Guide to Evidence 2019

With relatively few civil cases proceeding through trial to judgment these days, legal professionals increasingly lack the courtroom experience that forges a thorough understanding of the law of evidence.

But as experienced litigators know, such an understanding is critical to shaping the strategy of your case and assessing its strength, as well as to maximizing the odds of a favourable judgment in the event that no settlement is reached. One can't competently undertake a litigation file without asking "What can I prove?" or "What can I prevent the other side from proving?"

This OsgoodePD program will enable you to answer these questions with confidence and authority, giving you an edge both in settlement discussions and in the courtroom. For counsel with limited trial experience, this is a prime opportunity to get the benefit of what experienced judges and practitioners have to say about navigating this area. If you already have significant trial experience, this is an opportunity to ensure that your knowledge is current while deepening your insight into points that were always in need of clarification. At any level of practice experience, *The Civil Litigator's Survival Guide to Evidence* will provide you with practical knowledge you'll apply in negotiations, discoveries, motions, pretrials and trials.

## Who Should Attend

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

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## Agenda

8:30 a.m.

Registration

9:00 a.m.

Chairs' Welcome and Introductory Remarks

9:05 a.m.

Evidentiary Issues on Motions and Applications: How to Overcome Problems and Present Properly

**Megan Keenberg**

Van Kralingen & Keenberg LLP

- Motions vs. applications – the key differences and their role in determining the evidence you need
- How does the use of cross-examination transcripts on a motion differ from examinations for discovery in an action?
- Effective use of motions for directions
- Case conferences as evidence gathering tools for motions

9:50 a.m.

Relevance, Materiality, Probity, Persuasion

**Nadia Campion**

Lax O'Sullivan Lissus Gottlieb LLP

- Relevance and materiality – their meaning and practical implications under current law
- Do the goalposts shift between the pre-hearing and trial phases?
- Ensuring that your evidence is relevant and material
- How pleading technique influences how a judge will think about relevance and materiality in your particular case
- Arguing prejudicial effect vs. probative value

10:30 a.m.

Refreshment Break

10:45 a.m.

## Hearsay, Prior Inconsistent Statements and the Rule In *Browne v. Dunn*

**Lisa Munro**

Lerners LLP

**Jacqueline L. King**

Shibley Righton LLP

A Superior Court Justice has remarked that “nothing can contribute more to a court’s sense of unease than an impression that counsel does not understand” the basic principles regarding hearsay and the exceptions to hearsay. This session will pinpoint what you need to know at this point in the doctrine’s sometimes bewildering evolution.

Judges have also observed that the rule in *Browne v. Dunn* ranks just after hearsay as one of the most commonly misunderstood doctrines. This session will show how the application of the rule impacts on admissibility, and what counsel must consider in specific situations.

11:30 a.m.

## The Current State of Solicitor-Client and Litigation Privilege

**Laura M. Wagner**

Borden Ladner Gervais LLP

- Practical advice on how to challenge 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.

## Luncheon Address

### “The Art of Making Evidence Weigh More Heavily”

**Jane Sirdevan**

Gardiner Roberts LLP

Admissibility is primarily a matter of law; but when it comes to the weight of admissible evidence, differences in approaches by individual advocates can have an enormous impact. Mastery in this area signals the other side that you are equipped to drive the matter to a favourable outcome, with or without a trial. This session will help you maximize the odds of making your evidence receive its due weight.

1:15 p.m.

## Expert Evidence: How It Can Make or Break Your Case

**Robert B. Bell**

Lerners LLP

- Rule 53.03 and ‘the substance of his/her proposed testimony’; how much ‘substance’ do you need to provide?
- Which sources may be ‘inherently suspect’?
- Lawyers’ difficulties in challenging experts
- Determining the reliability of expert evidence
- Techniques for handling experts on the stand
- Tips on qualifying opinion evidence

1:45 p.m.

## Commonly-Encountered Evidentiary Conundrums and Their Solutions

**The Hon. Justice Jamie K. Trimble**

Superior Court of Justice (Ontario)

**Lindsay Lorimer**

McMillan LLP

**Marie-Andrée Vermette**

WeirFoulds LLP

A selection of challenging situations, drawn

from such areas as:

- Evidence on summary judgment motions
- Applying the best evidence rule in relation to documents
- “Oath-helping” by bolstering the evidence with information from affidavits – when and how to do it
- Affidavits and witness statements: when to choose one or the other
- Gathering evidence from persons outside the jurisdiction
- Getting around the business records exceptions in the *Evidence Act*

3:00 p.m.

## Refreshment Break

3:15 p.m.

## Ethical and Professional Issues Arising in Relation to Evidence

**Ranjan Das**

Berkow Youd Lev-Farrell Das LLP

**Sean Lawler**

Shibley Righton LLP

**Douglas B. B. Stewart** (Moderator)

Dentons Canada LLP

**Dena N. Varah**

Lenczner Slaght Royce Smith Griffin 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.

4:15 p.m.

## Final Questions from the Audience

4:30 p.m.

## Program Ends

## Chairs

Jacqueline L. King  
Shibley Righton LLP

Douglas B. B. Stewart  
Dentons Canada LLP

## Faculty Includes

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

Lindsay Lorimer  
McMillan LLP

Lisa C. Munro  
Lerners LLP

Robert B. Bell  
Lerners LLP

Jane Sirdevan  
Gardiner Roberts LLP

Nadia Campion  
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Gottlieb LLP

Dena N. Varah  
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Smith Griffin LLP

Ranjan Das  
Berkow Youd Lev-Farrell  
Das LLP

Marie-Andrée Vermette  
WeirFoulds LLP

Megan Keenberg  
Van Kralingen &  
Keenberg LLP

Laura M. Wagner  
Borden Ladner Gervais LLP

Sean Lawler  
Shibley Righton LLP

## Registration Details

### Fee per Delegate

**\$695 plus HST**

Fees include attendance, program materials, lunch 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

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1h 15m Professionalism)

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