



Managing Evidentiary Challenges

AGENDA

8:30 a.m. Registration and Continental Breakfast

9:00 a.m. Introduction to Program and Icebreaker

Pamela Chapman, Legal Educator & Consultant, Program Director

9:15 a.m. Refresher on Key Principles

Pamela Chapman, Legal Educator & Consultant, Program Director

- The rules of evidence for tribunals
- Key concepts: relevance, probative value, prejudicial effect
- A rubric for assessing admissibility
- Managing objections

10:00 a.m. Exercise: Using a Rubric to Assess Admissibility

Facilitator: Pamela Chapman, Legal Educator & Consultant, Program Director

- A short video scenario will set up an evidentiary objection
- In small groups, participants will use a rubric to consider the arguments about admissibility in a systematic way
- The plenary will discuss best practices

10:30 a.m.

Refreshment Break

10:45 a.m. Evolving Approaches to Managing Expert Evidence

John M. Buhlman, WeirFoulds LLP

- Standards for the admissibility of expert evidence
- The 'gate-keeping' function
- Hybrid or 'treating' witnesses
- Panels of experts, 'hot-tubbing' & other innovations

11:15 a.m. Panel Discussion: Evolving Approaches to Managing Expert Evidence

Short fact scenarios, discussion

Panelists:

John M. Buhlman, WeirFoulds LLP

Jerry DeMarco, Alternate Executive Chair, Environment and Land Tribunals Ontario (ELTO)

Soraya Farha, Vice-Chair, Health Services and Health Professions Appeal and

Review Boards

- Applying the judicial tests in the tribunal context
- Tribunal experience with evolving approaches
- Challenges & risks

12:15 p.m.

Lunch

1:00 p.m.

Assessing Evidence: Memory and Reliability

Professor Steve Joordens, Director of the Advanced Learning Technologies Lab,
Department of Psychology, University of Toronto

- How human memory does and does not work
- The risks of over reliance on memory, including false memories
- Challenges for oral and written evidence
- Exposure to post-event information

2:00 p.m.

Assessing Evidence: Credibility

Mark J. Sandler, Cooper, Sandler, Shime & Bergman LLP

- Assessing credibility: is demeanour completely discredited?
- Cultural context and implicit bias in making credibility findings
- What can you rely upon to assess contradictory evidence?
- How can you explain credibility findings?

2:45 p.m.

Refreshment Break

3:00 p.m.

“Counsel Rountable: To Admit or Not to Admit” – Should Tribunals Ever Exclude Evidence?

Panelists:

Christopher D. Bredt, Borden Ladner Gervais LLP

Aaron Dantowitz, Stockwoods LLP

James Gorham, Counsel, Justice Canada

Emily Lawrence, Paliare Roland Rosenberg Rothstein LLP

- Admissibility arguments when you are not bound by rules of evidence
- Admitting everything and having it go to weight
- Pro’s and con’s of admissibility rulings versus assessing weight
- Best practices for making admissibility and weight determinations

4:15 p.m.

“Puzzlers & Dazzlers”

- The program will end with a reflective exercise in plenary and the review of the key insights and learning from the day

4:30 p.m.

End of Day