

THE CIVIL LITIGATOR'S SURVIVAL GUIDE TO EVIDENCE 2020

*“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 or preparing 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 posed by experts’ reports
- 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

Program Chair

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

Date and Time

November 6, 2020
9:00 a.m. – 4:30 p.m.

Live Online

Get 120-day on-demand
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Register today at:

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

The Civil Litigator's Survival Guide To Evidence 2020

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

THE SOLUTION: Equip yourself with an enhanced understanding of the evidentiary principles and relevant cases you need to shape the strategy of your case and assess its strong and weak points.

One can't competently undertake a litigation file without asking "What can I prove?" and "What can I prevent the other side from proving?"

This updated version of the successful *OsgoodePD* program will enable you to answer these questions with confidence, giving you an edge in settlement discussions and in the courtroom. For counsel with limited trial experience, this is a prime opportunity to tap into the knowledge and practical wisdom of an expert faculty. And if you already have significant trial experience, it's an opportunity to ensure that your knowledge remains current and to deepen your insight into perennially vexing points. At any level of experience, **The Civil Litigators' Survival Guide To Evidence 2020** will give you the tools you need to prevail in negotiations, discoveries, motions, pretrials and trials.

Who Should Attend

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

Register today at:

osgoodepd.ca/evidenceguide

Agenda

8:45 a.m.

Login

9:00 a.m.

Chair's Welcome and Introductory Remarks

9:05 a.m.

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

Rebecca Durcan

Steinecke Maciura LeBlanc

Geoff R. Hall

McCarthy Tétrault 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.

9:45 a.m.

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

Ian P. Katchin

Fogler, Rubinoff 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

10:20 a.m.

Refreshment Break

10:35 a.m.

Relevance, Materiality, Probity, Persuasion

David Milosevic, LL.M., CFE

Milosevic Fiske LLP

Cameron Fiske, C.S.

Milosevic Fiske 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

11:10 a.m.

Admissibility of Evidence – And Is “Weight” a Thing?

Lisa Munro

Lerners 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.

11:45 a.m.

Evidence on Mediations and Arbitrations

William G. Horton

William G. Horton Commercial Arbitration

Kathryn Podrebarac

Podrebarac Mediation

Two speakers – experienced in arbitration and mediation respectively – will illuminate the special considerations to be applied

to evidence in these distinctive modes of dispute resolution. Areas covered include:

- Evidence and the arbitral process
- Applicability of the rules of evidence
- Admissibility vs weight
- Hearsay, best evidence and the rules of common sense
- The Rule in *Browne v. Dunn* in the arbitral context
- Rules applicable to expert evidence
- The rules of logic and their application

12:15 p.m.

Lunch

1:00 p.m.

Commonly-Encountered Evidentiary Conundrums and Their Solution

The Hon. Justice David Brown

Court of Appeal For Ontario

The Hon. Justice Michelle Fuerst

Regional Senior Judge (Central East Region), Superior Court of Justice (Ontario)

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 over the other
- Gathering evidence from persons outside the jurisdiction
- Getting around the business records exception in the *Evidence Act*

1:50 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”?

- Difficulties encountered (and surmounted) in challenging experts
- Determining the reliability of expert evidence
- Techniques for handling experts on the stand
- Tips on qualifying opinion evidence

2:25 p.m.

Refreshment break

2:40 p.m.

Ethical and Professional Issues Relating To Evidence

Akua Carmichael

Dale & Lessmann LLP

Ranjan Das

BYLD Barristers

Tanya C. Walker

Walker Law

3:40 p.m.

Evidence and the Trial

The Hon. Justice Todd L. Archibald

Superior Court of Justice (Ontario)

Jacqueline L. King, C.S.

Shibley Righton LLP

Robert Taylor

Levitt LLP

This conversation on dealing with evidence at trial explores perspectives from both sides of the bench. A distinguished judge and two practitioners reflect on their experiences as seasoned trier of fact and advocates, respectively. Tune in for their perspectives on dealing with unfavourable evidence (oral and documentary), crafting compelling openings and closings, conducting successful electronic trials, and more.

4:30 p.m.

Program ends

Chair

Jacqueline L. King
Shibley Righton LLP

Faculty Includes

**The Hon. Justice
David Brown**
Court of Appeal For Ontario

**The Hon. Justice
Todd L. Archibald**
Superior Court of Justice
(Ontario)

**The Hon. Justice
Michelle Fuerst**
Regional Senior Judge
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Commercial Arbitration

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David Milosevic, LL.M., CFE
Milosevic Fiske LLP

Lisa Munro
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Kathryn Podrebarac
Podrebarac Mediation

Robert Taylor
Levitt LLP

Tanya C. Walker
Walker Law

Registration Details

Fee per Delegate

\$695 plus HST

Newly Licensed (2017 – 2020): \$347.50 plus HST

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