

The National Civil Litigation CLE Conference Hot Topics In Litigation & Advocacy



Presented by the National Civil Litigation Section, the National Insurance Law Section, the Ontario Bar Association and the Canadian Bar Association's Continuing Legal Education Committee

April 28 and 29, 2006
OBA Conference Center
20 Toronto Street, Suite 200
Toronto, ON

Don't miss the second Annual National Civil Litigation and Insurance Law CLE Conference. Once again, this conference will provide content highly relevant to Canadian litigators. Topics are focused and pointed with the most recent developments only. Specialists will discuss the most recent case law arising out of the Supreme Court of Canada. Top quality speakers will present topics and provide written papers on their subjects for the attendees to read and use later in their practices.

Topics include Managing Mega-Cases, a review of Supreme Court of Canada cases dealing with insurance issues, as well as advocacy skills. The topics will be relevant to litigators from the East Coast, through Quebec, all the way to British Columbia.

People attending this conference can expect to receive practical knowledge in a form they can use in their practices.

CLE Conference Committee:

Dawn Pritchard, George A. McAllister, Pierre-Yves Trudel, Geoffrey Aylward, M. Lynn Murray, Q.C., Heather MacMillan-Brown, Jade Spalding, Art Wilson and Rod Hayley



This program has been accredited by the Specialty Committee(s) of the Law Society of Upper Canada towards the professional development requirement for certification.

Civil Litigation 10.5 hours
Corporate & Commercial Law 10.5 hours

For more information please consult the link below to Law Society web page relating to the Certified Specialist Program/CLE Accreditation.

www.lsuc.on.ca/services/services_specialist_intro_en.jsp

WHO SHOULD ATTEND?

Everyone practicing in the area of civil litigation and/or insurance law or with an interest in the examination of tort law developments, personal injury matters, and corporate and commercial law.

La seconde Conférence nationale de FJP en litige civil et du droit des assurances **« Les sujets de l'heure en matière de litige et de représentation en justice »**

Ne manquez sous aucun prétexte la seconde Conférence nationale de FJP en litige civil et du droit des assurances. Cette Conférence offrira aux avocats-plaideurs canadiens une foule de renseignements des plus précieux. Les thèmes choisis portent uniquement sur les plus récents développements survenus dans le domaine. Les spécialistes invités discuteront de la jurisprudence de la Cour suprême du Canada. D'éminents panélistes débattront de ces différents sujets et fourniront des textes écrits sur les sujets explorés afin que les participants et participantes puissent en faire usage dans le cadre de leur pratique.

Parmi les sujets à l'étude lors de cette conférence : la gestion des méga-causes, un examen des causes de la Cour suprême du Canada traitant de questions d'assurance, de même que les techniques de plaidoirie. Ces sujets intéresseront tous les avocats plaidants de la côte Est jusqu'en Colombie-Britannique en passant par le Québec.

Les gens qui assistent à cette conférence peuvent s'attendre à acquérir des connaissances pratiques sous une forme qui leur sera utile dans leur pratique quotidienne.

Ce programme est offert uniquement en anglais

Program

FRIDAY, April 28, 2006

8:00 - 8:45 REGISTRATION

8:45 - 9:00 WELCOME & INTRODUCTION

CONCURRENT SESSIONS

9:00 - 9:45 **What's New in Litigating Brain Injury Cases**

John McLeish is the co-author of *The Oatley - McLeish Guide To Brain Injury Litigation* which was published by LexisNexis in 2005. Learn what's new in this exciting and complex area of the law from one of Canada's leading personal injury lawyers.

Speaker: John A. McLeish, McLeish Orlando, Toronto, ON

9:00 - 9:45 **Cross-Border Dilemmas: Multi-Jurisdictional Class Actions**

This highly experienced panel will give the latest word on the knotty problems of multi-jurisdictional class action litigation (both national and international), and provide practical suggestions on how these problems can be addressed in order to best serve your clients' needs.

Moderator:

Rodney L. Hayley, Lawson Lundell LLP, Vancouver. Mr. Hayley has acted for both plaintiffs and defendants in class action litigation, and, as chair of the Uniform Law Conference of Canada's National Class Actions Project, he was also co-author of the ULCC's recent "Report on the National Class and Related Interjurisdictional Issues."

Speakers:

- Ward Branch, Branch MacMaster, Vancouver. A leading class actions counsel, Mr. Branch is the author of the standard Canadian text on class actions.
- Craig Jones, Bull Housser & Tupper, Vancouver. Counsel for the Province of BC in the tobacco litigation, Mr. Jones is also author of two important books on mass litigation.
- André Lespérance, General Counsel, Department of Justice. M. Lespérance is counsel in several major class actions.
- Professor Janet Walker, Osgoode. Professor Walker, author of the leading Canadian text on conflicts of law, has written several papers on jurisdictional issues relating to class actions.

9:50 - 10:35 **The AMA Guides (5th Edition) Explained**

The AMA Guides are an important benchmark used to determine impairment. Find out how they can affect your case and what their limitations are. Dr. Klimek has lectured and written extensively in the field of impairment and disability.

Speaker: Dr. Edwin Klimek, St. Catharines, ON

9:50 - 10:35 **Part II of Class Actions Panel Discussion**

10:35 - 10:50 REFRESHMENT BREAK

SPEAKERS ARE SUBJECT TO CHANGE

10:50-11:35 **The Bio-Psycho-Social Approach to Medicine - What you need to Know**

The old biological approach to medicine is being replaced by the new bio-psycho-social approach. What does this mean to your client and what do you need to know? This is a don't miss presentation.

Speaker: Dr. Edwin Klimek, St. Catharines, ON

10:50-11:35 **The Growth of Pharmaceutical Litigation in Canada**

There has been remarkable growth and change in the field of pharmaceutical litigation in Canada in the last decade involving a variety of drugs such as Vioxx, Baycol, fen-phen, and others. But how do such cases work? Why are they suitable (or not) for class certification? How may they be tried (or settled)? And how does this litigation fit within Canada's regulatory framework for prescription drugs?

Speaker: Douglas Lennox, Klein Lyons, Barristers & Solicitors, Toronto, ON

11:40 - 12:25 **Joint and Several Liability - What's the Difference and Why Does it Matter?**

A clear understanding of the principles of joint and several liability may be the key to success in your case. Sharpen your understanding of these important principles from one of Canada's leading authorities on joint and several liability.

Speaker: David Cheifetz, Bennett Best Burn LLP, Toronto, ON

11:40 - 12:25 **Pre-Trial Remedies - Mareva Injunctions, Anton Pillar Orders, and Norwich Orders**

These important pre-trial remedies can mean the difference between success and failure in a lawsuit. Learn when you should apply for a pre-trial remedy and the test for obtaining it. Come hear this don't miss presentation.

Speaker: Luis Sarabia, Davies Ward Phillips & Vineberg LLP, Toronto, ON

12:30- 2:15 LUNCH Keynote Speaker - The Honourable Mr. Justice Peter A. Cumming, Ontario Superior Court of Justice, Toronto
Le Royal Meridien King Edward Hotel, 37 King St., East. All delegates welcome.

2:30 - 3:15 **Disorder in the Courts: The Duty of Care after Cooper**

In its 2001 decision *Cooper v. Hobart*, the Supreme Court of Canada attempted to clarify and restate the *Anns* test for expansion of the duty of care. A confusing and largely conservative wave of lower court decisions has been the unintended result. The presentation will discuss the current test for the existence of a duty of care in novel situations, and provide a matrix for analysis of such claims.

Speaker: Chesley F. Crosbie, Q.C., Ches Crosbie Barristers, St. John's, NL

2:30 - 3:15 **Managing Mega Litigation – The Giant Mine Case – the judicial perspective**

Justice Lutz will speak on the Giant Mine Case from a judicial perspective, and will address the issue of how documents were structured and how documentation was managed. He will also address technology usage in the Courts.

Speaker: The Honourable Mr. Justice Arthur Lutz, Court of Queen's Bench of Alberta, Calgary, AB

3:20 - 4:05 **Mitigation - Traps and Remedies – topics to be covered include:**

- Failure of Counsel to stress the importance of attending for treatment.
- Plaintiff's failure to notify service providers of cancellations.
- Allowing physicians to over medicalize treatment and allowing plaintiffs to suffer from appointment fatigue.
- Failure to deal with anxiety and depression, which will kill motivation and not explaining this to the judge.
- Failing to deal with the Plaintiff's impecuniosity as a barrier to treatment.
- Pain as a barrier to effective treatment.
- Failure to follow medical treatment recommendations.
- Addressing conflicts in medical protocol philosophies.

Speaker: Ray Wagner, Wagner & Associates Inc., Halifax, NS

3:20 - 4:05 **Managing Mega Litigation – The Giant Mine Case – how technology was useful to Counsel**

As Plaintiff's counsel on the Giant Mine case, the issue of how technology can be utilized by counsel in civil litigation will be addressed, as well as how technology can assist counsel in managing civil litigation.

Speaker: J. Philip Warner, Q.C., Bishop McKenzie LLP, Edmonton, AB

Program

FRIDAY, April 28, 2006 - CONCURRENT SESSIONS cont'd

4:10 –
4:55

Bad Faith and the Courts

A discussion of recent decisions from the SCC and courts across the country and what they mean for your practice.

Speaker: Eugene P. Rossiter, Q.C., Stewart McKelvey Stirling Scales, Charlottetown, PE

4:10 –
4:55

Managing Mega Litigation - The Digital Management of Documents – how it is accomplished

The topic of managing mega cases including digital management and the tools needed to co-ordinate management will be addressed. Spoliation as an emerging problem that arises from the existence of digital records and their occasional intentional or unintentional destruction will also be addressed.

Speaker: Thomas P. Donovan, Q.C., Cox, Hanson, O'Reilly & Matheson, Halifax, NS

5:00 – 7:00

Networking Reception – Le Royal Meridien King Edward Hotel, 37 King St., East. All delegates welcome.

SATURDAY April 29, 2006

8:45 - 9:00

REGISTRATION

CONCURRENT SESSIONS

9:00 –
9:45

Relief from the unjust or unreasonable application of statutory conditions in insurance policies after *Marche v. Halifax Insurance Co.*

Find out the effect of the Supreme Court of Canada decision in *Marche v. Halifax Insurance Co.*, [2005] 1 S.C.R. 47. What is the current state of the law when an insured claims relief from the statutory conditions under an insurance policy? In what types of situations will a Court grant relief from forfeiture? How has insurance law been changed by this decision?

Speaker: M. Lynn Murray, Q.C., Cox Hanson O'Reilly Matheson, Charlottetown, PE

9:00 –
9:45

Demonstrative Evidence in the Courtroom

Making a complex scientific concept easy to understand for judge or jury, showing the court how your expert did her investigation correctly, that your accountant compiled properly all the supporting documentation, or just putting the widget in the finder of facts' hands so he can see and feel that it "just doesn't work!": What works or not in the courtroom, from high end technology to the old chalk and board, with Claude-Henri Grignon, of Montreal's Robinson Sheppard Shapiro firm, an insurance litigator of 30 years experience whose practice is almost exclusively comprised of long duration trials.

Speaker: Claude-Henri Grignon, Robinson Sheppard Shapiro, Montreal, QC

9:50 –
10:35

The Impact of *Athey v. Leonatti* On First Party Claims

A discussion of how this decision's treatment of causation has affected not only tort cases but also first party claims with insurers.

Speaker: Maria G. Henheffer, Q.C., Barry Spalding, Saint John, NB

9:50 –
10:35

The Use and Abuse of Surveillance

Can I read my employees' emails? Whose computer is it anyway? What about checking in on phone calls – even those that are not salespeople? Is that camera in the bathroom OK? And what about new technology to watch over my employees? We all used to know the answers to those questions, but that was last week! Bring yourself up-to-date with the latest decisions on the subject: Isabelle Lauzon is a member of the law firm of Le Corre et Associés, which specializes in Labour law on behalf of employers. She is the co-author of the recently published "*Charte et vie privée au travail : tout ce que l'employeur doit savoir*" (office tr.: The Charter and privacy at work: everything an employer must know).

Speaker: Isabelle Lauzon, Le Corre et Associés, Laval, QC

10:35 - 10:50

REFRESHMENT BREAK

10:50 - 11:35 Loss of Future Earnings and Causation

Mitch Taylor will discuss loss of future earnings, including causation, as dealt with by the Supreme Court of Canada in *H.L. v. Canada (Attorney General)*, 2005 SCC 25.

Speaker: Mitch Taylor, General Counsel for the Department of Justice Canada, Vancouver, BC

11:40 - 12:25 Vicarious Liability of Non-Profit Organizations for Sexual Abuse and Non-Delegable Duty – A First Hand View

Blackwater v. Plint, 2005 SCC 58 (*Barney*) is a landmark case on both vicarious liability of non-profit organizations and apportionment as between defendants for sexual abuse and non-delegable duty. Mitch Taylor, lead counsel for the Government of Canada will enlighten us with his first hand observations from trial up to the Supreme Court of Canada.

Speaker: Mitch Taylor, General Counsel for the Department of Justice Canada, Vancouver, BC

12:30 - 1:15 Invisible Injuries and Discrimination

Courts and tribunals adjudicating cases under human rights legislation and the *Charter* reveal an increasing concern with the “invisible” effects or injuries of discrimination going beyond the actual loss of the economic benefit, which might be the tangible object of the litigation. In some cases the “invisible” injury is the basis for the claim itself as was recently highlighted in *Keays v. Honda Canada Inc.*, [2005] O.J. No. 1145. Come and explore this new horizon.

Speaker: James Hendry, General Counsel, Human Rights Law Section, Justice Canada, Ottawa, ON

1:15 CLOSING REMARKS by the Chair, Dawn Pritchard

10:50 - 11:35 Using Event Data Recorders in Your Case

An event data recorder could be the key to your case. Find out what information is available, the key to unlocking it and the evidentiary foundation necessary to offer the information as evidence. Dr. Green has been personally involved in the investigation and reconstruction of more than 3000 motor vehicle accidents.

Speaker: Dr. Robert N. Green, Multi-Disciplinary Collision Research Team at the University of Western Ontario, London, ON

11:40 - 12:25 Expert Witnesses - from the Expert's Point of View

Bill Matiko of Deloitte & Touche LLP, Saskatoon, Saskatchewan will provide practical tips on expert witnesses. He will answer such questions as: How can litigators make better use of their expert witness? When should you get your expert involved? How can the expert assist you in the litigation beyond his or her own opinion and testimony? Come and hear these practical “Do’s and Don’ts” from an expert himself.

Speakers: Bill Matiko, Deloitte & Touche LLP, Saskatoon, SK

12:30 - 1:15 Insurance Law Recap of Supreme Court of Canada Cases

The Supreme Court of Canada has dealt with a number of insurance issues recently. This seminar will give you the “nuts and bolts” of what you need to know. The paper will provide a valuable quick reference to the leading cases from our top court and what they mean for both plaintiff and defense counsel.

Speaker: Brenda Lutz, Q.C., Gilbert McGloan Gillis, Saint John, NB

Registration Form

ACCOMMODATION

LE ROYAL MERIDIEN KING EDWARD
37 KING ST., EAST
TORONTO, ON M5C 1E9
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HOTEL RESERVATION CUT OFF DATE:

March 24, 2006

For convention rates, please contact the Hotel directly before the cut-off date and refer to the CBA Civil Litigation and Insurance Law Conference.

TRAVEL

Air Canada is the official carrier for all our CBA meetings. For travel assistance, please call the CBA's travel agent, Algonquin Travel at 1-866-216-1251 or Air Canada at 1-800-361-7585, and quote CBA Account # CV060405. By ensuring that this Special CBA Account Number appears on your ticket, regardless of the fare purchased, you will help support your organization financially, and we thank you.

CAR RENTAL

AVIS, the official rental car supplier of the CBA, offers several special rates. Call 1-800-331-1600 or visit www.avis.com to reserve your car. You must quote discount number C136498.

TO REGISTER

BY MAIL: Send cheque or money order made payable to the Canadian Bar Association or pay by credit card (Visa or MasterCard). Send payment together with this registration form to the attention of: **Ann Suurland, CLE Program Coordinator, Canadian Bar Association, 865 Carling Avenue, Suite 500, Ottawa, Ontario, K1S 5S8** or **BY FAX: (613) 237-0185.**

PAYMENT MUST BE RECEIVED PRIOR TO THE ACTUAL CONFERENCE AND WITH A COMPLETED REGISTRATION FORM

REFUND POLICY: There will be a 20% administrative charge on any registration cancellation received up to and including **March 28, 2006**. No refund given after March 28. There will be no refunds for "no shows". The program material will be shipped to these delegates within 15 days following the program.

For further information about this program, please contact Ann Suurland at the CBA National Office by telephone at **613-237-2925** or **1-800-267-8860** or by e-mail ann-maries@cba.org.

We encourage limited use of scented product during the conference in consideration of scent-sensitive participants. Thank you.

For updates on the program please visit our website at www.cba.org/cba/cle

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	FEE	GST	TOTAL
<input type="checkbox"/> CBA Members	\$535.00	\$37.45	\$572.45
<input type="checkbox"/> Students (CBA Members)	\$275.00	\$19.25	\$294.25
<input type="checkbox"/> Non-Members	\$695.00	\$48.65	\$743.65

Yes, I will be attending the Friday night reception

Yes, I would like to join the CBA now and pay the member fee to attend this program. I understand a membership representative will contact me.

No, I am unable to attend this Conference but would like to purchase the course material. Please allow 6 to 8 weeks after the conference for delivery.

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