

RECENT DEVELOPMENTS AND COMPLEX ISSUES IN EVIDENCE IN FAMILY PROCEEDINGS



A stellar faculty of experienced judges and leading family law experts will provide you with in-depth and practical guidance on key issues including:

- The emergence of the “Voice of the Child Report” - What is it? How should it be done? By whom?
- How you can and cannot make use of criminal evidence in a family proceeding
- Is illegally obtained evidence admissible in the family law proceeding?
- Making your case at trial: tips from counsel, judge and arbitrator on the best way to present your case
- Conflicting evidence and issues of credibility: an update on *Ierullo*
- Where the Court currently stands on experts and assessors - case law update

Plus! Don't miss the **Live Demonstration: Effective Examination and Cross Examination of a Therapist**. Gain insights into evidentiary issues and tips on how to handle and anticipate an expert's testimony.

Faculty

Professor Nicholas C. Bala

Queen's University, Faculty of Law

The Hon. Justice Victoria Chiappetta

Ontario Superior Court of Justice

Stephen Codas, *Epstein Cole LLP*

Steven M. D'Souza, MSW, RSW

Regional Clinical Supervisor

The Office of the Children's Lawyer

Dan L. Goldberg, *General Counsel*

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Gary S. Joseph, *MacDonald and*

Partners LLP

George Karahotzitis, *Thomson, Rogers*

Maxine M Kerr, *Barrister & Solicitor*

Alfred A. Mamo, *McKenzie Lake*

Lawyers LLP

Harold Niman, *Niman Gelgoot*

and Associates LLP

Richard Niman, *Niman Gelgoot*

and Associates LLP

Kristen Normandin, *Goldhart & Associates*

Patrick D. Schmidt, *Thomson, Rogers*

The Hon. Justice Roselyn Zisman

Ontario Court of Justice

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Webcast Available

Chair

Harold Niman

Niman Gelgoot and Associates LLP

Program Fee

\$345 plus HST

Date and Time

May 9, 2016

9:00 a.m. - 1:00 p.m. EDT

Online Replay Date: June 17, 2016

Location

Osgoode Professional Development

1 Dundas St. W., 26th Floor

Toronto, ON

AGENDA

8:30

Registration and Continental Breakfast

9:00

Welcome and Introductory Remarks from the Chair

HAROLD NIMAN, *Niman Gelgoot and Associates LLP*

9:05

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?
- 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)

9:25

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

9:45

Evidence at Trial: Making Your Case

HAROLD NIMAN, *Niman Gelgoot and Associates LLP*

GARY S. JOSEPH, *MacDonald & Partners LLP*

PATRICK D. SCHMIDT, *Thomson, Rogers*

THE HON. JUSTICE VICTORIA CHIAPPETTA, *Ontario Superior Court of Justice*

- 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)

10:25

Refreshment Break

10:40

Electronic Evidence & Illegally Obtained Evidence: Admissible or Not?

KRISTEN NORMANDIN, *Goldhart & Associates*

- What is the impact of section 184 of the *Criminal Code*?
- 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?
- Other methods of obtaining electronic evidence and how to introduce into court

11:00

Demonstration: Effective Examination and Cross-Examination of a Therapist

OCL Clinician: STEVEN M. D'SOUZA, *MSW, RSW, Regional Clinical Supervisor, The Office of The Children's Lawyer*

Counsel:

DAN L. GOLDBERG, *General Counsel, The Office of the Children's Lawyer*

STEPHEN CODAS, *Epstein Cole LLP*

Judge: THE HON. JUSTICE ROSELYN ZISMAN, *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, including:

- How to effectively qualify a therapist
- Techniques to advance the theory of your case: using the evidence
- How to handle your witness
- Attacking 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

Issues of Privilege in Evidence for Family Proceedings

GEORGE KARAHOTZITIS, *Thomson, Rogers*

- Waiver of privilege and the production of solicitor's file arising from claims made
- Evidentiary onus concerning privilege
- Litigation privilege in relation to expert reports

12:20

Evidence on Motions: Key Principles & 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 powers are to be employed

12:40

Experts & Assessors in Family Cases: Recent Developments

PROFESSOR NICHOLAS C. BALA, *Queen's University, Faculty of Law*

- Bias & the party retained expert: *White Burgess*
- Participant & litigation experts: *Westerhof v. Gee Estate*
- Hard sciences & reliability in family cases: *C.M.G. v D.W.S* and *Motherisk Review*
- The role of assessors, critics and consultants: *M v F*

1:00

Program Concludes