



## CIVIL LITIGATION UPDATED 2015

### “MONT STE. TREMBELLO”\* (MONT STE. MARIE @ MONTEBELLO @ MONT TREMBLANT)

November 20–21, 2015  
Fairmont Mont Tremblant, QC

#### FRIDAY, NOVEMBER 20, 2015

- MODERATOR:** Andrew Lenz, *Perley-Robertson, Hill & McDougall LLP/s.r.l.*
- 9:00 – 9:15** **Bienvenue! / Welcome!**  
Steve Gaon, *President, County of Carleton Law Association*
- 9:15 – 9:30** **It’s complicated...**  
**Sticking with and striking a jury (*Kempf v. Nguyen, Ont. C.A.*)**  
Jaye Hooper, *Hooper Litigation*
- 9:30 – 9:45** **Dismissals without notice: Preparing for the impact of the new Rule 48**  
Ian Hu, *LawPRO*
- 9:45 – 10:00** **Not your grandfather’s slip and fall:  
Why cases under the *Occupiers’ Liability Act* are not just for juniors anymore**  
Fiona Porter, *Intact Insurance*
- 10:00 – 10:15** **The appellate courts weigh in on expert witnesses  
*Moore v. Getahun, Westerhof v. Gee and White Burgess Langille Inman v. Abbot and Haliburton Co.***  
Kirsten Crain, *Borden Ladner Gervais LLP*
- 10:15 – 10:45** **Whatever happened to “trial by ambush”? Surveillance evidence and how (and how not) to use it (*Iannarella v. Corbett, Ont. C.A.*)**  
Justice Peter Lauwers, *Court of Appeal for Ontario*  
Ted Masters, *Burke-Robertson LLP/s.r.l.*  
Craig O’Brien, *Nelligan O’Brien Payne LLP*

**FRIDAY, NOVEMBER 20, 2015**

**10:45 – 11: 05      EXHIBITOR SHOWCASE BREAK**

**MODERATOR:**      **Jeff Saikaley, *Caza Saikaley s.r.l./LLP***

**11:05 – 11:35      **Judicial bias: Do you dare go there?****  
Associate Chief Justice Frank Marrocco, *Superior Court of Justice*  
David Scott, OC, QC, *Borden Ladner Gervais LLP*  
Lynne Watt, *Gowlings LLP*

**11:35 – 11:55      ***Hryniak*: Two years later: The multiple applications of “that summary judgment case” from the Supreme Court of Canada****  
Jessica Fullerton, *Nelligan O’Brien Payne LLP*

**11:55 - 12:45      **Six under six under six about six: Six (lawyers) under six (years at the bar speak for) under six (minutes each) about six (topics many of us pretend we know more about than we actually do).****

**THE TOPIC:** The epitome of eponymy (or “what’s in a name?”)

**ONE: *Mareva* Injunctions and *Anton Piller* Orders: Getting the goods**  
James Wishart, *Dentons Canada LLP*

**TWO: *Norwich Pharmacal* orders: Getting the goods—even without a lawsuit**  
Benjamin Grant, *Conway Baxter Wilson LLP/s.r.l*

**THREE: *Wagg* motions: Getting the goods from the police and/or the Crown**  
Alexa Biscaro, *Norton Rose Fulbright Canada LLP*

**FOUR: *Bullock* and *Sanderson* orders: Getting costs**  
Margot Leduc Pomerleau, *McBride Bond Christian LLP*

**FIVE: *Pierringer* and *Mary Carter* agreements: Getting multi-party litigation settled**  
Erin Callery, *Gowlings LLP*

**SIX: The Rule in *Browne v. Dunn*: Getting the evidence in (and getting into trouble if you don’t know about this rule)**  
Charlotte Porter, *Forget Smith Morel*

**12:45 - 1:00      **And now a word from our regulator...****  
Janet Minor, *Treasurer, Law Society of Upper Canada*

**FRIDAY, NOVEMBER 20, 2015**

**1:00 – 2:15 LUNCH**

**MODERATOR:** Christine Powell, *Soloway, Wright LLP*

**2:15 – 2:35 Good faith and honesty in contract law (*Bhasin v. Hrynew*, S.C.C.)**  
Michael Hebert, *Beament Green*

**2:35 – 2:50 Appeals from arbitration decisions: Can you?**  
Keith MacLaren, *Perley-Robertson, Hill & McDougall LLP*

**2:50 – 3:05 Prudent estate litigation (or “avoiding grave mistakes?”)**  
Justice Liza Sheard, *Superior Court of Justice*

**3:05 - 3:35 THE MONT STE. TREMBELLO CHALLENGE!**

**The Topic:** Interlocutory or Final?

**Your Host:** Justice Robert Beaudoin, *Superior Court of Justice*

**Your Contestants:** Nancy Brooks, *Blake, Cassels & Graydon LLP*  
Sally Gomery, *Norton Rose Fulbright Canada LLP*  
Peter Hagen, *Soloway, Wright LLP*  
Eric Williams, *Williams McEney LLP*

**3:35 – 3:55 EXHIBITOR SHOWCASE BREAK**

**MODERATOR:** Susanne Sviergula, *Cavanagh LLP*

**3:55 – 4:15 What’s new in the East Region? State of the region report**  
RSJ James McNamara, *Superior Court of Justice, East Region*

**4:15 – 4:30 Case management re-boot in the East Region**  
Justice Robert Beaudoin, *Superior Court of Justice*  
Master Calum MacLeod, *Superior Court of Justice*  
Master Nathalie Champagne, *Superior Court of Justice*

**4:30 – 5:30 JUDGES’ PANEL: Civility (and the lack of it), sharp practice and litigating with self-reps: The best—and the worst—we’ve seen in court**

**Moderator:** Justice Katherine Corrick, *Superior Court of Justice, Toronto*

**The Judges/Les Juges:**

Justice Laurie Lacelle, *Superior Court of Justice, Cornwall*  
Justice Timothy Ray, *Superior Court of Justice*  
Justice Pierre Roger, *Superior Court of Justice*  
Justice Patrick Smith, *Superior Court of Justice*  
Justice Robert Smith, *Superior Court of Justice*

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- 5:30 - 7:00 Pre-dinner cocktails - Soutana Room 1 & 2 (Lower Level)  
Sponsored by GML Actuarial Services**
- 7:00 - 9:00 Dinner – Mali I, II, III, IV**
- 9:00 - 1:00 Mix, Mingle and Dance to the New Originals – a New Band created to  
celebrate the 35th Anniversary of the Conference!  
Soutana Room 1 & 2 (Lower Level)  
Sponsored by MDD Forensic Accountants**
- 9:00 - 1:00 The Advocates’ Society Hospitality Suite – Soutana Room 3 (Lower  
Level)**
- 10:30 – 1:00 Late Night in the Gold Room, 7<sup>th</sup> Floor  
Sponsored by Collins Barrow**
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**SATURDAY, NOVEMBER 21, 2015**

**MODERATOR:** Robert de Toni, *Merovitz Potechin LLP*

**9:00 – 9:15 Zipping through waivers: Waivers of liability for high-risk  
activities**  
*Craig Williams, student, uOttawa School of Common Law*

**9:15 – 9:30 The new “neighbour principles”?  
Feuding over fences (and trees and decibels and property  
lines and monster homes and...)**  
*Ron Caza, Caza Saikaley s.r.l./LLP*

**9:30 to 9:50 La cour des petites créances**  
**Animateur:** *Patrick Thompson, McMillan LLP*

**Conferenciers:** *Marie Fortier, Cour supérieure de justice, court des petites  
créances*  
*Christine LaCasse, Williams McEneyr LLP; Cour supérieure de  
justice, court des petites créances*

**9:50 – 10:05 Litigators: How are you coping these days?**  
*Dr. Raj Bhatla, Royal Ottawa Health Care Group*

**10:05 – 11:05 PANEL: EMPLOYMENT LAW**  
**Moderator:** *Mark Josselyn, Gowlings LLP*

**Panellists:** *Justice David Brown, Court of Appeal for Ontario*  
*Justice Charles Hackland, Superior Court of Justice*  
*Jock Climie, Emond Harnden LLP*  
*John Westdal, Sevigny Westdal LLP*

**SATURDAY, NOVEMBER 21, 2015**

**11:05 – 11:25 EXHIBITOR SHOWCASE BREAK**

**MODERATOR:** Cale Harrison, *Tierney Stauffer LLP*

**11:25 – 12:05 PANEL: THE ELECTRONIC TRIAL**

**Moderator:** Joseph Obagi, *Connolly Obagi LLP*

**Panellists:** Justice Bonnie Warkentin, *Superior Court of Justice*  
Martha McCarthy, *President, The Advocates' Society*  
Alyssa Tomkins, *Caza Saikaley s.r.l./LLP*

**12:00 – 1:00 PERSONAL INJURY PANEL: Working up and responding to the case**

**Moderators:** Laurie Tucker, *Burn Tucker Lachaine LLP*  
Susanne Sviergula, *Cavanagh LLP*

**Panellists:** RSJ James McNamara, *Superior Court of Justice*  
Justice Patrick Smith, *Superior Court of Justice*  
Allison Klymyshyn, *Cavanagh LLP*  
Tracy Lyle, *Huckabone O'Brien Instance Bradley Lyle*

**1:00 – 1:30 BOX LUNCH**

**MODERATOR:** William J. Simpson, Q.C., LSM, *Tierney Stauffer LLP*  
Heather J. Williams, *Cavanagh LLP*

**1:30 – 3:30 THE ETHICAL LAWYER'S GUIDE TO THE CARE AND HANDLING OF EXPERT WITNESSES**

**In the wake of the Court of Appeal decisions in *Moore v. Getahun* and *Westerhof v. Gee*, what are the rules when it comes to ethical communications with expert witnesses? Speaking of rules, what are the rules of evidence and civil procedure that apply? What can we now say to experts? How much do we put in writing? How much should they put in writing? Can we comment on their draft reports? What do you do with those draft reports? How do you handle questions about experts at an examination for discovery? How do you qualify an expert witness? Does the expert's report become an exhibit? What is an effective examination in chief? Can you ask to see an expert's file and if so, when? When will a judge refuse to hear from an expert and when will any shortcomings go to weight?**

**Panellists:**

Justice Charles Hackland, *Superior Court of Justice*  
Justice Bonnie Warkentin, *Superior Court of Justice*  
Colleen Burn, *Burn Tucker Lachaine LLP*  
Peter Doody, *Borden Ladner Gervais LLP*  
Kristin Muszynski, *Templeman Menninga LLP*  
Peter Williamson, MASc Peng, *Williams Forensic Consulting*