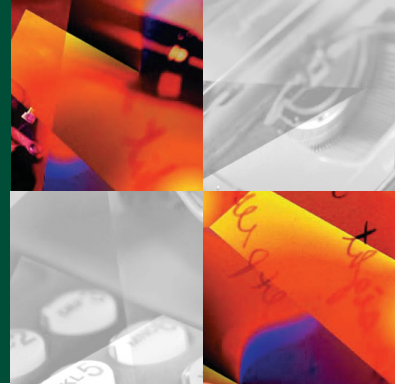




THE CANADIAN
BAR ASSOCIATION

L'ASSOCIATION DU
BARREAU CANADIEN

Advocacy Before the Federal Court in Intellectual Property Matters - Appeal Proceedings



Presented by the National Intellectual Property Section and the Continuing Legal Education Committee of the Canadian Bar Association

April 30, 2009

Hilton Lac-Leamy

**3, Boulevard du Casino
Gatineau, Quebec**



This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.

Intellectual Property Law - 2.5 hours

This program has been approved for 4.5 hours of Continuing Professional Development (CPD) by the Law Societies of British Columbia and Northwest Territories.

You have just received a court decision - do you appeal? You have been served with a notice of appeal - how do you respond?

Attend this program to learn:

- Whether to initiate an appeal, how to frame it properly and cast the errors as well as how to respond;
- How and when to seek an expedited hearing;
- The latest on the standards of review;
- How to write a persuasive factum and how to deliver your arguments and respond to the questions of the appellate bench.

Appellate advocacy is not trial advocacy and different considerations go into your preparation. Whether you are seeking to appeal from a prothonotary, Federal Court judge, or to the Supreme Court of Canada from the Court of Appeal, this program will focus on winning strategies to enable you to become a more effective appellate advocate. Our luncheon speaker, Chief Justice Richard of the Federal Court of Appeal, will also provide some valuable insight into appellate advocacy from the perspective of the bench.

 **DIMOCK STRATTON LLP**
experience. results.

OSLER
Osler, Hoskin
& Harcourt LLP

TORYS
LLP

Program

- 11:30 Registration
Introduction: John Cotter, Osler, Hoskin and Harcourt LLP, Toronto
- 12:00 - Welcome Luncheon
1:30 **Speaker:** *Chief Justice Richard, Federal Court of Appeal*
- 1:30 - Welcome Remarks - Kamleh Nicola, Torys LLP, Toronto (Chair, CLE Committee, National Intellectual Property Section)
1:35
- 1:35 - **To Appeal or Not to Appeal?**
1:50
- factors that go into deciding to appeal a decision from a prothonotary, a judge, or the Federal Court of Appeal
 - when and why to appeal interlocutory and/or final decisions
 - deciding whether to appeal, respond or cross-appeal
 - factors to consider in assessing likelihood of success on appeal
 - cost benefit analysis of appeal
 - ramifications of not appealing – overall case strategy, legal or factual issues, ramifications for other cases.
- Session Chair** - *Jordana Sanft, Ogilvy Renault LLP, Montréal*
Speaker: *Judith M. Robinson, Ogilvy Renault LLP, Montréal*
- 1:50 - **Framing the Appeal**
2:05
- how to properly frame the appeal, be it a notice of motion or notice of appeal
 - casting the errors
 - how much information is necessary/too much.
- Speaker:** *Dominique Hussey, Bennett Jones LLP, Toronto*
- 2:05 - **Stays and Expedites**
2:20
- when and how to bring a stay of the order below
 - effectively responding to a stay application
 - when and how to expedite an appeal hearing
 - responding to a request to expedite
- Speaker:** *Tara James, Osler, Hoskin & Harcourt LLP, Toronto*
- 2:20 - **Latest on Standards of Review**
2:35
- how the courts are applying *Housen vs. Nikolaisen*
 - how best to frame standard of review issues to win on appeal
 - questions of law vs. questions of fact vs. questions of mixed fact and law
 - effectively responding to standard of review issues
- Speaker:** *David M. Reive, Dimock Stratton LLP, Toronto*
- 2:35 - Refreshment Break
2:50
- 2:50 - **Writing the Persuasive Factum**
3:20
- learn how to write strategically and effectively by:
 - making a strong first impression
 - emphasizing strengths and downplaying weaknesses
 - writing an effective overview that “roadmaps” your arguments
 - selecting and organizing the most effective facts
 - determine how many legal arguments are enough
 - hear tips on what to avoid
- Speaker for the Appellant:** *Ronald Slaght, Lenczner Slaght, Toronto*
Speaker for the Respondent: *John B. Laskin, Torys LLP, Toronto*
- 3:20 - **Delivering Persuasive Oral Submissions**
3:50
- distilling the complicated case
 - dealing with questions from the bench
 - learn how to get to the point and stay there
 - transitioning to a new issue or back to an issue after an exchange with the bench
 - knowing when and how to concede a point
 - picking the best issues, not necessarily all your issues
- Speaker for the Appellant:** *David Scott, Borden Ladner Gervais LLP, Ottawa*
Speaker for the Respondent: *William H. Richardson, McCarthy Tétrault LLP, Toronto*
- 3:50 - **Seeking and Responding to SCC Leave Applications**
4:05
- how and when to seek leave – framing the leave application
 - learn what strategies increase your chances of getting leave
 - learn effective strategies to respond and don’t want leave
 - obtain valuable precedents
- Speaker:** *Eugene Meehan Q.C., Lang Michener LLP, Ottawa*
- 4:05 - **Panel Discussion on SCC Issues**
4:25
- topics to be considered by our esteemed panel include,
 - intervention – how to seek leave, how to respond and to make the most of the few minutes on your feet
 - bringing, and responding to, motions before the SCC
 - handling the media and other publicity issues
- Moderator:** *Kamleh Nicola, Torys LLP, Toronto*
Panel: *John B. Laskin, Torys LLP, Toronto*
David Scott, Borden Ladner Gervais LLP, Ottawa
Eugene Meehan Q.C., Lang Michener LLP, Ottawa
Ronald Slaght, Lenczner Slaght, Toronto
William H. Richardson, McCarthy Tétrault LLP, Toronto
- 4:25 - Closing Remarks
4:30

Speakers subject to change

Registration Form

MEETING VENUE & ACCOMMODATION

Hilton Lac-Leamy
3, Boulevard du Casino, Gatineau, Quebec
819-790-6444
Website: www.hiltonlacleamy.com

HOTEL RESERVATION

Please contact the hotel directly and refer to the **CBA Advocacy Before the Federal Court** to obtain the preferred rate. The preferred room rate is available until **Monday March 30, 2009**.

TRAVEL

Air Canada is the official carrier for all our CBA meetings. In order to receive a 10% discount, you must book your flight on-line at www.aircanada.ca and indicate the promotion code **QKUNQ741**. **The discount is not available if you call Air Canada directly.**

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**.

REGISTRATION

Pay by credit card (Visa, AMEX or MasterCard), or send cheque or money order made payable to the Canadian Bar Association together with this registration form to:

Sheila Mills
CLE Program Coordinator
Canadian Bar Association
865 Carling Ave., Suite 500
Ottawa, ON, K1S 5S8 or
fax information to 613-237-0185

Please note that you will not be invoiced. Payment and a completed registration form must be received prior to the conference date. A receipt will follow after the conference.

CANCELLATION POLICY

There will be a 20% administrative charge for any cancellation received in writing prior to **March 30, 2009**. No refund will be given after **March 30, 2009**. There will be no refunds for "no-show" registrants.

INFORMATION

For further information about this program, please contact **Sheila Mills** at the CBA National Office by telephone at **613-237-2925** or **1-800-267-8860 ext 107**, or by e-mail at sheilam@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 web-site at www.cba.org/CBA/CLE

Advocacy Before the Federal Court in Intellectual Property Matters - Appeals Proceedings Thursday April 30, 2009 • Hilton Lac-Leamy, Gatineau, Quebec

| | FEE | GST | TOTAL |
|---|----------|---------|----------|
| <input type="checkbox"/> CBA Members | \$210.00 | \$10.50 | \$220.50 |
| <input type="checkbox"/> Students (CBA Members) | \$125.00 | \$6.25 | \$131.25 |
| <input type="checkbox"/> Non-Members | \$320.00 | \$16.00 | \$336.00 |

*Quebec residents, please add the QST of 7.5% to your total.

- Yes**, I would like to join the CBA now and pay the member fee to attend this program. I understand that a membership representative will be contacting me.
- No**, I cannot attend but would like to purchase the course material. The publication coordinator will contact me after the conference to discuss cost.

CBA Membership No.

Mr. Ms.

Surname Given Names

Firm or Organization

Address

City Province Postal Code

Office Phone No. Fax No.

Email (required)

Please indicate special needs (dietary, wheelchair access, etc.)

Method of Payment (payment due with registration application)

Cheque Visa Mastercard AMEX

Card No. Expiry Date

Authorized Signature

PERSONAL INFORMATION CONSENT

CBA's programs are supported by preferred suppliers, sponsors, and exhibitors. Subject to the following paragraph, I understand that the provision of contact information on this form constitutes my consent to such information being disclosed to the preferred suppliers, sponsors, and exhibitors of this program. For further information about the CBA's treatment of personal information, see members' Privacy Policy at www.cba.org.

By checking this box , I do not wish my contact information disclosed to the preferred suppliers, sponsors, and exhibitors of this program. I understand that my name will not appear on the delegates list.