

CBA CRIMINAL JUSTICE CONFERENCE

APRIL 21, 2018 | VANCOUVER (BC)

The Pre-Trial Motion Puzzle

April 21, 2018

9:00 – 9:05 **Introduction**

9:05 – 9:20 **Fact Scenario: Blood and Tears in the Golden Years**

9:20 – 10:00 **The Dissection Panel** (15 minutes of substantive content + 25 minutes of ethics content)

The panel will dissect the fact scenario in detail analyzing the various ethical, strategic and legal issues that arise from the perspectives of the judiciary, Crown and defence.

Topics will include:

- Strategic and tactical decisions and applications to be made during the trial
- Ethical considerations on the decisions to be made by both Crown and defence counsel
- The approach by both Crown and defence in presenting their case within the appropriate limits

Speakers: Richard Fowler, QC
Peter Juk, QC
Hon. Justice Terence Schultes

10:00 – 10:35 **Delay Motions** (15 minutes of substantive content + 20 minutes of ethics content)

The panel will discuss the state of s. 11(b) motions in a post Jordan world.

- What are the new ethical obligations on the Crown and defence after R. v. Jordan?
- How much does the defence need to co-operate with the Crown to ensure a speedy trial?
- What obligations are owed to a co-accused?
- What ethical obligations rest on an accused to ensure that a trial is completed within a reasonable time?
- Should the parties ethically abandon pre-trial motions which might delay the trial but have little chance of success?

Speakers: Eric Gottardi
Trevor Shaw
Hon. Justice Michael Tammen

10:35 – 10:55 **Refreshment Break**

10:55 – 11:30 **Preparation of Witnesses** (15 minutes of substantive content + 20 minutes of ethics content)

The panel will discuss the best way of preparing witnesses to give evidence at trial and also warn of the pitfalls that await improper or inadequate witness preparation.

- What are the ethical limits of witness preparation?
- How do they decide what witnesses to call and what areas to explore?
- How do they plan and prepare what minefields to avoid?
- What happens when new disclosure emerges before and during the trial?
- What happens if an accused person admits guilt?
- How much of a Charter application is the Crown ethically permitted to show a police officer?
- Is the defence allowed to “coach” its witnesses?

Speakers: Hon. Justice Suhail Akhtar
Ian Donaldson, QC
Mark Levitz, QC

11:30 – 12:05 **Bail Applications** (20 minutes of substantive content + 15 minutes of ethics content)

The panel will look at the best way of dealing with bail hearings and how to apply release conditions following the recent Supreme Court of Canada case of *R. v. Antic*.

- What are the Crown obligations after *R. v. Antic*?
- When should defence consent to detention?
- Is the Crown ethically allowed to insist on a surety at all bail hearings?
- On a bail review, how much information is the defence ethically obliged to provide to the Crown?

Speakers: Michelle Booker
Greg DelBigio, QC
Hon. Justice Gary Trotter

12:05 – 1:00 **Lunch**

1:00 – 1:35 **Severance** (20 minutes of substantive content + 15 minutes of ethics content)

This panel will talk about severance of counts and accused on an indictment.

- What are the ethical and practical obligations on the Crown when joining accused and offences?
- Should the defence always make a severance application when two different sets of offences are joined in one indictment? What are the ethical issues surrounding the decisions to do so?
- When can/should the Crown ethically refuse severance?

Speakers: David Butcher, QC
Hon. Justice Kate Ker
Wendy Stephen, QC

1:35 – 2:10 **Similar Fact** (25 minutes of substantive content + 10 minutes of ethics content)

This panel discusses similar fact applications: how to prepare and make the application and also how to oppose them.

- Is it ethical for the Crown to adduce similar fact evidence when it has other incriminating evidence?
- If the defence is aware of other similar fact evidence unknown to the Crown what ethical obligations exist with respect to disclosure of that evidence?

- What type of limiting instructions should the Crown seek in the judge's charge to the jury?

Speakers: Christopher McPherson, QC
Matthew Nathanson
Hon. Justice Richard Saull

2:10 – 2:45 **Corbett Applications** (15 minutes of substantive content + 20 minutes of ethics content)

- What are the ethical decisions surrounding Corbett Applications?
- When should the Crown seek to lead discreditable conduct even though it is prejudicial?
- Is it ethical for the defence to object to prior discreditable conduct even though know it has a very high probative value?
- Is there an obligation on the defence to tell the Crown of prior convictions that they do not appear to be aware of?
- When it is ethical for the Crown or defence to concede a situation where an accused's prior record is sought to be cross-examined upon?

Speakers: Hon. Justice Michael Brundrett
Lara Vizsolyi
Kevin Westell

2:45 – 3:00 **Refreshment Break**

3:00 – 3:35 **Hearsay Applications** (35 minutes of substantive content)

This panel deals with the preparation of a pre-trial motion to adduce hearsay statements in a trial.

Speakers: Hon. Justice Patrick Healy
Michael Klein, QC
Jennifer Lopes

3:35 – 4:35 **Judges Panel** (30 minutes of substantive content + 30 minutes of ethics content)

A full and frank interactive question and answer session with the audience on various current issues in the law including many of the complicated ethical, strategic and legal problems faced by counsel during the course of a trial.

Moderator: Hon. Justice Richard Saull
Speakers: Hon. Justice David Frankel
Hon. Justice Patrick Healy
Hon. Justice Gary Trotter