
SATURDAY, APRIL 6, 2019

8:15 – 9:00 **REGISTRATION AND BREAKFAST**

9:00 – 9:05 **WELCOME AND INTRODUCTION**

Co-Chairs: **The Honourable Suhail Akhtar**, Superior Court of Justice (*Toronto, ON*)
Eric V. Gottardi, Peck and Company (*Vancouver, BC*)

9:05 – 9:25 **THE VISUAL FACT SCENARIO: BROKEN HEARTED**

9:25 – 9:55 **THE WATT LECTURE**

A 30 minute lecture from one of the most well-known and respected jurists in the country. This talk will cover the practical, legal, and ethical issues involving the calling and questioning of witnesses.

Speaker: **The Honourable David Watt**, Court of Appeal of Ontario (*Toronto, ON*)

9:55 – 10:35 **DISSECTING BROKEN HEARTED**

A practical approach to prosecuting and defending the suspects in the fact scenario. Here are some of the practical and ethical issues:

- How does the Crown decide who to prosecute?
- When should the decision be made?
- What credence should be given to the Vetrovec witness?
- Should the defence disclose the third party suspect, and if so, how?
- What can the defence ethically do to investigate the situation? What can it lawfully and ethically demand?

Speakers: **The Honourable Mike Brundrett**, Supreme Court of British Columbia (*Vancouver, BC*)
Richard Fowler, Q.C., Fowler and Blok, Barristers (*Vancouver, BC*)
Peter Juk, Q.C., Ministry of Attorney General (*Vancouver, BC*)

10:35 – 10:50 **NETWORKING BREAK**

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10:50 – 11:25 **WITNESS PREPARATION**

This panel deals with the issue of how the Crown and defence prepare their witnesses to testify for trial. Topics include:

- What is proper and improper witness preparation?
- How far can the Crown and defence go in suggesting what the other party might ask in cross-examination?
- What disclosure obligations arise from Witness Preparation?
- Are things different for the Crown and defence?
- Should either defence or the Crown have a third party present as a witness?

Speakers: **The Honourable Mark Jetté**, Provincial Court of British Columbia (*Surrey, BC*)
Michelle Booker, Ministry of Attorney General (*Vancouver, BC*)
Matthew Nathanson, Matthew A. Nathanson (*Vancouver, BC*)

11:25 – 12:00

THE ACCUSED AS A WITNESS

This panel deals with the difficulties faced when an accused chooses to testify at their trial. Topics include:

- How far can the defence go in preparing the accused as a witness before crossing ethical boundaries?
- What happens when the accused tells defence counsel something adverse to the defence case? Does the defence have to disclose?
- What happens when the accused, on the witness stand, changes the account given to defence counsel prior to trial? What should defence counsel do?
- How does the Crown prepare to cross-examine an accused witness?
- Can the Crown adduce evidence not tendered in chief to cross-examine an accused?

Speakers: **The Honourable Michael Tammen**, Supreme Court of British Columbia (*Vancouver, BC*)
Ian Donaldson, Q.C., Donaldson's (*Vancouver, BC*)
Rob Macgowan, Crown Counsel (*Abbotsford, BC*)

12:00 – 12:20

KEYNOTE ADDRESS | The Honourable Justice Sheilah L. Martin, Supreme Court of Canada

12:20 – 13:15

NETWORKING LUNCH

13:15 – 13:50

THE VULNERABLE WITNESS

This panel deals with the issue of the proposed testimony of vulnerable witnesses such as children, and victims of sexual and domestic abuse. Topics include:

- What factors must the Crown take into account when calling a vulnerable witness? What is the cost/benefit analysis of doing so?
- What ethical levels of protection should the Crown put into place for such witnesses?
- How does the defence approach the cross-examination of vulnerable witnesses?
- What happens when an accused's instructions contradict counsel's preferred approach in dealing with or admitting a vulnerable witness's evidence?

Speakers: **The Honourable Jennifer Duncan**, Supreme Court of British Columbia (*Vancouver, BC*)
Brock Martland, Q.C., Martland & Saulnier (*Vancouver, BC*)
Wendy Stephen, Q.C., Crown Counsel (*New Westminster, BC*)

13:50 – 14:25

THE VETROVEC WITNESS

This panel deals with the thorny issue of how to deal with an unsavoury witness in a criminal proceeding. Topics include:

- What factors must the Crown take into account when deciding to call this type of witness? What type of cost/benefit analysis must be undertaken particularly in regard to the dangers posed by the witness?
- What type of evidence should the Crown be looking for to attempt to confirm the witness' evidence?
- What disclosure obligations occur when a Vetrovec witness retreats from prior statements? What does the Crown do when the witness offers more evidence than originally?
- Will the defence always ask for a Vetrovec warning bearing in mind the judge's obligation to point out confirmatory evidence?
- What are the dangers when the defence calls their own unsavoury witness?

Speakers: **The Honourable Richard Saull**, Court of Queen's Bench of Manitoba (*Winnipeg, MB*)
Mark Levitz, Q.C., Criminal Appeals and Special Prosecutions (*Vancouver, BC*)
Gloria Ng, Gloria Ng Law (*Vancouver, BC*)

14:25 – 15:00

THE ALIBI AND IDENTIFICATION WITNESS

This panel deals with the thorny topic of an alibi witness called by the defence and identification evidence tendered by the Crown. Topics include:

- What, if any, is the defence obligation to disclose an alibi witness?
- What happens if the accused tells counsel not to disclose?
- How much notice must the defence give to the Crown and what happens when they fail to comply?
- What is the Crown's obligation with respect to the identification of the alibi witness?
- What can the Crown do when dealing with "weak" identification cases?
- When should the defence concede identity?

Speakers: **The Honourable Janet Winteringham**, Supreme Court of British Columbia (*Vancouver, BC*)
 Richard Peck, Q.C., Peck and Company (*Vancouver, BC*)
 David Ruse, Crown Counsel (*Kelowna, BC*)

15:00 – 15:15

NETWORKING BREAK

15:15 – 15:45

LAYTON v. GOTTARDI

Two counsel look at recent cases in a quick-fire mode and discuss them from a Crown and defence perspective.

Speakers: **David Layton, Q.C.**, Criminal Appeals and Special Prosecutions (*Vancouver, BC*)
 Eric V. Gottardi, Peck and Company (*Vancouver, BC*)

15:45 – 16:45

ASK THE JUDGES ANYTHING

Our panel of judges answer questions submitted by the audience on all potential issues, ethical, professional and legal.

Speakers: **The Honourable Elizabeth Bennett**, Court of Appeal of British Columbia (*Vancouver, BC*)
 The Honourable Justice Sheilah L. Martin, Supreme Court of Canada (*Ottawa, ON*)
 The Honourable Richard Saull, Court of Queen's Bench of Manitoba (*Winnipeg, MB*)

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