



## **How Do We Know What We Think We Know: Facts in the Legal System**


**October 9 - 11, 2013**

**The King Edward Hotel  
Toronto, Ontario**

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**CIAJ**

CANADIAN INSTITUTE  
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REGISTRATION FORM

How Do We Know What We Think We Know: Facts in the Legal System

October 9 - 11, 2013
The King Edward Hotel
Toronto, Ontario

(Participation at this conference is approved under Section 41 (1) of the Judges Act according to Resolution 29 (2012/2013) of the CJC and is accredited for 12 hours in provinces where CLE requirements for lawyers are mandatory including 1 1/2 hours professionalism by LSUC)

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I am fluent in English..... in French ..... both ..... (simultaneous translation is provided throughout the conference)

REGISTRATION FEE:

Early Bird - Until August 2, 2013

CIAJ members \$795 non members \$895
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Regular - From August 3, 2013

CIAJ members \$895 non members \$995
Students \$95 (enrolled as full-time at Canadian universities)
(Reception, breaks, luncheons, and conference material provided)

I WILL ATTEND

Wednesday, October 9, reception [ ] Yes [ ] No

Annual Reception and Dinner
Additional fee: 110 \$/ per person

I WILL ATTEND

Thursday, October 10, annual dinner [ ] Yes [ ] No

I will be accompanied by guest [ ] Yes [ ] No

Name of Guest/s .....

I wish to purchase ..... tickets at \$110 per person

Do you have any dietary restrictions?.....

Which? .....

Payment by

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ACCOMMODATION: A block of rooms has been reserved at The King Edward Hotel, 37 King Street East, Toronto, Ontario, Canada M5C 1E9: 1-855-265-9100 or 416-863-9700, reservations@thekingedwardhotel.com, http://www.thekingedwardhotel.com \$189 single or double occupancy (taxes not included). Participants are required to make their own hotel reservations before September 9, 2013 to take advantage of this rate.

CANCELLATION FEE: Requests for reimbursement must be submitted in writing to CIAJ seven (7) days prior to the event. An administrative fee of 10% will be withheld on cancellations submitted 7 days prior to the event. Except as noted, fees will not be reimbursed. Another participant may be designated as substitute.

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# How Do We Know What We Think We Know: Facts in the Legal System

The recent evolution in the law of evidence is a vital topic for those interested in our legal system, whether a decision-maker, advocate, litigator, academic, teacher, student and or law-maker. In the past 25 years, the Supreme Court of Canada has ushered in a set of revolutionary changes to the rules of evidence in several areas, including witness competence, privilege, hearsay and similar act evidence. It has developed a “principled approach” designed to return evidence law to fundamental first principles while conforming to the normative commitments of the *Charter*. The conference will address how facts are established through rules of evidence in criminal cases and how evidence law impacts the legal system in family law mediation, administrative hearings, civil cases, public inquiries and commissions through innovative, comparative and theoretical perspectives.

## Conference Co-Chairs

**The Honourable Chief Justice Annemarie Bonkalo**, Ontario Court of Justice, Toronto, ON  
**Ronalda Murphy**, Counsel, Crown Law Office – Civil Law, Ministry of the Attorney General (Ontario), Toronto, ON, and Professor, Schulich School of Law, Dalhousie University, Halifax, NS  
**The Honourable Justice Gladys Pardu**, Superior Court of Justice (Ontario), Toronto, ON  
**Paul Schabas**, Partner, Blakes Toronto, ON

## The Planning Committee also includes

**Professor Emma Cunliffe**, Faculty of Law, University of British Columbia, Vancouver, BC  
**Bart Danko**, Osgoode Hall Law Student, Toronto, ON  
**The Honourable Justice Georgina Jackson**, Saskatchewan Court of Appeal, CIAJ Vice President, Regina, SK  
**The Honourable Justice David Paciocco**, Ontario Court of Justice, Ottawa, ON  
**Dean Lorne Sossin**, Osgoode Hall Law School, York University, Toronto, ON  
**Beth Symes**, LSM, CM, CIAJ President, Symes Street & Millard LLP, Toronto, ON

## WEDNESDAY, OCTOBER 9, 2013

6:00 PM – 8:00 PM OPENING RECEPTION in the Convocation Hall at Osgoode Hall  
130 Queen St. West, East Entrance, Toronto, ON

## Co-Hosts

**The Honourable Justice Stephen Goudge**, Ontario Court of Appeal, Toronto, ON  
**The Honourable Chief Justice Heather Smith**, Ontario Superior Court of Justice, Toronto, ON  
**The Honourable Chief Justice Annemarie Bonkalo**, Ontario Court of Justice, Toronto, ON  
**Mr. Thomas Conway**, Treasurer, Law Society of Upper Canada, Toronto, ON

## THURSDAY, OCTOBER 10, 2013

8:00 AM – 8:45 AM REGISTRATION

8:45 AM – 9:00 AM WELCOME REMARKS

**Beth Symes**, LSM, CM, President, CIAJ, Toronto, ON

9:00 AM – 9:15 AM

### CONFERENCE OVERVIEW

We have many different types of legal process, ranging from an elaborate criminal trial, to a civil motion for summary judgment in a contract case, to a tribunal deciding whether to approve a pipeline. Moreover each process is governed by specialized and complicated substantive law. We can have, and have had, conferences on many such topics. But what is common to all legal processes is the need for fact-finding. The Supreme Court of Canada's vigorous review of the law of evidence should therefore have implications to all legal dispute resolution mechanisms. But does it? Should it? The conference will try and answer that question

**Ronalda Murphy, Counsel**, Counsel, Crown Law Office – Civil Law, Ministry of the Attorney General (Ontario), Toronto, ON, and Professor, Schulich School of Law, Dalhousie University, Halifax, NS

9:15 AM – 10:15 AM

### KEYNOTE SPEECH PROBABILITY, STATISTICS AND JUSTICE

*Introduction* **Paul Schabas**, Partner, Blakes, Toronto, ON  
*Keynote Speaker* **Jeffrey Rosenthal**, Professor, Department of Statistics, University of Toronto, Toronto, ON

10:15 AM – 10:30 AM BREAK

10:30 AM – 11:50 PM

### CANADA'S EVIDENCE REVOLUTION

*Chair* **The Honourable Lynn Smith**, Faculty of Law, University of British Columbia, formerly at the Supreme Court of British Columbia, Vancouver, BC

*Panel* **Professor Benjamin Berger**, Osgoode Hall Law School, York University, Toronto, ON

**The Honourable Ian Binnie**, Counsel, Lenczner Slaughter Royce Smith Griffin LLP, formerly at the Supreme Court of Canada, Toronto, ON

11:50 AM – 12:00 PM

### PRESENTATION OF THE CHR STUDENT ESSAY PRIZE

*Introduction* **Beth Symes, LSM, CM**, Symes Street & Millard LLP, Toronto, ON

*Prize presented by* **Christine Huglo Robertson**, Executive Director Emeritus, Canadian Institute for the Administration of Justice, Montreal, QC

*To* **Allan Yi-Lin Wu**, Faculty of Law, University of Victoria, Victoria, BC

12:00 PM – 1:15 PM LUNCH

12:00 PM – 12:15 PM

### ANNUAL CIAJ MEMBERS' MEETING

1:15 PM – 3:15 PM

### FACTS AND EVIDENCE IN THE CRIMINAL PROCESS

The principled revolution in Canadian evidence law has taken place primarily in the criminal law context. But how well does the new law serve the goals of the criminal process? Panellists will consider whether the current law of evidence promotes the search for truth and the pursuit of fairness in criminal justice.

*Introduction* **The Honourable Judge Patrick Healy**, Quebec Court, Montreal, QC

*Panel* **The Honourable Judge Anne Derrick**, Provincial Court of Nova Scotia, Halifax, NS  
**Professor Lisa Dufraimont**, Faculty of Law, Queen's University, Kingston, ON  
**The Honourable Justice Renee Pomerance**, Superior Court of Justice (Ontario), Windsor, ON

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3:15 PM – 3:30 PM BREAK

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3:30 PM – 4:30 PM

### EVIDENCE IN CIVIL JUSTICE: BEYOND RULES

It is often said that there aren't any rules for civil cases, that it "all goes to weight" because liberty interests are not at stake. This panel explores if this is true or if it should be true.

*Chair* **Paul Schabas**, Partner, Blakes, Toronto, ON  
*Panel* **The Honourable Justice Marie St-Pierre**, Quebec Court of Appeal, Montreal, QC  
**Linda Rothstein**, Partner, Paliare Roland, Barristers, Toronto, ON  
**The Honourable Lynn Smith**, Faculty of Law, University of British Columbia, formerly at the Supreme Court of British Columbia, Vancouver, BC

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6:30 PM RECEPTION at the KING EDWARD HOTEL

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7:30 PM ANNUAL DINNER at the KING EDWARD HOTEL

### PRESENTATION OF THE 2013 CIAJ JUSTICE MEDAL

**BY** **Beth Symes**, LSM, CM, CIAJ President, Symes Street & Millard LLP, Toronto, ON  
**TO** **The Right Honourable Beverley McLachlin**, P.C., Chief Justice of Canada, Ottawa, ON

### PROBLEMS AND PROJECTS IN THEORY AND PRACTICE OF EVIDENCE LAW

*Introduction* **Ronalda Murphy**, Counsel, Crown Law Office – Civil Law, Ministry of the Attorney General (Ontario), Toronto, ON, and Professor, Schulich School of Law, Dalhousie University, Halifax, NS

*Dinner Speaker* **Dr Susan Haack**, Distinguished Professor in the Humanities, Cooper Senior Scholar in Arts and Sciences and Professor of Law and of Philosophy, Faculty of Law, University of Miami, Coral Gables, FL (USA)

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## FRIDAY, OCTOBER 11, 2013

9:00 AM – 9:30 AM

### EVIDENCE, TRUTH AND CERTAINTY: ASSESSING TRUTH IN OUR EVIDENTIARY SYSTEMS

Our evidentiary systems are founded on the assumption that Truth exists "out there" and that it is possible to know it when assessing evidence. In our multicultural society, the occidental understanding of what truth is and how it can be known is often challenged. This panel will explore different conceptions of truth through caselaw and expose how truth is at work in our evidentiary system.

*Introduction* **The Honourable Chief Justice Annemarie Bonkalo**, Ontario Court of Justice, Toronto, ON

*Presentation* **Professor France Houle**, Faculty of Law, University of Montreal, 2012 Charles D. Gonthier Fellowship Recipient, Montreal, QC

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9:30 AM – 10:30 AM

### THE FINAL FRONTIER: PRINCIPLES OF EVIDENCE AND ADMINISTRATIVE JUSTICE

This panel will explore the galaxy beyond court-based rules of evidence - with a focus on the diverse statutory contexts of administrative justice and the innovative practices emerging in those settings - from tribunals to public inquiries to discretionary decision-makers

*Chair* **Dean Lorne Sossin**, Osgoode Hall Law School, York University, Toronto, ON

*Panel* **Professor Nicolas Lambert**, Faculty of Law, University of Moncton, Moncton, NB  
**Kimberly Murray**, Executive Director, Truth and Reconciliation Commission of Canada, Winnipeg, MB  
**David Wright**, Chair, Law Society Tribunals, Law Society of Upper Canada, Osgoode Hall, Toronto, ON

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10:30 AM – 10:45 AM BREAK

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10:45 AM – 12:00 PM

### IF IT'S FRIDAY... THIS MUST BE EVIDENCE

Searching the World for Facts

*Chair* **Master Heather MacNaughton**, Supreme Court of British Columbia, Vancouver, BC

*Panel* **The Honourable Justice Yves-Marie Morissette**, Quebec Court of Appeal, Montreal, QC  
**Professor Gary Edmond**, Faculty of Law, University of New South Wales, Sydney, NSW (Australia)  
**Professor Emma Cunliffe**, Faculty of Law, University of British Columbia, Vancouver, BC  
**Aimée Craft**, Public Interest Law Centre, Winnipeg, MB

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12:00 PM – 1:00 PM LUNCH

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1 :00 PM – 2:30 PM

### ETHICAL PRINCIPLES AND THE SEARCH FOR TRUTH, CLASH OR CONVERGENCE?

Do ethical principles promote the search for truth or impede it? What ethical principles are engaged by evidentiary issues?

*Chair* **The Honourable Justice Gladys Pardu**, Superior Court of Justice (Ontario), Toronto, ON

*Panel* **The Honourable Justice Michael Code**, Superior Court of Justice (Ontario), Toronto, ON  
**David Layton**, Ritchie Sandford, Vancouver, BC  
**Professor David Tanovich**, Faculty of Law, University of Windsor, Windsor, ON

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2:30 PM – 2:45 PM BREAK

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2:45 PM – 4:00 PM

### FUNDAMENTAL OR ORNAMENTAL? THE ROLE OF FACTS AND EVIDENCE IN CHARTER CASES"

The panelists will explore how courts deal with facts and evidence in constitutional litigation. They will debate which matters more: correct constitutional theory or concrete attention to the facts in advocating a particular result under the Canadian *Charter of Rights and Freedoms*? Panelists intend to explore the question from different angles - historical, social change advocacy, and institutional legitimacy - drawing on their wealth of experience in thinking about and practicing constitutional law.

*Chair* **The Honourable Justice Georgina Jackson**, Saskatchewan Court of Appeal, CIAJ Vice President, Regina, SK

*Panel* **Joseph Arvay**, Arvay Finlay Barristers, and Osgoode Hall Law School, Toronto, ON  
**Joseph Cheng**, Counsel, Department of Justice Canada, Toronto, ON  
**Ronalda Murphy**, Counsel, Crown Law Office – Civil Law, Ministry of the Attorney General (Ontario), Toronto, ON, and Professor, Schulich School of Law, Dalhousie University, Halifax, NS  
**Sheila Tucker**, Associate Counsel, Davis LLP, Vancouver, BC

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4:00 PM – 4:30 PM

### WILL THERE BE FACTS IN 2025?

*Introduction* **Beth Symes**, LSM, CM, Symes Street & Millard LLP, Toronto, ON

*Panel* **The Honourable Judge Patrick Healy**, Quebec Court, Montreal, QC  
**Professor Alana Klein**, Faculty of Law, McGill University, Montreal, QC  
**Paul Schabas**, Partner, Blakes, Toronto, ON

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4:30 PM

### CLOSING REMARKS

*Incoming CIAJ President*

**The Honourable Judge Patrick Healy**, Quebec Court, Montreal, QC

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*Program subject to change*