

TORONTO JUDGES SEMINAR

L. Craig Brown
Thomson, Rogers

Time Management Issues
(Cartoon Slide)

Pre-Trial Motions and Meetings

- i. Scheduling Meeting with Counsel
 - 1) Before Jury Panel is brought in
 - 2) Allow an hour or so

- ii. There are no Simple Cases
 - 1) Assume that there will be Preliminary motions to be argued before Opening Statements
 - 2) You may need to allow a day or more for argument and decision where issues must be resolved before Opening Statements can be made
 - 3) Less urgent motions can be deferred to days when witnesses are not available or finish early

3

Mid Trial Motions

- i. Usually related to evidentiary issues

- ii. These must usually be dealt with when they arise

- iii. Sometimes can be argued in written submissions by email
 - 1) overnight
 - 2) over a weekend

4

Demands on Trial Judge and Counsel

i. Preparation of Jury Questions

- 1) Be kind to Counsel at the beginning of the case – don't ask for draft jury questions by day 3
- 2) In complex cases – Useful to allow the case to progress for a while before starting on the questions
 - a) Certain issues may be settled during the trial (i.e. actuarial evidence etc.)
 - b) The evidence actually given during the trial have a significant impact on the wording of questions and their order

ii. Preparation of Closing Arguments

- 1) Counsel will want to make extensive use of exhibits and often of transcript from the trial
- 2) Preparation of the Plaintiff's Closing cannot be done ahead of time
 - a) particularly where graphic and visual aids are being used
 - i. preparation of spreadsheets and use of ELMO
- 3) Counsel will usually require at least 24 clear hours to prepare a Closing

5

Demands on Trial Judge and Counsel

iii. Preparation of Charge

- 1) Pre-Charge Meeting
 - a) Following Close of Evidence
 - b) Draft Charge should be made available to Counsel several hours before the meeting
 - c) Allow several hours for the meeting and any necessary revisions that may result
 - d) Total down time – about ½ a day
 - e) Can overlap time permitted to Counsel for prep of Closing but be careful of multitasking
- 2) Availability of Printed Charge to Jury?

6

New Trends in Presenting Evidence

(Cartoon Slide)

New Trends in Presenting Evidence

a) Preparation Aids

i. Power Point

1) Use in Opening Statement

- a) Often results in disclosure to Jury of exhibits that are not yet in evidence and which may be contentious
- b) Review printed copy of PPP prior to delivery
- c) Should copies of the Opening be given to the Jury and if so, should they be permitted to keep them?

ii. ELMO

1) Insert slides from OTLA presentation

New Trends in Presenting Evidence

b) Graphics and Spreadsheets

- i. Used to gather, organize and present complex financial and accounting evidence
 - 1) example from OTLA presentation
- ii. Should copies be given to the jury?
- iii. Should Jury be permitted to take this material into the jury room during their deliberations?
- iv. How can this material be used when drafting the jury questions?

9

New Trends in Presenting Evidence

c) Medical and Engineering Reconstruction

- i. Medical Illustrations
- ii. Computer generated Accident Reconstruction

10

Cartoon Slide Finale