Best Practices in Medical Malpractice Litigation
Law Society of Ontario
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"Trials Should Not Take Six Weeks or More"

Tips on meeting this goal

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1. Avoid/eliminate peripheral defendants.

2. Litigate only the "true" issues, e.g. plaintiffs - do not pursue causes of action that have little to no chance of success on the facts (e.g. breach of fiduciary duty; battery; lack of informed consent); defendants – admit liability, breach of standard of practice or causation in appropriate cases.

3. Agree on damages or any heads of damages in advance.

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4. Have a trial management conference with the trial judge in advance of trial

5. Agree on time limits for openings and closings

6. Consider exchanging written openings in advance and try to resolve any objections in advance (particularly useful with an inexperienced trial judge)

7. Agree on jury questions in advance of trial

8. Agree on a chronology and/or a glossary of terms to be provided to the judge (and jury) at the outset

9. Agree on a statement of facts (works better than requests to admit)

10. Agree in advance on the use of any demonstrative evidence

11. Make judicious use of requests to admit authenticity of documents; agree on a joint brief of documents; it should never be necessary to call a witness from Health Records

12. Make judicious use of section 52 notices; consider whether treating health practitioners really need to be cross-examined?

13. Discourage "leisurely" court schedules;

14. Be prepared to avoid "deadtime" in between witnesses:
    - be open to calling witnesses out of order
    - be prepared to read in from discovery transcripts
    - slot in short witnesses (e.g. FLA claimants)

15. Avoid multiplicity of experts and of witnesses
    - be sensible and rational, driven by fairness
    - do not try to limit number of experts to 3 per issue; rather, limit the number of specialists/subspecialists
    - in complicated medical malpractice trials, there should be no need to have to fight to call more than three experts, as long as these experts have different specialties or subspecialties

16. Provide advance warning regarding anticipated challenges to expert qualifications or scope of opinion evidence

17. Consider written evidence versus oral evidence

18. Don't spring evidentiary objections on counsel

19. Consider providing trial judge at outset with joint brief of key cases relevant to standard/common objections

20. Examine witnesses efficiently; unless a witness is a major fact witness or an expert, the vast majority of witnesses should be completed in three hours or less

21. Prepare witnesses to be good witnesses, ie, to listen carefully to the question, and to give an honest answer to that question and only that question. Where a witness is repeatedly veering into perspicacity, implore the trial judge to intervene and to control the witness