

10TH ANNUAL UPDATE

PERSONAL INJURY LAW & PRACTICE



In one information-packed day, get a comprehensive review of the most critical recent developments in personal injury law and practice, including:

- The most significant judicial decisions over the past year
- The emerging shape of the new Accident Benefits dispute resolution regime and its practical implications
- Significant new law in the area of insurance coverage, including the Ontario Court of Appeal's decisions in *Bawden* and *Kozel*
- New directions in the law concerning uninsured, underinsured and unidentified motorists
- A distinguished academic's perspective on recent decisions in causation - and how strategies for arguing it are changing
- How to draft an enforceable Rule 49 offer and the current state of cost awards in Ontario
- Where the law and practice concerning expert evidence stands after *Moore v. Getahun*
- The latest on avoiding solicitor's liability for negligence

Get valuable insights and the latest strategies and tactics from top personal injury litigators

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Chairs

Richard M. Bogoroch
Bogoroch & Associates LLP

Susan E. Gunter
Dutton Brock LLP

Date and Time

September 30, 2014
8:30 a.m. - 4:30 p.m. EDT/EST

Location

Osgoode Professional Development
1 Dundas St. W., 26th Floor
Toronto, ON

Webcast Available

10TH ANNUAL UPDATE
PERSONAL INJURY LAW & PRACTICE

Personal injury litigation continues to be a dynamic, high-stakes area of law. Ongoing caselaw and practice changes make it more important than ever that you stay up-to-date.

This comprehensive *Osgoode Professional Development* annual conference brings you the latest key developments from a faculty of personal injury experts, led by Richard Bogoroch and Susan Gunter. They will guide you through the most pivotal recent trial and appellate decisions, providing you with thoughtful analysis and practical tips. Topics will include:

- Key accident benefits issues in such areas as economic loss, attendant care, and the applicability of the Minor Injury Guideline
- Examination for discovery strategies in insurance coverage disputes
- Corroborating evidence in cases involving unidentified motorists
- How best to approach/defend summary judgment motions in light of *Hryniak* (SCC) and the cases following it
- Current treatment of excessive disbursements
- Permissible forms of communication with expert witnesses

Plus! A demonstration of a post- *Hryniak* summary judgment motion, with accompanying commentary and tips.

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*Superior Court of Justice
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Darla A. Wilson**
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(Ontario)*

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**“[BEST THING WAS] THE
QUALITY OF THE SPEAKERS AND
TIMELINESS OF THE TOPICS”**

Ruth Henneberry
*Blakeney Henneberry
Murphy & Galligan*

AGENDA

8:00-8:30

Registration and Continental Breakfast

8:30-8:35

Chairs' Welcome and Introduction

8:35-9:15

Significant Recent Personal Injury Decisions

David Lackman, *Gluckstein Personal Injury Lawyers PC*

Personal injury law continues to develop at a rapid pace. This session will highlight and analyze some of the most important cases of the past year, and assess their likely impact. Caselaw will reflect developments as of fall 2014, and is expected to include the latest on both liability and damages.

9:15-9:45

Accident Benefits:

New Cases and Government Reforms

Jennifer J. Griffiths

Zarek Taylor Grossman Hanrahan LLP

Between recent SABS amendments, the Cunningham Report and Bill 171, along with developing caselaw, the accident benefits area has been undergoing highly visible and significant change. A provincial election call introduces a further element of uncertainty. What can be said safely at this writing is that the session will:

- survey the top AB cases of the past year
- examine the stakeholder responses (plaintiff's bar, insurance industry, defence bar) to the Cunningham Report and the lessons to be drawn therefrom
- consider what in the Report may stay and what may end up on the cutting-room floor if a change of government occurs
- offer some educated crystal-ball-gazing in areas such as the Minor Injury Guideline and "incurred expense"

9:45-10:15

Insurance Coverage Issues for Personal Injury Lawyers - Recent Cases and Strategies

Christopher R. Dunn

Dutton Brock LLP

- Duty to defend, exclusions, reservation of rights and non-waiver
- Homeowners, CGL and auto coverages
- Use or operation of a motor vehicle
- Discovery strategies
- Current judicial trends in insurance coverage
- Homeowners and *Bawden* (Ont. C.A.) - claims by members of the household
- Relief from forfeiture: *Kozel* (Ont. C.A.)

10:15-10:30

Refreshment Break

10:30-11:00

Uninsured, Underinsured, Unidentified Coverages and Recent Case Law

Jay A. Skukowski, *Blaney McMurtry LLP*

- Coverages - which insurer provides coverage? Section 265 of the *Insurance Act*
- Unidentified motorists and corroborating evidence: *Featherstone* (Ont. C.A.)
- Uninsured - onus of proof, coverage denials
- Underinsured OPCF 44R Family Protection Endorsement
 - limitation periods: *Rocque* and *Schmitz* (Ont. C.A.) and procedures

11:00-12:30

Demonstration and Panel Discussion: Summary Judgment Motion Post-*Hryniak* (SCC)

The Hon. Justice Anne Mullins

Superior Court of Justice (Ontario)

Barry Cox, *Stieber Berlach LLP*

Stacey L. Stevens, *Thomson Rogers*

A demonstration aimed at illustrating some of the most effective approaches for advocates on either side of a summary judgment motion in the light of the most recent law, followed by an informal "debriefing" discussion/question-and-answer session.

12:30-1:15

Luncheon

1:15-2:00

The Continuing Evolution of Causation in Personal Injury Claims

Erik S. Knutsen

Associate Professor, Queen's University Faculty of Law

- Where has causation gone since the SCC's decisions in *Clements* and *Ediger*?
- Common causation pitfalls at trial and on appeal
- Causation evidence - plaintiff and defendant perspectives
- Delay in treatment and multi-defendant causation

2:00-2:30

Costs in Personal Injury Cases

Robert G. Schipper, *Barrister & Solicitor*

- What is an enforceable Rule 49 offer?
- Failing to mediate - *Ross v. Bacchus*, *Williston v. Hamilton Police Service* and *Keam v. Caddey*
- Excessive disbursements - how the courts currently address them
 - Crisante v. DePuy Orthopaedics*; *Dugal v. Manulife Financial*; *Rosen v. BMO Nesbitt Burns Inc.*
- Costs against solicitors personally - an update

2:30-2:45

Refreshment Break

AGENDA (Cont'd)

2:45-3:45

Expert Evidence and *Moore v. Getahun* (2014) - the Application of Rule 53 and Communications Between Experts and Counsel

The Hon. Justice Mark L. Edwards

Superior Court of Justice (Ontario)

Paul Harte, Paul Harte PC

Matthew P. Sammon, Lenczner Slaght Royce Smith Griffin LLP

The Hon. Justice Darla A. Wilson

Superior Court of Justice (Ontario)

- Retaining the expert - consultation and timing
- Communicating with the expert - draft report, telephone calls, meeting?
- Restrictions on number of experts - recent case law
- Has Rule 53 been stretched too far? Or not far enough?

3:45-4:30

Avoiding Negligence Claims: Strategies for Personal Injury Counsel (Plaintiffs' and Defendants')

Christine Fotopoulos and Robin Squires

Borden Ladner Gervais LLP

- Retainers - how to avoid the phantom client
- Improvident settlement of claims (tort, accident benefits)
- Limitation periods - developments
- Mishandling of litigation/arbitration - liability for appearances

4:30

Program Ends



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10th Annual Update Personal Injury Law & Practice

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8:30 a.m. - 4:30 p.m. EDT/EST

Please arrive a half hour early for sign-in and material pick-up.
Dress is business casual.

Location

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Downtown Toronto Conference Centre
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Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.



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