

A JOINT PROGRAM OF THE CENTRE FOR FORENSIC  
SCIENCE AND MEDICINE AT THE UNIVERSITY OF TORONTO  
AND OSGOODEPD

# EXPERT FORENSIC EVIDENCE IN CRIMINAL PROCEEDINGS



Join a distinguished faculty of Crowns, defence litigators, experienced forensic experts, and a judge to explore and discuss:

- New developments in the jurisprudence on expert testimony
- Forensic pathology as a prototype for other forensic disciplines
- Distinguishing between science and pseudo science
- Issues in obtaining an expert's opinion: to draft or not to draft and other dilemmas
- Tackling the ethical minefield for experts and lawyers
- Experts in the media

*"THIS IS POSSIBLY THE MOST IMPORTANT SYMPOSIUM THAT MAJOR CASE INVESTIGATORS SHOULD ATTEND. UNDERSTANDING THE VALUE AND POTENTIAL PITFALLS OF EXPERT EVIDENCE IS INVALUABLE."*

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## Chairs

**Michael S. Pollanen, MD, Ph.D, FRCPath, DMJ (Path)**

*FRCPC Founder, Forensic Pathology, Chief Forensic Pathologist of Ontario, Professor Department of Laboratory Medicine & Pathobiology, University of Toronto*

**Mark J. Sandler**

*Barrister & Solicitor, Cooper, Sandler Shime & Bergman LLP, Toronto  
Special Counsel, Criminal Law, Goudge Inquiry*

## Date and Time

January 16, 2015  
9:00 a.m. - 4:45 p.m. EDT/EST

## Location

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

Webcast Available



Centre for Forensic Science & Medicine  
UNIVERSITY OF TORONTO



## EXPERT FORENSIC EVIDENCE IN CRIMINAL PROCEEDINGS

Scientific and ethical standards are the cornerstones of expert evidence during the course of a criminal investigation and subsequent court proceedings.

Expert witnesses must not only be fully qualified in their particular area of expertise but also act ethically and without bias. Lawyers and judges dealing with experts are obligated to meet ethical standards and be well-informed in the science relating to their cases.

This *OsgoodePD* and *Centre for Forensic Science and Medicine* forum examines the latest developments in several key areas of forensic science and explores challenges and best practices in presenting forensic evidence in the criminal trial process.

The forum will be an open, interactive and thought-provoking gathering of experienced participants across the full spectrum of criminal justice, including judges, defence and Crown litigators, forensic scientists, legal researchers and others. There will also be plenty of opportunity for questions and comments.

Hear from leading forensic scientists and legal experts on new issues of critical importance. Don't miss it!

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*FRCPC Founder Forensic Pathology, Chief Forensic Pathologist of Ontario, Professor, Department of Laboratory Medicine & Pathobiology, University of Toronto*

**Mark J. Sandler**  
*Barrister & Solicitor, Cooper, Sandler, Shime & Bergman LLP Toronto, Special Counsel, Criminal Law Goudge Inquiry*

### Keynote Speaker

**James Lockyer**  
*Lockyer Campbell Posner Barristers and Solicitors*

### Faculty

**Kristopher S. Cunningham MD, Ph.D**  
*Forensic and Cardiovascular Pathologist*

**Richard Crouse**  
*Film Critic*

**Michal Fairburn**  
*Stockwoods LLP Barristers*

**John R. Fernandes MDCM, FRCSC, FRCPC**  
*Founder Designation in Forensic Pathology Medical Director of the Regional Forensic Pathology Unit, Forensic Pathology Programme Director and Associate Professor, McMaster University and Hamilton Health Sciences*

**Robin Flumerfelt**  
*Crown Counsel, Ministry of the Attorney General (Ontario) Crown Law Office - Criminal*

**Dr. Kathy Gruspier Ph.D, J.D.**  
*Forensic Anthropologist Associate Professor Laboratory Medicine and Pathobiology, Ontario Forensic Pathology Service*

**Marie Henein**  
*Henein Hutchison LLP*

**Scott C. Hutchison**  
*Henein Hutchison LLP*

**Charis Kepron MD, MSc, FRCPC**  
*Forensic Pathologist, Eastern Ontario Forensic Pathology Unit, Ontario Forensic Pathology Service*

**Jeffrey R. Manishen**  
*Ross & McBride LLP*

**The Hon. Justice David Paciocco**  
*Ontario Court of Justice*

**Toby H. Rose MD, FRCPC**  
*Deputy Chief Forensic Pathologist, Ontario Forensic Pathology Service*

**Michelle Shouldice MEd, MD, FRCPC, FAAP**  
*Head, Division of Paediatric Medicine, Associate Professor of Paediatrics, University of Toronto, Hospital for Sick Children*

**Steven A. Skurka**  
*Barrister & Solicitor*

**Anthony Tessarolo**  
*Director, Centre of Forensic Sciences*



# AGENDA

**8:15-9:00**

## Registration and Continental Breakfast

**9:00-9:05**

## Welcome and Introduction

**9:05-10:00**

## New Developments in the Jurisprudence on Expert Testimony

**Jeffrey R. Manishen**, *Ross & McBride LLP (Moderator)*

**Michal Fairburn**, *Stockwoods LLP Barristers*

**The Hon. Justice David Paciocco**, *Ontario Court of Justice*

- A review and commentary of notable decisions following the seminal case of *R. v. Abbey* and the recommendations of the *Goudge* Report 2008
- The continuing tension between admissibility and weight; when should “biased” evidence be excluded?

**10:00-11:15**

## New Developments in Forensic Pathology as a Prototype for Other Forensic Disciplines

### Moderator

**Michael S. Pollanen, MD, Ph.D, FRCPath, DMJ (Path)**

*FRCPC Founder, Forensic Pathology, Chief Forensic Pathologist of Ontario, Professor, Department of Laboratory Medicine & Pathobiology, University of Toronto*

**Kristopher S. Cunningham, MD, Ph.D, Forensic and Cardiovascular Pathologist**

**Charis Kepron, MD, MSc, FRCPC, Forensic Pathologist Eastern Ontario Forensic Pathology Unit, Ontario Forensic Pathology Service**

**John R. Fernandes, MDCM, FRCSC, FRCPC, Founder Designation in Forensic Pathology, Medical Director of the Regional Forensic Pathology Unit, Forensic Pathology Programme Director and Associate Professor, McMaster University and Hamilton Health Sciences**

- What constitutes “science”?
- Is scientific knowledge more reliable than other types of knowledge?
- What is the scientific method and how does it apply to court cases?
- How can forensic pathology be a prototype of science in the courts?

**Note: A 15 minute break will be taken during this session.**

**11:15-12:15**

## Distinguishing Between Science and Pseudo Science?

**Michelle Shouldice, MEd, MD, FRCPC, FAAP, Head, Division of Paediatric Medicine, Associate Professor of Paediatrics University of Toronto, Hospital for Sick Children**

**Dr. Kathy Gruspier, Ph.D, J.D., Forensic Anthropologist Associate Professor, Laboratory Medicine and Pathobiology Ontario Forensic Pathology Service**

**Anthony Tessarolo, Director, Centre of Forensic Sciences**

- When does novel science or expertise meet basic reliability criteria?
- What traditional areas of expertise should be re-evaluated?
- What are the new “sciences” and how do they withstand scrutiny?
- Digital forensic imaging (facial recognition)
- Arson investigations revisited
- Gait analysis
- When are injuries child abuse?

**12:15-1:00**

## Luncheon

**1:00-1:45**

### Keynote Address

#### **A Case Study: How Forensic Science Came to the Rescue**

**James Lockyer**

*Lockyer Campbell Posner, Barristers and Solicitors*

**1:45-2:45**

## Issues in Obtaining an Expert's Opinion: To Draft or Not to Draft and Other Dilemmas

### Moderator

**Mark J. Sandler, Cooper, Sandler, Shime & Bergman LLP Toronto; Special Counsel, Criminal Law, Goudge Inquiry**

**Scott C. Hutchison, Henein Hutchison LLP**

**Robin Flumerfelt, Crown Counsel, Ministry of the Attorney General (Ontario), Crown Law Office-Criminal**

**Toby H. Rose, MD, FRCPC, Deputy Chief Forensic Pathologist Ontario Forensic Pathology Service**

- Should experts provide counsel with draft reports?
- What role should counsel play in finalizing a report?
- When should reciprocal disclosure take place?
- What materials should not be provided to experts?
- Obtaining multiple experts to obtain favourable reports; what must be disclosed to the new expert and to anyone else involved in the proceedings

**2:45-3:00**

## Refreshment Break

**3:00-4:00**

## Ethics and Professional Responsibility Issues with Expert Evidence

**Michal Fairburn, Stockwoods LLP Barristers**

**Marie Henein, Henein Hutchison LLP**

**Michelle Shouldice, MEd, MD, FRCPC, FAAP, Head, Division of Paediatric Medicine, Associate Professor of Paediatrics University of Toronto, Hospital for Sick Children**

- Understanding the expert's obligations when meeting with opposing counsel; What is confidential and what can be revealed to retaining counsel about the meeting?

# AGENDA (Cont'd)

- Counsels' obligation to correct overstatements by the expert
- Eliciting evidence beyond the expert's expertise
- Balancing the tension between truth seeking and the professional duty to one's client
- The permissible scope of cross-examination when one's own expert agrees with the opinions expressed

**4:00-4:45**

## Experts in the Media

**Steven A. Skurka**, *Barrister & Solicitor*

**Jeffrey R. Manishen**, *Ross & McBride LLP*

**Richard Crouse**, *Film Critic*

The final session of the day will be a lively discussion about the portrayal of experts in the media. What lessons can we learn from how experts and lawyers are depicted in the media?

**4:45**

## Program Concludes

# WHO SHOULD ATTEND

- Forensic experts involved in the criminal justice system
- Crowns
- Defence litigators
- Judges
- Government policy makers
- Academics



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### Fee Per Delegate

\$525 plus 13% HST for a total of \$593.25.

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Fees include attendance, program materials, continental breakfast, lunch and bread refreshments. Group discounts are available. Visit [www.osgoodepd.ca](http://www.osgoodepd.ca) for details. Please inquire about financial assistance.

### Date & Time

January 16, 2015  
9:00 a.m. to 4:45 p.m. EDT/EST  
Please arrive a half hour early for sign-in and material pick-up.  
Dress is business casual.

### Location

Osgoode Professional Development  
Downtown Toronto Conference Centre  
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### Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

### 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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