

SUCCESSFUL SETTLEMENTS

STRATEGIES & TACTICS FOR CIVIL LITIGATORS



96% of civil cases settle before judgment.

So it's critical to enhance your understanding of key settlement issues including:

- Creating the right environment for settlement and overcoming a party's resistance
- Key differences in settlement strategies by practice area - personal injury, employment, estates, commercial and construction litigation
- How apps and social media are facilitating settlements
- *Union Carbide* (SCC) and its impact on settlement privilege
- Avoiding costly pitfalls in drafting offers to settle, minutes of settlement and releases
- The distinct roles of settlement counsel and litigation counsel--and how they are increasingly working together
- Mastering motions to enforce settlements
- Ethical and professional issues in negotiating and documenting settlements

Learn how to maximize the odds of a good settlement that will 'stick'

Plus! Don't miss Luncheon Speaker **The Hon. Justice Edward M. Morgan**, *Superior Court of Justice (Ontario)* on when settlement is or isn't a good thing.

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Webcast Available

Chairs

Paul Neil Feldman
Feldman Lawyers

Mitchell Rose

Stancer Gossin Rose LLP

Date and Time

November 26, 2015
9:00 a.m. - 4:45 p.m. EDT
Online Replay: February 1, 2016

Location

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



SUCCESSFUL SETTLEMENTS STRATEGIES & TACTICS FOR CIVIL LITIGATORS

The great majority of civil cases settle sometime between issuing the claim and ascending the courthouse steps. Yet lawyers' training focuses disproportionately on trials.

This *OsgoodePD* program redresses the balance. An outstanding faculty with long experience in settlement will assist you in honing the skills you rely on most often. They will deepen your understanding of what works best to meet your clients' needs, protect you against liability and enhance your standing as someone who gets optimum results. Topics covered will include:

- What psychological factors have a tangible impact on settlement?
- What can litigators in one specialty learn from the settlement strategies employed in other kinds of cases?
- How can your approach to documenting the settlement maximize protection for your client and yourself?
- Are you primarily a 'settlement counsel' or a 'litigation counsel' and when is it a winning formula for you to collaborate with another lawyer whose skills complement your own?
- Are you taking full advantage of online resources that can make the settlement process more cost-effective?
- What caselaw and practice tips are most helpful when you need to enforce the settlement through the court system?

Plus! A practical (and CPD-accredited) discussion of the ethical and professional conundrums arising during the settlement process – and how best to address them.

**REGISTER NOW BY VISITING WWW.OSGOODEPD.CA,
CALLING 416.597.9724 OR 1.888.923.3394,
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Chairs

Mitchell Rose
Stancer Gossin Rose LLP

Paul Neil Feldman
Feldman Lawyers

Keynote Speaker

**The Hon. Justice
Edward M. Morgan**
*Superior Court of Justice
(Ontario)*

Faculty

Kimberly Boara Alexander
Teplitsky, Colson LLP

Lisa C. Munro
Lerners LLP

Jennifer Bell
*Principal, Placet Dispute
Resolution*

John O'Sullivan
Barrister & Solicitor

Colm Brannigan
*Colm Brannigan Mediation and
Arbitration Services*

Neil E. Sacks
Howie, Sacks & Henry LLP

Alison Burrison
McLeish Orlando LLP

Sam R. Sasso
Ricketts, Harris LLP

Ian R. Dick
*Hicks Morley Hamilton Stewart
Storie LLP*

Sandra L. Secord
Torkin Manes LLP

Jon T. Fidler
*M + F Mediation and
Arbitration Services*

Natasha E. Skupsky
*Thompson, Tooze, McLean &
Elkin*

Eric B. Gossin
Stancer Gossin Rose LLP

**The Hon. Justice
Gertrude F. Speigel**
*Superior Court of Justice
(Ontario)*

Jennifer L. Hunter
Lerners LLP

Lisa Stam
Koldorf Stam LLP

Mana Khami
Harrison Pensa LLP

Oscar Strawczynski
Feldman Lawyers

Richard J. Mazar
*Richard J. Mazar Professional
Corporation*

AGENDA

8:30

Registration and Continental Breakfast

9:00

Welcome and Introductory Remarks

9:05

The Psychology of Settlement: It's About the Money (But Not Really)

JON T. FIDLER, *M + F Mediation and Arbitration Services*

ERIC B. GOSSIN, *Stancer Gossin Rose LLP*

THE HON. GERTRUDE F. SPEIGEL, *Superior Court of Justice (Ontario)*

- What are the intangible factors that impel parties to settle or not settle?
- How can counsel best use this information to create an optimal environment for settlement?
- How to draw a reluctant/resistant party to the bargaining table
- Are costs or other economic incentives actually helpful?
- The apology as a low-cost, low-risk settlement tool
- Is it ever advantageous to be aggressive in settlement discussions? How far is too far?

10:15

Refreshment Break

10:30

Settlement Strategies in Different Practice Areas: Comparing Notes

KIMBERLY BOARA ALEXANDER, *Teplitzky, Colson LLP*

MANA KHAMI, *Harrison Pensa LLP*

RICHARD J. MAZAR, *Richard J. Mazar Professional Corporation*

NEIL E. SACKS, *Howie, Sacks & Henry LLP*

JOHN O'SULLIVAN, *Barrister & Solicitor*

Different areas of the law present distinctive challenges and call for different approaches to settlement. But practitioners in one area can learn much from the strategies employed in others. Our panel will draw together experts from five of them and will identify the practical lessons to be derived from 'comparing notes'. The areas are:

- Personal injury litigation
- Employment litigation
- Estate litigation
- Commercial litigation (focusing on shareholder disputes)
- Construction litigation

12:00

Luncheon (including session on "When Settlement Is or Isn't a Good Thing")

THE HON. JUSTICE EDWARD M. MORGAN, *Superior Court of Justice (Ontario)*

LISA C. MUNRO, *Lerners LLP*

- Are there instances in which settlement is inappropriate?
- What are the hidden benefits and costs of resolution both in the courtroom and at the settlement table?
- Settlement (especially early settlement) considered from the points of view of the client, the lawyers and the public interest

1:00

Drafting Offers To Settle and Minutes of Settlement: Avoiding or Addressing the Pitfalls

IAN R. DICK, *Hicks Morley Hamilton Stewart Storie LLP*

SAM R. SASSO, *Ricketts, Harris LLP*

- Drafting to minimize the chances of the settlement breaking down
- Offers to settle plus costs
- Costs in "all-in" settlements
- Charitable donations
- Apportioning costs 'in a tax advantageous manner within the limits of the law' and minimizing the odds of CRA audits
- Minimizing the risk of solicitor's liability
- Toughest drafting problems in settlement offers and agreements, with creative solutions.

1:45

Emerging Areas in the Settlement Process

1. Using Settlement Counsel: When Two Heads Are Better Than One

PAUL NEIL FELDMAN, *Feldman Lawyers*

MITCHELL ROSE, *Stancer Gossin Rose LLP*

A practical discussion of how the use of 'settlement counsel' in conjunction with litigation counsel is being applied to enhance value to clients while producing happier lawyers - and what may persuade the client to go this route.

2. Settlement in the Digital Era: Essentials For Non-Techies

COLM BRANNIGAN, *Colm Brannigan Mediation and Arbitration Services*

LISA STAM, *Koldorf Stam LLP*

How the Internet, your smartphone, and apps are already changing how we settle cases.

- Apps and social media that can assist negotiations
- On-line dispute resolution (ODR) - how does it impact on settlement strategy and tactics?

2:45

Refreshment Break

3:00

Litigating Settlements

OSCAR STRAWCZYNSKI, *Feldman Lawyers*

ALLISON BURRISON, *McLeish Orlando LLP*

While most settlements 'stick', court intervention is sometimes required to enforce settlements or to interpret their terms. Learn about the hot-button issues and caselaw that you must know before you settle your next case. Including:

- Litigating releases in various subject areas - which terms are presumed to be included and which must be specified?
- Enforcing confidentiality clauses
- Motions to enforce a settlement
- Settlement privilege and its exceptions: when are things said at a mediation not confidential?
- *Union Carbide* and its implications

3:45

Ethical and Professional Considerations In Negotiating Settlements

JENNIFER BELL, *Placet Dispute Resolution*

JENNIFER L. HUNTER, *Lerners LLP*

SANDRA L. SECORD, *Torkin Manes LLP*

NATASHA E. SKUPSKY, *Thompson, Tooze, McLean & Elkin*

This session will address a variety of ethical and professional challenges which can arise at various stages of the settlement process, and indicate the strengths and weaknesses of various approaches. Reference will be made in each instance to the relevant LSUC Rules of Professional Conduct.

4:45

Program Ends



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSUC.



Eligible CPD/MCLE hours:

LSUC (ON): 7.25 CPD hours (5.0 Substantive; 2.25 Professionalism) NY CLE (on-site participants only): 8.0 credit hours in the Area of Professional Practice for Transitional and Non-transitional lawyers.

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Successful Settlements: Strategies & Tactics for Civil Litigators

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Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca for details. Please inquire about financial assistance.

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9:00 a.m. - 4:45 p.m. EDT

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Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

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.

Location

Osgoode Professional Development
 Downtown Toronto Conference Centre
 1 Dundas St. W., 26th Floor
 Toronto, ON M5G 1Z3

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.



4 Convenient Ways to Register

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