

# CURRENT & EMERGING ISSUES IN CIVIL SEXUAL ASSAULT

Do you have what you need to advance or defend a civil sexual assault claim in 2018?

Join Canada's foremost experts for a comprehensive update on the key current issues and new trends in this complex field. Be part of an interactive discussion about:

- What's new in negligence and vicarious liability
- How to deal with credibility problems at various stages of litigation
- Defense strategies for challenging certification of abuse claims
- Assessing the pros and cons of counter-claiming for defamation
- Emerging legal claims for "revenge porn", voyeurism and the non-consensual dissemination of intimate images

Register today at:

[osgoodepd.ca/civilsexual](http://osgoodepd.ca/civilsexual)

## Program Chairs

**Elizabeth K. P. Grace**  
Lerners LLP

**Gillian T. Hnatiw**  
Adair, Goldblatt Bieber LLP

## Date and Time

**February 26, 2018**  
9:00 a.m. – 5:00 p.m. EST

**ONLINE REPLAY:**  
**March 26, 2018**

## Location

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

# Current & Emerging Issues in Civil Sexual Assault

Already an area fraught with challenges, civil sexual assault claims have become increasingly complex. Whether you are advancing or defending a claim, or representing an organization that is the subject of one, you need to know how to navigate this challenging area of law.

In one information packed day, you will acquire the key knowledge, practical strategies and contacts you need to do so successfully. Let OsgoodePD's experts provide you with the benefit of their insights and experience and answer your most pressing questions on topics including:

- Strategies on how to prepare for and deal with the different forms of pre-trial resolution
- Class actions vs. mass tort claims: When is a class action the 'preferable procedure'?
- Breach of non-delegable duty – is this a viable alternative where other claims fail?
- What you need to know about the new exceptions to 3rd party records regime and record sharing between civil and criminal counsel
- Damages from on-line privacy violations: how can they be measured?

## Who Should Attend?

- In-house Counsel
- Lawyers advising on sexual assault issues
- Insurance Adjusters
- Human Resources Professionals
- Institutional Representatives from the following sectors:
  - Educational organizations
  - Healthcare organizations
  - Religious organizations
  - Long Term Care organizations
  - Athletic organizations
  - Children's activity organizations (camps, tutoring, sports leagues)
  - Eldercare organizations

## Agenda

9:00 a.m.

### Opening By Chairs

9:10 a.m.

### Resolution Without Trial

**Frank Gomberg**, Gomberg Mediation Solutions Inc.

**Kathleen Urdahl**, Global Resolutions

Most civil sexual assault claims are resolved pre-trial. This session will equip you with the tools you need to maximize your success at the mediation and/or pre-trial stage.

- Sexual abuse mediations vs. Pre-trials: Is there a difference (and if so, what?)
- Strategies on how to prepare for and deal with the different forms of pre-trial resolution
- Managing client expectations
- ADR advocacy – what to do and what not to do
- Missteps and mistakes mediators and judges should avoid

9:55 a.m.

### Institutional Liability Claims – Part 1

**Bruce Hutchison**, Genest Murray LLP

**Loretta P. Merritt**, Torkin Manes LLP

**Linda C. Phillips-Smith**, Stieber Berlach LLP

**Robert Talach**, Beckett Personal Injury Lawyers

**Susan Vella**, Rochon Genova LLP

**Alexander D. Pettingill**, Thomas Gold

Institutional liability claims are often the focal point for both counsel and organizational representatives who must respond to these types of claims. This session is an in-depth review of the current law, a discussion of new and ongoing issues, and an examination of the special challenges in this complex area, led by some of Canada's leading experts in civil sexual assault. It includes a dedicated Q&A session, so that you can optimize your learning.

- What's new in negligence and vicarious liability: a review of the case law and emerging trends
- Areas foreclosed and new frontiers
- Breach of non-delegable duty – is this a viable alternative where other claims fail?
- Strategies for dealing with the special challenges with school boards and Children's Aid Societies
- Potential ethical challenges with institutional liability claims – how to recognize and deal with them

**10:40 a.m.**

#### Refreshment Break

**10:55 a.m.**

#### Institutional Liability Claims Part 2: Interactive Q&A

**11:40 a.m.**

#### Class Actions

**Linda C. Phillips-Smith**, Stieber Berlach LLP

**Margaret L. Waddell**, Waddell Phillips Professional Corporation

- Class actions vs mass tort claims – when is a class action the 'preferable procedure' in personal injury cases?
- Determining if your firm or organization is equipped to support/defend a class action
- Defense strategies for challenging certification of abuse claims
- Approaches for quantifying damages on behalf of the class and individual class members
- Case law review including recent class actions against the RCMP, Grenville Christian College and the Royal Winnipeg Ballet
- Unique ethical challenges with class actions

**12:25 p.m.**

#### Lunch

**1:30 p.m.**

#### Credibility And Memory Issues In Sexual Assault Cases

**Loretta P. Merritt**, Torkin Manes LLP

**Dr. Candice M. Monson**, C.Psych., Department of Psychology, Ryerson University

**The Hon. Justice Diane Oleskiw**, Ontario Court of Justice

- Assessing credibility in sexual abuse cases
- The nature of traumatic memory
- How to deal with credibility problems at various stages of litigation (pleadings, affidavit of documents, examinations for discovery, experts and trial)
- Strategies for recognizing and being sensitive to the unique needs of the complainant/victim

**2:30 p.m.**

#### Interplay Between Civil And Criminal Proceedings

**David Butt**, Barrister

**Peter J. Osborne**, Lenczner Slaght

**Breese Davies**, Breese Davies Law

Now, more than ever, it is incumbent upon counsel to be familiar with issues that may arise in other proceedings and their potential impact on the civil case. These issues are especially tricky when there are both criminal and civil proceedings related to the same conduct. Civil lawyers must be aware of:

- The impact of criminal convictions and acquittals upon civil cases
- Strategies for dealing with criminal and civil proceedings for the same conduct
- What you need to know about the new exceptions to 3rd party records regime, which allows for the sharing of records and other evidence between civil and criminal counsel
- Understanding your obligations with respect to confidentiality and privilege
- Emerging claims for restitution in criminal cases

**3:15 p.m.**

#### Refreshment Break

**3:30 p.m.**

#### Update: Bill 132 – Ontario's New Sexual Violence & Harassment Legislation And Initiatives

**Joanna Birenbaum**, Ursel Phillips Fellows Hopkinson LLP

**Simona Jellinek**, Jellinek Law Office

- Report Card: Where are we at, where we are heading?
- Challenges for colleges and universities in addressing sexual assault on campus
- New workplace obligations for employers

**4:00 p.m.**

#### Civil Sexual Assault And The Defamation Claim

**Andrea Gonsalves**, Stockwoods Barristers

**Alex Smith**, Henein Hutchison LLP

- What are the advantages and risks of (counter-)claiming for defamation?
- Practical strategies for effectively advancing/defending these claims
- Special considerations for co-defendants

**4:30 p.m.**

#### What's On The Horizon: New And Emerging Issues

**Anna Matas**, Lerner LLP

**Molly Reynolds**, Torsys LLP

- Emerging legal claims for "revenge porn", voyeurism and the non-consensual dissemination of intimate images
- Policy initiatives and concerns in response to on-line harassment
- Damages from on-line privacy violations: how can they be measured?

**5:00 p.m.**

#### Program Concludes

## Chairs

Elizabeth K. Grace,  
Lerners LLP

Gillian T. Hnatiw,  
Adair, Goldblatt Bieber LLP

## Faculty Includes

Joanna Birenbaum, Ursel  
Phillips Fellows Hopkinson LLP

Alexander D. Pettingill,  
Thomas Gold Pettingill LLP

Breese Davies, Breese  
Davies Law

Linda C. Phillips-Smith,  
Stieber Berlach LLP

David Butt, Barrister

Molly Reynolds, Torsys LLP

Frank Gomberg, Gomberg  
Mediation Solutions Inc.

Alex Smith, Henein  
Hutchison LLP

Andrea Gonsalves,  
Stockwoods Barristers

Robert Talach, Beckett  
Personal Injury Lawyers

Bruce Hutchison,  
Genest Murray LLP

Kathleen Urdahl, Global  
Resolutions

Simona Jellinek, Jellinek Law  
Office

Susan Vella, Rochon  
Genova LLP

Anna Matas, Lerners LLP

Margaret L. Waddell,  
Waddell Phillips Professional  
Corporation

Loretta P. Merritt, Torkin  
Manes LLP

Dr. Candice M. Monson,  
C.Psych., Department  
of Psychology, Ryerson  
University

The Hon. Justice  
Diane Oleskiw, Ontario  
Court of Justice

Peter J. Osborne,  
Lenczner Slaght

## Registration Details

### Fee per Delegate

**\$725 plus HST**

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

### 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 is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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Osgoode Professional Development



416.597.9724

1 Dundas Street West, Suite 2600



@OsgoodePD

Toronto, ON Canada M5G 1Z3



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