

# SUCCESSFUL SETTLEMENTS 2017

## STRATEGIES AND TACTICS FOR CIVIL LITIGATORS

96% of civil cases settle before judgment.

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

- Key caselaw impacting the settlement process
- Opportunities for settlement and the litigation timeline
- How alternative fee structures and retainer agreements impact settlement discussions
- The menu of available tools for achieving settlement
- Drafting offers and minutes of settlement: avoiding the pitfalls
- Great moments in settlement strategy and why they worked
- What do clients really want from the process (and how to give it to them)

Register today at:

[osgoodepd.ca/successful-settlements](http://osgoodepd.ca/successful-settlements)

### Program Chairs:

**Paul Neil Feldman**  
Feldman Lawyers

**Mitchell Rose**  
Stancer Gossin Rose LLP

### Program Details:

#### DATE AND TIME

**March 24, 2017**

**9:00 a.m. – 4:45 p.m. EST**

**Webcast available**

#### LOCATION

**Osgoode Professional  
Development**

1 Dundas St. West, 26th Floor  
Toronto, ON

#### ONLINE REPLAY

**April 25, 2017**



# Successful Settlements 2017

## STRATEGIES AND 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 in:

- Meeting your clients' needs
- Protecting you against liability, and
- Enhancing your reputation as someone who gets optimum results.

## Topics Include

- The cases governing the enforceability of your settlement
- What should guide your decision on the timing of your offer to settle?
- The tactical logic of choosing formal or informal settlement discussions
- Drafting choices that make the most of Rule 49
- Responding to client expectations while shaping them
- Approaches best calculated to breaking 'hopeless' deadlocks

## Who Should Attend?

- Civil litigators
- In-house litigation counsel
- Paralegals and litigation law clerks

### What attendees said about the previous (2015) program

“Fantastic program, very much needed!”

“As a junior lawyer, the program provided me with a lot of things useful to implement now and even to be aware of as my practice develops”

“Very organized and well-run”

“Great CPD – thank you”

# Agenda

8:30

Registration and Continental Breakfast

9:00

Chairs' Welcome and Introductory Remarks

9:05

Key Caselaw Impacting The Settlement Process

**Oscar Strawczynski**, Feldman Lawyers

**Andrea Sanche**, Ricketts, Harris LLP

This session will summarize and comment on the cases with which every counsel involved in settling disputes should be familiar, in areas including:

- Enforceability of penalty clauses in settlement provisions
- Identification of settling parties: who is bound by the settlement?
- Relevant law on confidentiality and privilege

9:45

Opportunities For Settlement and the Litigation Timeline

**Nancy Shapiro**, Koskie Minsky LLP

**Jason Singer**, Singer, Kwinter

Counsel often grapple with the question of when it makes the best sense strategically to propose a settlement: *Am I showing my hand too early and inviting the other side to perceive weakness? Do I have to deliver the offer before discovery to preserve my client's claim for costs?* This session will explore the calculus that should guide your decisions at each stage of the process. Including:

- How does the pursuit of settlement influence the timing and manner in which to draft pleadings?
- Does it always make sense to make offers open until the commencement of the hearing or are there occasions when a time-limited offer makes more sense?

- Does an offer to settle before commencement of litigation have any bearing on costs?

**10:35**

### Refreshment Break

**10:50**

### How Alternative Fee Structures and Retainer Agreements Impact Settlement Discussions

**Caroline E. Abela**, WeirFoulds LLP

**Lisa Stam**, Koldorf Stam LLP

A party's willingness to settle at any point can be profoundly affected by how the litigation is being financed. Can the party afford to ignore the ticking clock? And what happens when the arrangements around fees and costs generate serious tensions between lawyers' and clients' interests?

This discussion by experienced counsel of a high-stakes area, in light of the most recent law, is one you can't afford to miss!

Including:

- The impact of different financing scenarios, including contingency fees, flat-fee arrangements, third-party litigation financing and costs insurance
- Settlement and the underfunded non-contingency fee retainer
- Apportionment of costs in settlement negotiations
- Does the client have to be invested in the litigation to be encouraged to settle?
- What happens with the client loses interest or runs out of money or both?

**11:50**

### The Menu of Available Tools For Achieving Settlement

**Eric Gossin**, Stancer Gossin Rose LLP

**Paul M. Iacono, Q.C.**, Beard Winter LLP & YorkStreet Dispute Resolution Inc.

**Jessica Kimmel**, Goodmans LLP

**Clifford Lax**, Lax O'Sullivan Lisus Gottlieb LLP

**Moira Visoiu**, Law Firm of Moira Visoiu

Our panel will anatomize the relative effectiveness of an array of settlement tools, for example:

- Use of settlement counsel
- Making use of med and arb clauses in business agreements
- Expedited arbitration
- Early neutral evaluation
- Informal settlement meetings
- Letting clients meet without counsel

Drawing on their very substantial experience, the panelists will share their views on which strategies earn a grade of A, C or F -- and in which contexts.

**1:00**

### Lunch

**1:45**

### Drafting Offers and Minutes of Settlement: Avoiding Common Pitfalls

**Lisa C. Munro**, Lerner LLP

- Drafting to minimize the chances of the settlement breaking down
- Offers to settle plus costs
- Drafting for costs in "all-in" settlements
- 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
- Tactics and strategies to maximize the value of Rule 49

Get guidance on some of the most challenging drafting problems in settlement offers and agreements, and their effective solution.

**2:30**

### What Do Clients Really Want From the Process? (and How To Give It To Them)

**Hermie Abraham**, Advocation Professional Corporation

**Yonni Fushman**, Vice-President and Deputy General Counsel, Aecon Corp.

**David J. Smagata**, Vice-President and Chief Legal Officer, DAS Canada

**Mary A. Teal**, Hughes Amys LLP

Your credibility and reputation are influenced by your ability to obtain settlements that so far as possible meet your clients' needs, whether or not those needs are fully articulated. In this session, experienced counsel -- some of whom are or have also been significant consumers of legal services -- explore issues including:

- How client expectations undergo shifts throughout the litigation/settlement process, or from one file to another
- Assessing the mix of motives (cost-savings, deterrence/reputational interests, preserving relationships, etc)
- Identifying "the problem beneath the problem"
- Getting beyond one-size-fits-all approaches

**3:45**

### Refreshment Break

**4:00**

### Peace Breaks Out: Experts Deconstruct Great Moments in Settlement Strategy and Why They Worked

**The Hon. Justice Todd Archibald**

Superior Court of Justice (Ontario)

**Robert B. Bell**, Lerner LLP

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

**Mana Khami**, Harrison Pensa LLP

Our panelists discuss the most creative settlement strategies and results they've seen or been involved in, highlighting the breakthroughs that made for successful settlements and the strategic and tactical tips they illustrate.

**4:45**

### Program Concludes

## Chairs

**Paul Neil Feldman**  
Feldman Lawyers

**Mitchell Rose**  
Stancer Gossin Rose LLP

## Faculty

**Caroline E. Abela**  
WeirFoulds LLP

**Jessica Kimmel**  
Goodmans LLP

**Hermie Abraham**  
Advocation Professional  
Corporation

**Clifford Lax**  
Lax O'Sullivan Liss  
Gottlieb LLP

**The Hon. Justice Todd  
Archibald**  
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**Lisa C. Munro**  
Lerners LLP

**Robert B. Bell**  
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**Andrea Sanche**  
Ricketts, Harris LLP

**Yonni Fushman**  
Vice-President and Deputy  
General Counsel  
Aecon Corp.

**Nancy Shapiro**  
Koskie Minsky LLP

**Frank K. Gomberg**  
Gomberg Mediation  
Solutions Inc.

**Jason Singer**  
Singer Kwinter

**David J. Smagata, LL.M.**  
Vice President and Chief  
Legal Officer, DAS Canada

**Eric Gossin**  
Stancer Gossin Rose LLP

**Lisa Stam**  
Koldorf Stam LLP

**Paul M. Iacono, Q.C.**  
Beard Winter LLP  
& YorkStreet Dispute  
Resolution Group Inc.

**Oscar Strawczynski**  
Feldman Lawyers

**Mary A. Teal**  
Hughes Amys LLP

**Mana Khami**  
Harrison Pensa LLP

**Moira Visoiu**  
Law Firm of Moira Visoiu

## Registration Details

### Fee per Delegate

**\$595 + 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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