

# SUCCESSFUL ADVOCACY IN TORT AND PERSONAL INJURY MEDIATIONS

Expert counsel and mediators will illuminate and demonstrate key aspects of mediation advocacy, including:

- Taking full advantage of the opportunities presented by the mediation brief
- Establishing and maintaining your credibility with the mediator
- Tactics the other side will use and how to counter them
- Getting a failing mediation back on track
- Ethical and professional issues arising throughout the process

“*This is the best program that I have ever seen, that I have ever attended, or that I’ve ever been involved in, [on]... mediation advocacy.*”

Jon Fidler, Distinguished Fellow, International Academy of Mediators

Register today at:

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

## Program Chairs:

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

**Paul Torrie**  
Global Resolutions

## Program Details:

DATES AND TIMES:

**February 15-16, 2017**

9:00 a.m. – 5:00 p.m. EST

9:00 a.m. – 1:30 p.m. EST

**In Person or Webcast**

OPTIONAL WORKSHOP:

**February 16, 2017**

1:45 p.m. - 4:45 p.m.

**In Person**

LOCATION

**Osgoode Professional  
Development**

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

ONLINE REPLAY:

**March 6-7, 2017**

Learn how to maximize your effectiveness as an advocate in these challenging cases.

Mediation aims to settle disputes in a way that the parties can accept, at less financial and psychological cost than through traditional civil litigation. The psychological costs for tort/personal injury plaintiffs in particular are often much higher than those arising in the context of merely commercial disputes. But whether the mediation succeeds, or is a way-station on the road to the courtroom, it's a unique process--one that requires both plaintiffs' and defendants'/insurers' counsel to make distinctive strategic and tactical choices.

This OsgoodePD program is chaired by **Frank Gomberg** and **Paul Torrie**, two highly-respected mediators who have between them mediated over 5,000 tort and personal injury disputes, on top of longtime PI litigation experience. Together with **a faculty of over twenty distinguished counsel and mediators**, they will provide you with tools that will inform every mediation you appear on and maximize your ability to obtain the best possible results for your clients.

## Plus!

An optional add-on workshop in which you'll apply the skills you've learned and receive individual feedback from mediation experts.

## Who Should Attend

- Plaintiffs' and defendants' counsel in tort or personal injury mediations
- Claims managers and other insurance professionals who make settlement decisions at mediation
- Institutional litigants who make settlement decisions at mediations

# Agenda

Day 1

February 15, 2017

8:30

Registration and Continental Breakfast

9:00

Chairs' Welcome and Remarks

9:05

### What's Unique About Mediation Advocacy?

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

*Paul Torrie, Global Resolutions*

In this context-setting session, you'll get a realistic picture of what counsel are trying to achieve for the plaintiff or defendant on a mediation, as opposed to an arbitration or trial. Understanding the differences -- some obvious, some subtle -- and how these should influence your approach before, during and following mediation, is key to maximizing your credibility with all parties, and your ultimate chances of obtaining a successful result.

9:45

### Secrets of the Persuasive Mediation Brief

*Jeffrey R. LeRoy, Lawson LLP*

*Robert Rotenberg, Rotenberg Shidlowski Jesin*

*Paul Torrie, Global Resolutions (moderator)*

- How the purpose of written advocacy differs in the mediation context
- Should a mediation memorandum be more than just a revised pretrial conference memorandum?
- The brief as a means of ensuring that you fully understand your own case
- The brief as an exercise in persuasive risk analysis

- Strategy and technique in framing the memorandum - the most effective approaches
- How to best address the weak points in your case
- The nitty gritty: what should and shouldn't go in?
- How long should the memorandum be?
- Do you include previous offers?
- Do you include exhibits?
- Do you include the 'holes' in your opponent's case?
- Managing the emotive content of language
- The DAC principle ("Disarm, Alarm and Charm")
- An outstanding mediation memorandum analyzed: what worked and why?

**10:40**  
**Refreshment Break**

**10:55**

**Your Relationship With the Mediator**

*Frank K. Gomberg, Gomberg Mediation Solutions Inc. (moderator)*

*Risa M. Kirshblum, Lenczner Slaght Royce Smith Griffin LLP*

*Kadey B.J. Schultz, Schultz Frost LLP*

The mediator is a resource whose value to your client can be maximized or minimized according to the choices you make. This panel will dispel myths about how to deal with mediators and provide practical guidance on how to manage the relationship from the the outset – or put it back on track if things are going amiss. Topics include:

- Must you avoid disclosing your strategy to the mediator?
- How much candor can you afford?
- Can/should you 'hide behind the mediator'?

**11:35**

**Handling Bad Behaviour and Difficult Personalities**

*Jon T. Fidler, M + F Mediation & Arbitration Services*

*Wendy Moore Mandel, Thomson, Rogers*

*J. Jay Rudolph, Rudolph Mediation & Arbitration Services Inc.*

Experienced counsel and mediators all have to cope on occasion with behaviours that leave scars both on the process and the participants. Our panelists will offer practical insights to help you respond effectively while avoiding being manipulated or drawn into replicating the other side's unproductive or aberrant conduct.

**12:15**  
**Lunch**

**Nonverbal Communication In the Mediation Room; The Messages You May Be Sending Without Knowing It**

A presentation by **Dr. Mark G. Frank** that will deepen your insight on how your effectiveness at mediation may be increased or undercut by nonverbal cues that the opposite party, that party's counsel and the mediator will pick up on, such as:

- posture
- eye contact
- gestures
- vocal tone
- clothing choices

Learn how, with increased awareness of these cues, you can boost your ability to grasp the intentions of others and your overall credibility as an advocate.

Professor Frank is Chair of the Department of Communication, as well as Director of the Communication Science Center at the University at Buffalo, The State University of New York. His work has been funded by The National Science Foundation, the U.S. Department of Homeland Security, the U.S. Department of Defense,

and the intelligence community, and he has presented briefings on deception and counterterrorism to the U.S. Congress and the National Academies of Sciences. Dr. Frank's lecture series, *Understanding Nonverbal Communication*, is included in the Great Courses series.

**1:15**

**Breaking Impasses: Creative Solutions For Counsel**

*Ivan Luxenberg, M + F Mediation & Arbitration Services*

*Paul Torrie, Global Resolutions (moderator)*

*Richard J. (Rick) Weiler, Weiler ADR Inc.*

While mediations offer an opportunity to avoid the risks of a trial, they often generate their own share of unexpected crises. Our panel will examine how imaginative counsel overcome deadlocks and keep things moving forward.

**2:05**

**Advocacy at the Mediation, Part 1**

*Heidi R. Brown, Bogoroch & Associates LLP*

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

*Alfred M. Kwinter, Singer Kwinter*

*Robert L. Love, Borden Ladner Gervais LLP*

*Kathleen Urdahl, Global Resolutions*

Demonstrations of mediation openings will be shown and dissected by a panel of experts. The advantages and disadvantages of both 'hard' and 'soft' approaches will be illustrated and discussed, to assist you in determining which approach will best fit with the demands of the particular case and with your individual style.

**5:00**

**Day 1 ends**

## Day 2 February 16, 2017

9:00

### Advocacy at the Mediation, Part 2

*Catherine Bruder, Bruder Springstead LLP*

*Elizabeth Grace, Leners LLP*

*Rebecca L. Nelson, Azevedo & Nelson*

*Paul Torrie, Global Resolutions  
(moderator)*

This session continues the previous day's viewing and discussion of mediation demonstrations, with insights from a new panel.

10:30

### Refreshment Break

10:45

### Impact of Cross-Cultural Factors on the Mediation

*Frank K. Gomberg, Gomberg Mediation Solutions Inc. (moderator)*

*Sandhya Kohli, Mediator & Professor, Osgoode Hall Law School*

*Muneeza Sheikh, Levitt LLP*

Cultural factors can influence attitudes towards legal disputes, the adversary system, authority, decision-making and communication styles. These factors can profoundly affect the mediation process and must be carefully considered by counsel. This session will thoughtfully explore these themes and their practical lessons.

11:50

### Lunch

12:30

### Ethical and Professional Issues In the Tort/PI Mediation Process

*Valerie A. Edwards, Torkin Manes LLP*

*Gavin MacKenzie, MacKenzie Barristers*

*Donald H. Rogers, Q.C., Rogers Partners LLP*

*Paul Torrie, Global Resolutions  
(moderator)*

An experienced panel will review a sequence of fact situations raising vexing ethical and professional questions that you will face before, during and after mediation.

1:30

### Plenary sessions end

### OPTIONAL ADD-ON

## Small-Group Skills Workshops

1:45

### Putting Your Mediation Advocacy Skills To Work: Learn-By-Doing Exercises With Individualized Feedback

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

*J. Jay Rudolph, Rudolph Mediation & Arbitration Services Inc.*

*Paul Torrie, Global Resolutions*

Working with a choice of two fact situations circulated in advance, you will have the opportunity to present a mediation opening and to receive constructive feedback from expert mediators.

4:45

### Workshop ends

What attendees at the earlier version of this program said:

“All the panelists were very informative and it was very helpful to hear from so many experienced lawyers and mediators.”

Paul Ratcliffe  
Buset & Partners LLP

“I loved the variety and differing perspectives. It reflected the reality of mediation...it was great to hear from both mediators and lawyers on the practical issues that arise at mediation...‘real life’ issues were raised and alternative methods of addressing them were provided. The panel comments were invaluable!...Excellent cross-section of counsel.”

Kathleen Urdahl  
Global Resolutions

“The panels were exceptional, well-organized and relevant... not a boring moment.... superb and helpful program.”

Stephen Newell  
Hooper Law

Drawing on the expertise and experience of leading lawyers and mediators, including:

## Program Chairs



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



**Paul Torrie**  
Global Resolutions

## Program Faculty

**Heidi R. Brown**

Bogoroch & Associates LLP

**Catherine Bruder**

Bruder Springstead LLP

**Valerie A. Edwards**

Torkin Manes LLP

**Jon T. Fidler**

M + F Mediation & Arbitration Services

**Mark G. Frank, Ph.D.**

Professor and Chair, Department of Communication, University at Buffalo, State University of New York

**Frank K. Gomberg, B.A., J.D., LL.M.**

Gomberg Mediation Solutions Inc.

**Elizabeth Grace**

Lerners LLP

**Risa M. Kirshblum**

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Levitt LLP

**Paul Torrie**

Global Resolutions

**Kathleen Urdahl**

Global Resolutions

**Richard J. (Rick) Weiler**

Weiler ADR Inc.

“Excellent program: comprehensive and very informative discussions from both plaintiff and defendant perspectives...Practical examples were very effective to illustrate points and strategy. Mediations had become a somewhat routine exercise in my practice and today’s program has inspired me to use some of the tools and strategies in my openings and dealings with my client.”

Grace Leung  
Bruder Springstead LLP

“A very well-conceived program designed to arm a litigator... with basic and advanced skills for mediation as well as an understanding of some of the more nuanced aspects of mediation strategy, process and problems.”

Jayashree Goswami  
Zurich Canadian Holdings Ltd.

## Registration Details

### Fee per Delegate

**Course Only: \$695 plus HST**

**Course and Workshop: \$895 plus HST**

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/groupdiscounts](http://www.osgoodepd.ca/groupdiscounts) 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 (less \$75 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.



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Eligible CPD/MCLE hours: LSUC (ON)

Course: 14.5 CPD hours (3.0 Professionalism, 11.0 Substantive)

Course plus workshop: 17.5 CPD hours (3.0 Professionalism, 14.0 Substantive)

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian jurisdictions. To inquire about credit eligibility, please contact [cpd@osgoode.yorku.ca](mailto:cpd@osgoode.yorku.ca)



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