

PROSECUTING AND DEFENDING PROFESSIONAL DISCIPLINE CASES

“This was one of the most informative and advanced education sessions I have ever attended. Excellent!”

Sophia Ruddock
Ontario Nurses Association

Master the law and best practices you need to succeed in this challenging litigation specialty.

This **unique** course will give you expert guidance on all aspects of a file, including:

- **The investigation phase:**
 - Navigating your client through examinations, interviews, inquiries
 - Prospects for early resolution
- **Pre-hearing preparations and proceedings:**
 - Scope of duty to preserve records
 - Pursuing and resisting interim orders
 - Dealing effectively with concurrent criminal proceedings
- **The discipline hearing:**
 - Effective advocacy
 - Factors affecting penalties
 - Cost considerations and strategies
 - Applications for readmittance

Faculty includes regulators from: the College of Physicians and Surgeons of Ontario, the Institute of Chartered Accountants of Ontario and the Ontario Securities Commission.

Program Chairs

Linda Fuerst and
Jeremy Devereux
Norton Rose Fulbright
Canada LLP

Date and Time

April 24, 2019
9:00 a.m. – 4:30 p.m. EDT
In Person or Webcast

Online Replay:
June 12, 2019

Location

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

Register today at:
[osgoodepd.ca/
prosecuting](http://osgoodepd.ca/prosecuting)



Prosecuting and Defending Professional Discipline Cases

The stakes are high in professional discipline proceedings. For the professional, years of education and experience, reputation and livelihood are on the line. For the regulator, there is pressure to vigorously protect the public interest and respond to allegations of misconduct, incompetence or incapacity in a fair and timely manner.

This *OsgoodePD* course brings together an outstanding faculty of defence and prosecution counsel, to share their insights and provide a thorough review of the essential skills you need to master in order to succeed in this unique and challenging litigation speciality.

Topics Include

- Strategy for imposition of interim orders and interpretation in *Rohringer v. Royal College of Dental Surgeons of Ontario*, 2017 ONSC 6656
- Validity and interpretation of the definition of misconduct
- Use of testimony given in other proceedings
- Changing societal values and behavioral expectations reflected in disciplinary hearing decisions
- The impact of parallel investigations by police or other agencies on examinations
- Conduct of hearing: in writing/electronic/oral presentation

Who Should Attend

- Counsel who represent regulated professionals
- Counsel who prosecute on behalf of professional regulators
- Investigators and staff of professional regulatory bodies
- Members of complaints and discipline committees

Register today at:

osgoodepd.ca/prosecuting

Agenda

8:30 a.m.

Registration

9:00 a.m.

Chairs' Welcome & Introductory Remarks

9:05 a.m.

Assessing Duties and Powers

Jaen Lilles, Lenczner Slaght

Julie Maciura, Steinecke Maciura LeBlanc

- Challenging use of the power to summons
- Challenging *ex parte* investigation orders
- Duties of investigators/College staff
 - Duty of good faith, neutrality and reasonableness?
 - Duty to provide notice of complaint or investigation
- The professional's duty to cooperate and its limits
 - Availability of protections against compelled testimony
 - Co-operating with a power to inquire into and examine

9:50 a.m.

The Paper Chase: Documentary Requests and Production

Lindsay Kantor, Torkin Manes

- Demands for production
 - Preservation and protection of electronic records
 - Results of internal investigations and privilege
 - PIPEDA obligations and privacy issues
 - Limits on the power to inspect
 - How production demands might affect disclosure obligations
- Anticipating use of the search and seizure powers
 - What to do when an investigator arrives with a warrant
- *Charter* considerations at production stage

- Solicitor-client privilege
 - What can be claimed; challenging claims
- Motions for production of third party records
- Reciprocal disclosure from defendants

10:35 a.m.

Refreshment Break

10:50 a.m.

Examinations, Interviews, Inquiries

Jill Dougherty, WeirFoulds LLP

Rebecca Jones, Lenczner Slaght

- Best practices in preparing the client
- Entitlement to pre-examination disclosure
- Prudent practices and planning for the conduct of investigations
- The privilege against self-incrimination
- The impact of parallel investigations by police or other agencies on examinations

11:35 a.m.

Preparing for the Hearing

Bonni Ellis, Lerner LLP

Alix Hersak, Director, Investigations & Prosecutions, CPA Ontario

- Familiarizing yourself with the tribunal practices
- Pre-hearing conferences
- Anticipating the other side
- Severing allegations or respondents: strategic considerations
- Witness preparation
 - Interviewing witnesses preliminary to hearing
 - Vulnerable witnesses
- Materials preparation
 - Assessing expert reports: do you need a reply report?
 - Conduct of hearing: in writing/electronic/oral presentation
 - Disclosure, including:
 - i. How to determine if disclosure is complete
 - ii. Procedures for challenging adequacy of disclosure

- iii. Obtaining access to third-party documents
- iv. Getting information about staff conduct
- v. Applying the implied undertaking rule

- Initial fairness issues:

- The right to counsel and adjournments
- Alleging bias
- Validity and interpretation of the definition of misconduct

12:35 p.m.

Lunch

1:15 p.m.

Interim Proceedings: Scope and Strategy

Emily Lawrence, Paliare Roland

- Review of changes to RHPA regarding interim order powers
- Strategy for imposition of interim orders and interpretation in *Rohringer v. Royal College of Dental Surgeons of Ontario*, 2017 ONSC 6656
- Consequences of interim orders on future prosecutions and penalties

1:45 p.m.

The Hearing: Penalties, Costs, Settlements

Matthew Britton, Ontario Securities Commission

TBD

- Pitfalls of settlement: avoiding or addressing them
- Use of admissions made in other proceedings
- Is it possible to negotiate too good a deal?
- Penalty guidelines and the use of prior decisions
- Effective evidence and its presentation
- Assessment of costs in disciplinary proceedings
- Challenging the tribunal staff's claim for costs

2:30 p.m.

Refreshment Break

2:45 p.m.

Dealing Effectively with Concurrent Criminal and Civil Proceedings

Lisa Freeman, Barrister and Solicitor

Megan Savard, Addario Law Group LLP

- Which proceeding should go first?
- Impact of parallel proceedings on production, disclosure, undertakings
- Use of testimony given in other proceedings
- Impact of findings in parallel proceedings

3:15 p.m.

Court Challenges to Professional Discipline Decisions

Lisa Brownstone, College of Physicians and Surgeons of Ontario

Alistair Crawley, Crawley Mackewn Brush LLP

- Deference afforded to disciplinary bodies on questions of law upon judicial review
- Interpreting originating statutes
- Changing societal values and behavioral expectations reflected in disciplinary hearing decisions

3:45 p.m.

Ethical and Professional Issues in Professional Discipline Practice

Luisa Ritacca, Stockwoods

Nadia Campion, Lax O'Sullivan Lisus Gottlieb

The panelists will discuss fact situations illustrating how to best address ethical and professional issues that you will face sooner or later in professional discipline practice. There will be ample time for questions and discussion.

4:30 p.m.

Program ends

“Really got a lot of value out of the day.”

Marianne Wright, Unit Commander, Legal Services, Toronto Police Service

Chairs

Linda Fuerst and Jeremy Devereux
Norton Rose Fulbright Canada LLP

Faculty Includes

Matthew Britton
Ontario Securities Commission

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College of Physicians and Surgeons of Ontario

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Jill Dougherty
WeirFoulds LLP

Bonni Ellis
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Lisa Freeman
Barrister and Solicitor

Alix Hersak
Director, Investigations & Prosecutions, Chartered Professional Accountants, Ontario

Rebecca Jones
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Julie Maciura
Steinecke Maciura LeBlanc

Luisa Ritacca
Stockwoods

Megan Savard
Addario Law Group LLP

Registration Details

Fee per Delegate
\$695 plus HST

Fees include attendance, program materials, lunch and break refreshments. Group discounts are available. Visit 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 21 days prior to the program date. If a cancellation request is made with less than 21 days notice, a \$150 administration fee will apply. No other refund is available.



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Eligible CPD Hours: LSO (ON): 6h 45m CPD (5h 30m Substantive; 1h Professionalism; 15m EDI).

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This program is approved for the LAWPRO Risk Management Credit.

“Covered an exceptionally broad scope of substantive and practical considerations in a condensed time period.”

Jason W. J. Woycheshyn, Bennett Jones LLP

“Panels were uniformly excellent.”

James B. Camp, Camp Advocacy P.C.

 **osgoodepd.ca** **Osgoode Professional Development**
 **416.597.9724** **1 Dundas Street West, Suite 2600**
 **@OsgoodePD** **Toronto, ON Canada M5G 1Z3**



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