



EXPERT EVIDENCE IN PERSONAL INJURY CASES 2020

Will your experts make your case, or break it? Learn the most effective approaches, in light of key recent caselaw.

Equip yourself fully to meet the challenges of adducing or countering expert evidence, in such areas as:

- Communications with experts and the boundaries of litigation privilege
 - Quantifying past and future income dependency
 - Laying the evidentiary foundation for future care reports
 - How to fund experts in high-risk litigation
- along with other current issues noted in the agenda.

Register today at:

osgoodepd.ca/expert

Program Chairs

Steve Rastin
Rastin & Associates

Audrey P. Ramsay
Blouin, Dunn LLP

Date and Time

March 4, 2020
9:00 a.m. to 4:45 p.m. EST
In Person or Webcast

Online Replay:
April 17, 2020

Location

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

Expert Evidence in Personal Injury Cases 2020

Whether you are striving to achieve the best settlement or preparing for trial, it's critical you know how to effectively use and counter expert evidence. Debate continues on whether recent caselaw has clarified or complicated what was already one of the most challenging areas for counsel at all levels of experience. Get equipped with the latest thinking in this area.

What was said about recent *OsgoodePD* programs in personal injury law:

“Excellent... great sessions focusing on a number of areas of value... just the right amount.”

Lorne Sabsay, Sabsay Lawyers

“Incredibly insightful program by seasoned experts... useful for both the plaintiff and insurance defence bars.”

Amer Pasalic, Dentons Canada LLP

“Very informative and helpful for utilizing new thoughts and theories in our everyday practice.”

Tracy Romanowski, Kahler Law Firm

“Excellent quality of speakers... excellent topics all around.”

Greg Specht, Kawaguchi Krajden LLP

Topics Include

- The New Simplified Rules Trials: key amendments affecting expert evidence
- Challenging the expert's independence and impartiality
- Pretrial disclosure obligations
- Evidence on economic dependency in fatality claims
- Future care reports: the good, the bad and the ugly
- Has the causation test really changed?
- Black box evidence, airbag litigation, experts in threshold-defensible cases and more!

Who Should Attend

- Plaintiffs' and defendants' counsel in personal injury cases
- In-house litigation counsel
- Insurance professionals involved in personal injury cases/dispute resolution

Agenda

8:30 a.m.
Registration

9:05 a.m.

Chairs' Introductory Remarks

9:10 a.m.

Expert Evidence in New Simplified Rules Trials

The Hon. Justice Mark Edwards
Superior Court of Justice (Ontario)

Adam Wagman
Howie, Sacks & Henry LLP

- Key amendments to rule 76 regarding expert evidence
- Tactical considerations in selecting an expert for a judge-alone trial
- Impact of the cap on costs and disbursements on the choice of experts

9:45 a.m.

Exclusion of Experts and the Potential Impact of *White Burgess*

Linda Matthews
Matthews Abogado LLP

- How are courts interpreting the *White Burgess* test?
- How and when to challenge experts for lack of independence and impartiality
- The judge's gatekeeping role in the wake of *White Burgess* and *Bruff-Murphy v. Gunawardena*
- Admissibility vs. weight: is there a case for *not* excluding expert opinion where there is apparent bias?

10:00 a.m.

Refreshment Break

10:15 a.m.

Pretrial Disclosure Obligations to Produce the Experts' File

Tina D. Radimisis
Jewell Radimisis Jorgie LLP

- Communications with experts and the boundaries of litigation privilege

- The impact of *Moore v. Getahun* and *Bruell Contracting* on pre-trial disclosure of documentation and draft reports
- Pre-trial disclosure of foundational information for an expert's report as part of the discovery process
- Preservation of the expert's file and avoiding an adverse inference

10:35 a.m.

Black Box Evidence in Motor Vehicle Cases

Sam Kodsí, P.Eng.

President and Consulting Professional Engineer, Kodsí Forensic Engineering

- What it is, how to collect it and how to use it
- Challenging the accuracy of black box data
- Black box vs. Infotainment data systems: what's the difference?

11:05 a.m.

Fatality Claims and Economic Dependency Damages

Ian Wollach

Partner, Litigation Accounting and Business Valuation Services, RSM Canada

- Quantifying past and future income dependency, and the role of contingencies
- Determining dependency losses in the context of single-parent families
- The impact of survivor pensions, CPP Survivor and OAS benefits on dependency loss claims
- How to determine which dependency methodology should be used
- Quantifying future loss of services
- Is income loss of a surviving FLA member claimable?

11:35 a.m.

Expert Evidence and Future Care Reports (FCRs): Valuable Tool or Irritant?

Barbara Legate

Legate LLP

Kadey B. J. Schultz, LL.M., CRM

Schultz Frost LLP

- Is calling the occupational therapist enough?
- What does it mean to be a "certified" life care expert?

- The case for and against obtaining FCRs and the risks of not obtaining them
- The defence perspective: FCRs as impediments to settlement

12:15 p.m.

Lunch

1:00 p.m.

Expert Evidence in Airbag Litigation

Craig C. Wilkinson, P.Eng.

Director, Senior Engineer, MEA Forensic Engineers and Scientists

- The safety advantages of airbags vs. risks of injury in specific situations
- The potential for still more litigation in this area
- Evaluating whether or not you have an airbag litigation case
- An expert's explanation of the science

1:30 p.m.

How to Use Experts in Threshold Defensible Cases

Maia L. Bent

Lerners LLP

Edward J. Chadderton

Carroll Heyd Chown LLP

- Funding experts in high-risk litigation
- Impact of the new Simplified Rules (and disbursement limits)
- Use of litigation experts vs. participating efforts in light of *Westerhof* and later cases
- Judge or jury? The impact on expert selection
- Use of lay witnesses and treating doctors in neutralizing defence experts

2:30 p.m.

Refreshment Break

2:45 p.m.

Experts and Causation

Ryan Breedon

Breedon Litigation

- Why we need to educate doctors about the importance of causation in litigation
- "But/for" and "material causation" tests: are they really different?

- Approaching causation after *Clement*
- Is there any place left for the *Athey* analysis?
- Practical implications of recent C.A. decisions

3:15 p.m.

Expert Evidence in Medical Negligence Cases: Cost-Effective Approaches

Richard C. Halpern

Thomson, Rogers

- Building a viable medical negligence case without breaking the bank
- Addressing the CMPA's resource advantages
- Will it be feasible to bring medical negligence cases under the new Simplified Rules?
- Overcoming access-to-justice barriers for smaller-damage cases

3:45 p.m.

The Ethics of Working with Experts: How Close Is Too Close? Rule 53 Obligations and Other Issues

The Honourable Frank N. Marrocco

Associate Chief Justice of the Superior Court of Justice (Ontario)

Brian M. Bangay

Desjardins General Insurance Group Inc.

Laura Hillyer

Martin & Hillyer Associates

- What are the appropriate bounds of communications with experts in the preparation of reports?
- Where's the line between being neutral and impartial and part of the advocacy team?
- What limits should there be with respect to meetings, phone calls, and text messages?
- Should experts provide draft reports to counsel, and do such reports need to be served or disclosed?
- Can counsel persuade experts to reconsider their position?
- What's the proper role of experts in assisting with the cross-examination of opposing experts?

4:45 p.m.

Program Ends

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President and Consulting
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Adam Wagman
Howie, Sacks & Henry LLP

Craig C. Wilkinson, P.Eng.
Director, Senior Engineer,
MEA Forensic Engineers and
Scientists

Ian Wollach
Partner, Litigation Accounting
and Business Valuation Services,
RSM Canada

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 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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