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, Chartered Professional Accountants of Ontario and the Ontario Securities Commission.

Program Chairs
Linda Fuerst and Jeremy Devereux
Norton Rose Fulbright Canada LLP

Date and Time
April 2, 2020
9:00 a.m.–4:30 p.m. EDT
In-Person and Webcast

Online Replay:
June 2, 2020

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

Register today at:
osgoodepd.ca/disciplinecases
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 essential skills you need to master in order to succeed in this area.

The investigation phase
- Examinations, interviews and inquiries
- Prospects for early resolution

Pre-hearing preparation and proceedings
- Familiarizing yourself with tribunal practices
- Pursuing/resisting interim orders
- Dealing with concurrent civil and criminal proceedings

The discipline hearing
- Factors affecting the determination of the appropriate penalties
- Costs: considerations and strategies

Topics Include
- Strategy for imposition of interim orders and interpretation
- 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

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Agenda

8:30 a.m.
Registration

9:00 a.m.

Chairs’ Welcome & Introductory Remarks

9:05 a.m.
Assessing Duties and Powers

Jaan Lilles, Lenczner Slaght Royce Smith Griffin LLP
Erica Richler, 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
  - Cooperating with a power to inquire into and examine

9:50 a.m.
The Paper Chase: Documentary Requests and Production

Lindsay Kantor, Torkin Manes LLP
- 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

10:35 a.m.
Refreshment Break

10:50 a.m.

Examinations, Interviews, Inquiries

Rebecca Jones, Lenczner Slaght Royce Smith Griffin LLP
• 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

Adam Patenaude, Lerners LLP
Alix Hersak, Vice President, Investigations & Prosecutions, Chartered Professional Accountants of 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 and oral presentation
• Disclosure, including:
  - How to determine if disclosure is complete
  - Procedures for challenging adequacy of disclosure
  - Obtaining access to third-party documents

1:45 p.m.

The Hearing: Penalties, Costs, Settlements

Matthew H. Britton, Senior Litigation Counsel, Enforcement Branch, Ontario Securities Commission

Rebecca C. Durcan, Steinecke Maciura LeBlanc
• 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 & 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, Chief Legal Officer, 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

Nadia Campion, Lax O’Sullivan Lisus Gottlieb LLP
A discussion of fact situations illustrating how to best address ethical and professional issues that you will face sooner or later in professional discipline work.

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
Prosecuting and Defending Professional Discipline Cases

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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.

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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.