

12TH ANNUAL UPDATE

# PERSONAL INJURY LAW & PRACTICE



Important new cases, strategic insights and business challenges for PI counsel.

With topics including:

- The year's most significant decisions identified
- The new accident benefits regime: changes to the SABS and to dispute resolution at the LAT
- Court approval of settlements in pediatric injury cases: what should the affidavit contain?
- Waivers of liability and releases: when can they be set aside?
- Quantifying the loss in fatal accident cases
- Important recent law on deducting collateral benefits
- How listing municipalities as additional insureds on policies is changing how cases are being litigated
- Adverse costs insurance - is it worth it?
- Is there a bright future for personal injury practitioners, or should we all start learning wills and estates?

Get practical guidance in successfully handling these cases - from top personal injury experts

*"...RIGOUR, DEPTH AND PRACTICAL [APPLICATIONS]..... WONDERFUL MATERIALS COVERING ALL AREAS OF PERSONAL INJURY"*

**Supreet More** (2015)

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PERSONALINJURY**



### Chairs

**Richard M. Bogoroch**  
Bogoroch & Associates LLP

**Susan E. Gunter**  
Dutton Brock LLP

### Date and Time

September 23, 2016  
8:30 a.m. - 4:30 p.m. EDT

### Location

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

**Webcast Available**

**12TH ANNUAL UPDATE**  
**PERSONAL INJURY LAW & PRACTICE**

Personal injury litigation continues to be a dynamic, high-stakes area of law. Ongoing caselaw and practice changes make it more important than ever that you stay up-to-date.

This comprehensive OsgoodePD annual conference brings you the latest information from a faculty of personal injury experts, led by **Richard Bogoroch** and **Susan Gunter**. They will guide you through the most pivotal recent trial and appellate decisions and legislative initiatives, providing you with thoughtful analysis and practical tips. Issues covered will reflect developments as of September 2016, and are currently expected to include:

- The rules of practice in accident benefits matters at the Licence Appeal Tribunal
- Special considerations in litigating claims involving child plaintiffs
- Contractual waivers of liability in the context of sports and recreational activities and occupier's liability
- Fatal accidents: the impact of cases such as *MacDonald v. Duncan* [2015] on *Family Law Act* claims by survivors
- Marketing and advertising personal injury practices in a crowded market—where to draw the line

**REGISTER NOW** by visiting  
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**“TERRIFIC PROGRAM. GREAT FACULTY. GOOD QUALITY PAPERS THAT ADDRESS CASE LAW AND LEGISLATIVE DEVELOPMENTS”**

Catherine Zingg, Flaherty McCarthy LLP (2015)

**Chairs**

**Richard M. Bogoroch**  
*Bogoroch & Associates LLP*

**Susan E. Gunter**  
*Dutton Brock LLP*

**Faculty**

**Ian H. Gold**  
*Thomas Gold Pettingill LLP*

**Barbara L. Legate**  
*Legate & Associates LLP*

**Brian G. Grant**  
*Lerners LLP*

**Jaan Lilles**  
*Lenczner Slaght Royce Smith Griffin LLP*

**Willie Handler**  
*Regulatory and Insurance Consultant, Willie Handler and Associates*

**Cynthia F. Miller**  
*Unit Director & Counsel, LawPRO*

**Ian Hu**  
*Counsel, Claims Prevention and practicePRO, LawPRO*

**Wendy Moore Mandel**  
*Thomson, Rogers*

**Judith A. Hull**  
*Judith Hull & Associates*

**Anna-Marie Musson**  
*Miller Thomson LLP*

**Alfred M. Kwinter**  
*Singer Kwinter*

**Richard J.T. Shaheen**  
*Nesbitt Coulter LLP*

**David Lackman**  
*Gluckstein Personal Injury Lawyers PC*

**Yoni J. Silberman**  
*Bogoroch & Associates LLP*

**James D. Tomlinson**  
*McCague Borlack LLP*

**WHO SHOULD ATTEND**

- Personal injury lawyers (plaintiffs' and defendants')
- In-house litigation counsel
- Litigation law clerks
- Licensed paralegals
- Insurance professionals: claims examiners/managers, adjusters

# AGENDA

**8:00**

## Registration and Continental Breakfast

**8:30**

## Chairs' Welcome and Introduction

**8:35**

## Update on Personal Injury Decisions from the past year

DAVID LACKMAN, *Gluckstein Personal Injury Lawyers*

Personal injury law continues to develop at a rapid pace. This perennially popular session will highlight and analyze some of the most important cases since last fall, and assess their likely impact.

**9:15**

## Changes to the Statutory Accident Benefit Schedule and AB Dispute Resolution

ANNA-MARIE MUSSON, *Miller Thomson LLP*

YONI J. SILBERMAN, *Bogoroch & Associates LLP*

WILLIE HANDLER, *Regulatory and Insurance Consultant, Willie Handler and Associates*

It's a transformational year for accident benefits, given the shifting of the dispute resolution mechanism from FSCO to LAT along with important changes to the SABS. Our experts – one from a big firm, one from a personal-injury boutique, and one longtime senior government policy advisor – will join their diverse but complementary perspectives to give you fresh insights and guidance.

- SABS Ontario Regulation 664, new CAT definition
- Rules of Practice at the Licence Appeal Tribunal (LAT) – Deadlines and Case Conferences
- New Application and Response forms, New Costs and Expenditure rules, Complaints process

**10:15**

## Refreshment Break

**10:30**

## Litigating Pediatric Personal Injuries – Procedural Concerns

BARBARA L. LEGATE, *Legate & Associates*

Pediatric injury claims are more than ever the focus of particular scrutiny, extending to retainers, fees, settlements, and the procedural and tactical challenges that beset these emotionally-charged cases, involving many of our most vulnerable plaintiffs. The discussion will consider significant new cases such as *Kelly v. Toronto* [2016] on examination for discovery of a minor and *Batalla v. St. Michael's Hospital* [2016] on infant settlement approval.

- Examination for discovery of a minor
- Evidentiary considerations
- Court approval of settlements under Rule 7: what should the affidavit contain?
- Joint retainers and prior approval of contingency fee arrangements

**11:00**

## Waivers and Releases of Liability: Do They Hold Up In Court?

JAMES D. TOMLINSON, *McCague Borlack LLP*

Traditionally, courts have been reluctant to deprive injured parties of a potential remedy. Now that we are seeing more attempts by way of summary judgment to exclude liability based on waivers and releases, a review of the effectiveness of these documents is especially timely.

- Recreational activities: *Kempf v. Nguyen* [2015], *Levita v. Alan Crew* [2015]
- Occupiers liability: *Loychuk v. Cougar Mountain*

**11:30**

## Quantifying Losses In Fatality Cases

JUDITH A. HULL, *Judith Hull & Associates*

The challenge of compensating family members and dependents for the loss of a loved one, and the difficulty of determining a dollar value for non-pecuniary loss in particular, is reflected in the lawyer's adage that "it's cheaper to kill than to injure". This session will provide current guidance to plaintiffs' and defendants' counsel in handling these tragic cases.

- Cross-dependency and modified dependency
- What creative arguments can still be made?

**12:00**

## Lunch

**12:45**

## Qualifying or Disqualifying Expert Witnesses: Demonstration and Commentary

JAAN LILLES, *Lenczner Slaght Royce Smith Griffin LLP*

This session will illustrate effective techniques for advocates on either side, followed by an informal 'briefing' and Q&A. Areas considered will include:

- Qualifications
- Area of Specialty
- Bias - *White Burgess Langille Inman v. Abbott and Haliburton* [2015]

**1:30**

## Deductibility of Collateral Benefits

RICHARD J.T. SHAHEEN, *Nesbitt Coulter LLP*

Deductibility of collateral benefits continues to complicate motor vehicle litigation and also presents potentially thorny issues in accident benefits and med-mal contexts. Judges and lawyers continue to grapple with this complex but critical area, particularly as it impacts on offers to settle and entitlement to costs. An experienced counsel will bring clarity to the key issues in light of the most recent law including *Cobb v. Long Estate* [2015].

- Overruling the private insurance exception to the rule against double recovery in non-MVA cases: *Mazzucco v. Herer* [2015]
- Deducing health and LTD benefits in AB cases
- Why the collateral benefits hearings at the end of trials have to be taken very seriously

**2:00**

## Municipal Law Developments Affecting Personal Injury Cases

BRIAN G. GRANT, *Lerners LLP*

Municipalities are often target defendants and despite legislative attempts to limit their liability, the stakes remain high in these cases.

- To what extent is it still possible to sue municipalities
  - What are the barriers to doing so successfully
  - Impact of recent road authority cases
  - How has the evolution of insurance arrangements improved municipalities' position?
  - Indemnification agreements between defendants
- Plus: an update on negligent police investigation and malicious prosecution

**2:30**

## Refreshment Break

# AGENDA (Cont'd)

2:45

## Solicitor's Negligence Claims in Personal Injury Cases

CYNTHIA F. MILLER, *Unit Director & Counsel, LawPRO*

IAN HU, *Counsel, Claims Prevention and practicePRO, LawPRO*

Two experienced LawPRO counsel will give you the latest on how to prevent claims, sleepless nights and having to down a carload of Tums. Including:

- Rule 48's January 1, 2017 Dismissal Deadline - are you ready?
- Adverse Costs Insurance - what does the standard of care require?

3:30

## The Near Future of the Personal Injury Bar

RICHARD M. BOGOROCH, *Bogoroch & Associates LLP (moderator)*

IAN H. GOLD, *Thomas Gold Pettingill LLP*

WENDY MOORE MANDEL, *Thomson, Rogers*

ALFRED M. KWINTER, *Singer Kwinter*

Where will we be in five years? Is there a bright future for personal injury practitioners, or should we all start learning wills and estates? A distinguished panel takes you through the most pressing current issues, along with the ethical and professional conundrums they post. Including:

- Marketing and professionalism: making the best choices
- Advertising—when is it worth it?
- Third-party litigation funding: how will it be used?
- Accident benefits: a doomed practice area?

4:30

## Program ends

*"THE CONCLUDING TOPIC ON 'THE BUSINESS OF PERSONAL INJURY LAW' IS THE MOST THOUGHT-PROVOKING DISCUSSION OF ITS KIND I HAVE HEARD TO DATE"*

Peter Lingard (2015)



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# REGISTRATION

Please complete all registrant information.

## 12th Annual Update Personal Injury Law & Practice

I will attend:  On site  Via Webcast (single viewer)  Online Replay

Unable to attend? Please contact us to order the Materials/Program Archive.

Name: \_\_\_\_\_

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### Fee Per Delegate

\$725 plus HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/groupbooking](http://www.osgoodepd.ca/groupbooking) for details. Please inquire about financial assistance.

### Date & Time

September 23, 2016

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Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

### Location

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Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3

### 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.



## 4 Convenient Ways to Register

1. **MAIL** your registration form to:  
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Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3
2. **ONLINE** at  
[www.osgoodepd.ca/personalinjury](http://www.osgoodepd.ca/personalinjury)
3. **FAX** your registration to 416.597.9736
4. **CALL US** at 416.597.9724