

The Osgoode Short Course

Prosecuting and Defending Professional Discipline Cases

This unique course will give you expert guidance on all aspects of handling professional discipline files, including:

The Investigation Phase

- The powers of the tribunal and the professional's duties and obligations
- Navigating the maze of documentary production
- Successfully representing your client through examinations, interviews, and inquiries

Pre-Hearing Preparation and Proceedings

- The proper scope of prosecutorial disclosure
- The effect of the implied undertaking rule
- Pursuing and resisting interim orders
- Thinking through key issues, defences and strategies for the hearing

The Discipline Hearing

- Effective advocacy in disciplinary proceedings
- Factors affecting penalties
- Costs: considerations and strategies
- Applications for readmittance

Faculty includes regulators from:

The Alcohol & Gaming Commission of Ontario • The College of Physicians and Surgeons of Ontario • The Ontario College of Nurses • The Institute of Chartered Accountants of Ontario • The Real Estate Council of Ontario



DATES & TIME

January 30 - 31, 2013

9:00 a.m. - 4:45 p.m. EDT/EST

LOCATION

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

COURSE LEADERS

Linda Fuerst, Lenczner Slaght
Royce Smith Griffin LLP

Nina Bombier, Lenczner Slaght
Royce Smith Griffin LLP

Webcast
Available



Public CLE Seminars

Customized CLE Programs

Skills Training & Certification

ITAW

Professional LLM

Register now at
www.osgoodepd.ca



Sponsored by
**Lenczner
Slaght**

YORK
UNIVERSITÉ
UNIVERSITY
redefine THE POSSIBLE.



The Osgoode Short Course

Prosecuting and Defending Professional Discipline Cases

Are you fully equipped to handle these complicated and high-stakes 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 licensing body, there's pressure to respond to allegations of misconduct, incompetence or incapacity in a fair and timely manner, and to vigorously protect the public interest.

Whether you are a lawyer defending a professional in disciplinary proceedings, or represent a regulatory body, this *Osgoode Professional Development* short course will provide you with a thorough and current understanding of the essential practical, technical and substantive law issues that you need to master in order to succeed in this unique and challenging litigation specialty.

The course brings together a truly outstanding faculty of defence and prosecuting counsel. They will ensure that you are up-to-date with the very latest legal developments, and will highlight effective strategies, tactics and tips for defending or prosecuting professional discipline cases.

Don't miss this unique opportunity to have your questions answered by a distinguished gathering of the highest-caliber experts in the field.

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Course Leaders

Linda Fuerst, Lenczner Slaght Royce Smith Griffin LLP

Nina Bombier, Lenczner Slaght Royce Smith Griffin LLP

Faculty

Raj Anand, WeirFoulds LLP

Wendy Berman, Cassels Brock & Blackwell LLP

Amy Block, Counsel, The College of Physicians and Surgeons of Ontario

Johanna Braden, Stockwoods LLP

Lisa Brownstone, Co-Director, Legal Department The College of Physicians and Surgeons of Ontario

Alistair Crawley, Crawley Meredith Brush LLP

Brian Gover, Stockwoods LLP

Aviva Harari, Legal Counsel, Alcohol & Gaming Commission of Ontario

Brian Heller, Heller, Rubel Barristers

Alix Hersak, Counsel, Professional Conduct Institute of Chartered Accountants of Ontario

James A. Hodgson, Norton Rose Canada LLP

Sharon E. Lavine, Greenspan Humphrey Lavine Barristers

Sean Lawler, Shibley Righton LLP

Paul Le Vay, Stockwoods LLP

Jaan E. Lilles, Lenczner Slaght Royce Smith Griffin LLP

Jonathan Lisus, Lax O'Sullivan Scott Lisus LLP

Melissa MacKewn, Heenan Blaikie LLP

Andrew Matheson, McCarthy Tétrault LLP

Robert Maxwell, Legal Counsel, Real Estate Council of Ontario

Karen McGovern, Director, Professional Conduct Ontario College of Nurses

W.A. Derry Millar, WeirFoulds LLP

Neil Perrier, Perrier Law Professional Corporation

Matthew Sammon, Lenczner Slaght Royce Smith Griffin LLP

Megan E. Shortreed, Paliare Roland Rosenberg Rothstein LLP

Ian R. Smith, Fenton, Smith Barristers

Richard Steinecke, Steinecke Maciura LeBlanc

Glenn M. Stuart, StuartLaw

Caroline Zayid, McCarthy Tétrault LLP

Agenda

Day One: Wednesday, January 30, 2013

8:30 Registration and Continental Breakfast

9:00 Welcome and Introduction from the Course Leaders

Linda Fuerst, Lenczner Slaght Royce Smith Griffin LLP

Nina Bombier, Lenczner Slaght Royce Smith Griffin LLP

PART ONE: THE INVESTIGATIVE PROCESS: KEY ISSUES AND STRATEGIES

9:05 Assessing Duties and Powers

Lisa Brownstone, Co-Director, Legal Department
The College of Physicians and Surgeons of Ontario

Aviva Harari, Legal Counsel, The Alcohol & Gaming
Commission of Ontario

Jaan E. Lilles, Lenczner Slaght Royce Smith Griffin LLP

- Delineating and challenging the powers of investigators
 - proper scope of investigatory powers
 - challenging use of the power to summons: *Sazant* (Div. Ct.)
 - challenging *ex parte* investigation orders
- The duties of investigators/College staff
 - duty of good faith, neutrality and reasonableness?
 - duty to provide notice of complaint or investigation: *Volochay* (CA)
- The professional's duty to cooperate
 - in what circumstances and to what extent does the duty apply?
 - availability of protections against compelled testimony
 - cooperating with a power to inquire into and examine: *Gore* (CA)

10:00 The Paper Chase: Documentary Requests and Production

Paul Le Vay, Stockwoods LLP

Sharon E. Lavine, Greenspan Humphrey Lavine Barristers

Melissa MacKewn, Heenan Blaikie LLP

- Demands for production
 - preservation and protection of electronic records: dos and don'ts
 - results of internal investigations and privilege
 - PIPEDA obligations and privacy issues
 - limits on the power to inspect
 - considering how production demands might affect disclosure obligations later on (*Biovail*)

- Searches and seizures
 - anticipating when investigators are likely to resort to the power to search and seize
 - what to do when an investigator arrives with a warrant
- *Charter* considerations at the production stage
- Solicitor-client privilege
 - what can be claimed, challenging claims
 - *Blood Tribe* and its implications in this area

11:00 Refreshment Break

11:15 Examinations, Interviews and Inquiries

Megan E. Shortreed, Paliare Roland Rosenberg
Rothstein LLP

Ian R. Smith, Fenton, Smith Barristers

- Preparing the client
 - best practices
 - ethical and professional considerations
- Entitlement to pre-examination disclosure
- Prudent practices and planning for the conduct of investigations
- Compelled testimony and the privilege against self-incrimination
 - what are the limits on subsequent use?
 - what is the impact on information sharing with other regulators and police agencies?
 - the distinction between *Charter* and *Evidence Act* protections
- The impact of parallel investigations by police or other agencies on examinations
- *Charter* issues arising at the examination stage
- Written inquiries and responses: strategic considerations

12:15 Networking Luncheon

PART TWO: AFTER REFERRAL TO A HEARING

1:15 Preparing for the Hearing, Part 1: Disclosure and Related Issues

Brian Gover, Stockwoods LLP

Robert Maxwell, Legal Counsel
Real Estate Council of Ontario

Matthew Sammon, Lenczner Slaght Royce
Smith Griffin LLP

- The right to counsel and adjournments
- Disclosure to the respondent
 - what *Stinchcombe* requires
 - how to determine if disclosure is complete

Agenda

- procedures for challenging adequacy of disclosure
- challenging claims of privilege made by the tribunal staff
- the right to particulars: the distinction between disclosure and particulars
- respondent's entitlement under s.8 of the *Statutory Powers Procedure Act*
- obtaining access to third party documents
- information about staff conduct: what can you get, and how?

- The implied undertaking rule: the scope of its application; consequences of breach in the administrative context
- Severance of allegations or respondents: the test and strategic considerations

2:30 Refreshment Break

2:45 Preparing for the Hearing, Part 2: Critical Issues, Defences, and Strategic Considerations

Alistair Crawley, Crawley Meredith Brush LLP

Richard Steinecke, Steinecke Maciura Leblanc

Jonathan Lisus, Lax O'Sullivan Scott Lisus LLP

- Defence of officially induced error: under what circumstances will it be effective?
- To what extent can the respondent use reliance upon legal advice as a defence?
- Defence of due diligence: *MacLeod* (Fed. CA)
- Delay/abuse of process/breach of s.7 of the *Charter*
 - how long is too long?
 - establishing prejudice
- Alleging bias
 - when should you raise a bias challenge?
 - to whom should the argument be made?
 - the benefits and risks of alleging bias
- Validity and interpretation of the definition of misconduct
- The standard of practice: battle of the experts
- The burden of proof: *FH v. McDougall*

4:00 Interim Proceedings: Scope and Strategy

Andrew Matheson, McCarthy Tétrault LLP

Karen McGovern, Director, Professional Conduct Ontario College of Nurses

- Notice issues: circumstances where an order may be made without notice
- Tactical use by tribunal staff: a means of obtaining early disclosure from the respondent?

- Terms of practice pending the hearing; undertakings
- Impact on respondent's ability to defend
- The interim orders powers of the Inquiries, Complaints and Reports Committee under the amended RHPA
- Evidentiary considerations in interim proceedings and negotiations

4:45 Day One Adjourns

Day Two: Thursday, January 31, 2013

PART THREE: THE DISCIPLINE HEARING

8:30 Continental Breakfast

9:00 The Discipline Hearing, Part 1: Effective Advocacy

James A. Hodgson, Norton Rose Canada LLP

W.A. Derry Millar, WeirFoulds LLP

Neil Perrier, Perrier Law Professional Corporation

Utilizing specific problem scenarios in the professional discipline context, the panel will explore a variety of substantive and strategic issues that can present challenges to advocates in regulatory hearings. The panel will comment on such issues as:

- Limits on the role of independent counsel to the tribunal
- Persuading the lay tribunal member
- Establishing and assessing credibility
- The importance of oral evidence: *Re KY Ho*
- The use of prior testimony or interviews
- Objections and the importance of the record
- Use of prior decisions of the tribunal
- Differences between advocacy before tribunals and the courts
- Special issues in hearings before domestic tribunals (e.g. IIROC)

10:30 Refreshment Break

10:45 The Discipline Hearing, Part 2: Penalties, Costs, Settlements, Readmittance

Alix Hersak, Counsel, Professional Conduct Institute of Chartered Accountants of Ontario

Sean Lawler, Shibley Righton LLP

Glenn M. Stuart, StuartLaw

- Settlements
 - pitfalls of settlement and how to avoid or address them

Agenda

- use of admissions made in other proceedings
- ability of other respondents to obtain access to communications otherwise protected by settlement privilege
- is it possible to negotiate too *good* a deal?
- Assessing the appropriate penalty
 - the usefulness of prior decisions
 - penalty guidelines
 - effective evidence and its presentation
- Costs
 - assessment of costs in disciplinary proceedings; comparisons across tribunals
 - ability of the tribunal to recover or to pay costs and its impact on the conduct of the hearing
 - challenging the tribunal staff's claims for costs – *Donnini*
- Applications for readmittance: is the game worth the candle?

12:15 Networking Luncheon

1:15 Dealing Effectively with Concurrent Criminal and/or Civil Proceedings

Wendy Berman, Cassels Brock & Blackwell LLP

Johanna Braden, Stockwoods LLP

Brian Heller, Heller, Rubel Barristers

- Which proceeding should go first?
- The impact of parallel proceedings on production, disclosure, and undertakings
- Use of testimony given in other proceedings; self-incrimination and cross-border issues
- Ability to use pre-hearing disclosure in other proceedings and the implied undertaking rule
- Significance and practical import of the Court of Appeal's decision in *R v. Sandhu*
- Potential use of a finding of an administrative tribunal in the courts, and *vice-versa*

2:30 Refreshment Break

2:45 Court Challenges to Professional Discipline Decisions

Raj Anand, WeirFoulds LLP

Amy Block, Counsel, The College of Physicians and Surgeons of Ontario

Caroline Zayid, McCarthy Tétrault LLP

- Considerations in determining whether to seek judicial review or to appeal

- Prematurity considerations: at what stage can you ask the court to intervene?
- How much deference will be given to findings of fact made by a disciplinary tribunal? Should it differ from other types of administrative decisions? – *McDougall* and others
- Adequacy of reasons and the relationship to "reasonableness" review
- Test for obtaining a stay of proceedings pending review or appeal
- The standard of review: the impact of *Dunsmuir* in this area

4:00 Closing Remarks from the Course Leaders

4:15 Course Concludes

Who Should Attend

- Litigators who represent regulated professionals
- Regulators, Members of SRO's
- Professional regulation adjudicators
- Members of Complaint Committees
- Investigators
- Mediators and Arbitrators

Registration

Please complete all registrant information.

"This was one of the most informative and advanced education sessions I have ever attended. Excellent!"
Sophia Ruddock, Ontario Nurses Association

Register me for: *Professional Discipline Cases*

I will attend: On site Via webcast (single viewer)

Unable to attend? The live webcast and/or program materials are available within 5 business days following the program. Please contact us to order.

Fee Per Delegate

\$1595 plus 13% HST for a total of \$1802.35.

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available for both on site and webcast participants. Visit www.osgoodepd.ca for details. Please inquire about financial assistance and CPD credits.



CPD Credits

LSUC (ON) CPD: pending; the **Barreau du Québec, BC CPD, Manitoba, Law Society of New Brunswick, Northwest Territories, Nunavut, PEI and Saskatchewan** for 12.0 credit hours for CPD requirements; **NSBS CPD:** 13.0 credit hours; the **New York CLE Board** for 14.0 credit hours in the Area of Professional Practice for transitional and non-transitional lawyers. Eligible for CLE/Insurance Premium Credits Program offered by the **Law Society of PEI** and for Alberta CPD credit with the **Law Society of Alberta**. Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

Interested in Custom and In-house Programs?

Osgoode Professional Development also offers many of its programs in-house and can customize some programs to your specific needs. If you would like further information, please contact Heather Gore, Program & Business Development Lawyer, at 416.597.8847 or custom@osgoode.yorku.ca or visit www.osgoodepd.ca.

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.

Dates & Times

January 30 - 31, 2013

9:00 a.m. - 4:45 p.m. EDT/EST

9:00 a.m. - 4:15 p.m. EDT/EST

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

Dress is business casual.

Location

**Osgoode Professional Development
Downtown Toronto Conference Centre**

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

Registrant Information

Name: _____

Title: _____

Firm/Company: _____

Practice Area: _____

Address: _____

City: _____ Prov: _____ Postal Code: _____

Telephone: _____ Fax: _____

Email: _____

- Add me to your mailing list
 Delete me from your mailing list
 I do not wish to be contacted by e-mail

Priority Service Code
(from mailing label below)

1 2 5 3 F T

Payment Options

- Cheque enclosed (payable to York University — HST# R119306736)
 Bill my credit card: VISA Mastercard

Card# _____ Expiry: _____

Signature: _____ Payment amount: \$ _____

Public CLE Seminars

Customized CLE Programs

Skills Training & Certification

ITAW

Professional LLM

OSGOODE

OSGOODE HALL LAW SCHOOL
YORK UNIVERSITY

Professional Development
CLE

4 Convenient Ways to Register

- MAIL** your registration form to:
Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas St. W., 26th Floor
Toronto, ON M5G 1Z3
- ONLINE** at
www.osgoodepd.ca
- FAX** your registration to
416.597.9736
- CALL US** at 416.597.9724
or 1.888.923.3394