

PROSECUTING AND DEFENDING PROFESSIONAL DISCIPLINE CASES

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

- The investigation phase: examinations, interviews, inquiries, early resolution
- Pre-hearing preparation, preserving records, interim orders, concurrent criminal proceedings
- The hearing, penalties, costs strategies

“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.

Program Leaders:

Linda Fuerst and
Jeremy Devereux of
Norton Rose Fulbright
Canada LLP

Program Details:

DATE AND TIME

January 26, 2017

9:00 a.m. – 5:00 p.m. EST

In Person or Webcast

LOCATION

Osgoode Professional
Development

1 Dundas St. West, 26th Floor
Toronto, ON

ONLINE REPLAY

March 10, 2017

Register today at:

osgoodepd.ca/disciplinecases



Prosecuting and Defending Professional Discipline Cases

The course brings together an outstanding faculty of defence and prosecution counsel, to share their insights and address your questions in key areas.

The Investigation Phase

- Examinations, interviews and inquiries
- Prospects for early resolution

Pre-Hearing Preparation and Proceedings

- Scope of the duty to preserve electronic records
- Pursuing/resisting interim orders
- Dealing with concurrent civil and criminal proceedings

Pre-Hearing Preparation and Proceedings

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

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

Here's what last year's participants had to say:

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

Sophia Ruddock, Ontario Nurses Association

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

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

Agenda

8:30

Registration and Continental Breakfast

9:00

Chairs' Introductory Remarks

Linda Fuerst and Jeremy Devereux, Norton Rose Fulbright Canada LLP

9:10

Assessing Duties and Powers

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

Usman Sheikh, Gowlings WLG (Canada) LLP

- 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 co-operate and its limits
 - Availability of protections against compelled testimony
 - Co-operating with a power to inquire into and examine

9:50

The Paper Chase: Documentary Requests and Production

Shara N. Roy, Lenczner Slaght Royce Smith Griffin LLP

Clarke Tedesco, Crawley MacKewn Brush 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

10:30

Refreshment Break

10:45

Examinations, Interviews, Inquiries

Johanna Braden, Stockwoods LLP

Ian R. Smith, Fenton, Smith

- 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

11:25

Preparing for the Hearing, Part 1

Robert A. Maxwell, Discipline Counsel, Real Estate Council of Ontario

- The right to counsel and adjournments
- Disclosure to the respondent, including:
 - How to determine if disclosure is complete
 - Procedures for challenging adequacy of disclosure
 - Respondent's entitlement under s.8 of the SPPA
 - Obtaining access to third-party documents
 - Getting information about staff conduct
- Applying the implied undertaking rule
- Severing allegations or respondents: strategic considerations

12:05

Lunch

12:55

Preparing for the Hearing, Part 2

Jeremy Devereux, Norton Rose Fulbright Canada LLP

Jonathan Lisus, Lax O'Sullivan Lisus Gottlieb LLP

- Defences of officially-induced error and reliance upon legal advice as a defence
 - Delay/abuse of process/breach of s.7 of the Charter

- Alleging bias
- Validity and interpretation of the definition of misconduct
- The standard of practice: battle of the experts

1:35

Interim Proceedings: Scope and Strategy

Farah Ismail, Director, Practice Quality, College of Nurses of Ontario

Brendan van Niejenhuis, Stockwoods LLP

- When can an order be made without notice?
- Tactical use by tribunal staff to obtain early disclosure
- Terms of practice pending the hearing; undertakings
- Impact on respondent's ability to defend
- Interim order powers of committees
- Evidentiary considerations in interim proceedings and negotiations

2:10

The Hearing: Penalties, Costs, Settlements

Yvonne B. Chisholm, Senior Legal Counsel, Litigation, Ontario Securities Commission

Sean Lawler, Shibley Righton LLP

Glenn M. Stuart, StuartLaw

- 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

2:50

Refreshment break

3:00

Dealing Effectively With Concurrent Criminal and Civil Proceedings

Lara Jackson, Cassels Brock & Blackwell LLP

Murray H. Shore, Heller, Rubel

Seth Weinstein, Greenspan Humphrey Lavine

- 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

3:40

Court Challenges To Professional Discipline Decisions

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

Caroline Zayid, McCarthy Tétrault LLP

- Whether to seek judicial review or to appeal
- Prematurity considerations: at what stage can you ask the court to intervene?
- Are findings of fact by a disciplinary tribunal subject to a different standard of review than those of other administrative bodies?
- Adequacy of reasons and the relationship to "reasonableness"
- Test for obtaining a stay of proceedings pending review/appeal

4:15

Ethical and Professional Issues in Professional Discipline Practice

James A. Hodgson, Norton Rose Fulbright Canada LLP

Neil J. Perrier, Perrier Law Professional Corporation

Mark J. Sandler, Cooper, Sandler, Shime & Bergman LLP

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.

5:00

Program ends

Faculty Includes

Amy Block

Legal 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

Yvonne B. Chisholm

Senior Legal Counsel, Litigation, Ontario Securities Commission

Jeremy Devereux

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Cassels Brock & Blackwell LLP

Sean Lawler

Shibley Righton LLP

Jonathan Lissus

Lax O'Sullivan Lissus Gottlieb LLP

Robert A. Maxwell

Discipline Counsel, Real Estate Council of Ontario

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Perrier Law Professional Corporation

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Crawley MacKewn Brush LLP

Brendan van Niejenhuis

Stockwoods LLP

Seth Weinstein

Greenspan Humphrey Lavine

Caroline Zayid

McCarthy Tétrault LLP

Registration Details

Fee per Delegate

\$795 plus HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/groupdiscounts for details. Please inquire about financial assistance.

Program Changes

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416.597.9724

1 Dundas Street West, Suite 2600



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