

PROSECUTING AND DEFENDING PROFESSIONAL DISCIPLINE CASES 2021

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

Sophia Ruddock
Ontario Nurses Association

Program Chairs

Linda Fuerst and
Jeremy Devereux
Norton Rose Fulbright
Canada LLP

Date and Time

April 19, 2021
9:00 a.m. – 4:30 p.m.

Online Replay:
June 3, 2021

Location

Online – Live, Interactive

*Includes 120-day access to
program archive*

Register today at:

[osgoodepd.ca/
disciplinecases](https://osgoodepd.ca/disciplinecases)

Get the 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 and 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.

Prosecuting and Defending Professional Discipline Cases 2021

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 the essential skills you need to succeed in this area.

The Investigative Phase

- Examinations, interviews and inquiries
- Prospects for early resolution

Pre-Hearing Preparations and Proceedings

- Familiarizing yourself with tribunal practices
- Pursuing and 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 and 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 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.

Break

10:50 a.m.

Examinations, Interviews, Inquiries

Dena N. Varah, 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, Leners LLP

Nisha Dhanoa, Professional Standards Counsel, 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 / oral presentation
- Disclosure, including:
 - How to determine if disclosure is complete
 - Procedures for challenging adequacy of disclosure
 - Obtaining access to third-party documents

- Getting information about staff conduct
- Applying the implied undertaking rule
- Initial fairness issues:
 - The right to counsel and adjournments
 - Alleging bias
 - Validity and interpretation of the definition of misconduct

12:35 p.m.

Lunch Break

1:15 p.m.

Interim Proceedings: Scope and Strategy

Emily Lawrence, Paliare Roland Rosenberg Rothstein LLP

- Review of changes to RHPA regarding interim order powers
- Strategy for imposition of interim orders and interpretation in *Rohringer v. Royal College of Dental Surgeons of Ontario*, 2017 ONSC 6656
- Consequences of interim orders on future prosecutions and penalties

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.

Break

2:45 p.m.

Dealing Effectively with Concurrent Criminal and Civil Proceedings

Lisa Freeman, Barrister & Solicitor

Samara Sectar, 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 Lissu Gottlieb LLP

A review of realistic fact situations illustrating how to best address ethical and professional issues that you will face sooner or later in professional discipline work. There will be ample time for questions and discussion.

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

Chairs

Linda Fuerst and Jeremy Devereux
Norton Rose Fulbright Canada LLP

Faculty Includes

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

Lisa Brownstone
Chief Legal Officer,
College of Physicians and
Surgeons of Ontario

Nadia Campion
Lax O'Sullivan Lisus Gottlieb LLP

Alistair Crawley
Crawley MacKewn Brush LLP

Nisha Dhanoa
Professional Standards Counsel,
Chartered Professional
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Rebecca C. Durcan
Steinecke Maciura LeBlanc

Lisa Freeman
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Lindsay Kantor
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Adam Patenaude
Lerners LLP

Erica Richler
Steinecke Maciura LeBlanc

Samara Sexter
Addario Law Group LLP

Dena N. Varah
Lenczner Slaght Royce Smith
Griffin LLP

Registration Details

Fee per Delegate

\$695 plus HST

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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.

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