

14TH ANNUAL UPDATE

# PERSONAL INJURY LAW & PRACTICE

Learn practical, strategic insights and solutions to vexing challenges for personal injury legal professionals. You'll get a comprehensive review of important cases and other timely issues, including:

- How to overcome problems in paediatric and elder care injury cases
- Tips and strategies when advancing or defending concussion claims
- What you need to know about the new mandatory Standard Form Contingency Fee Agreement
- Updates on SABS/LAT; causation after *Sacks*, and overcoming difficulties in threshold motions

Register today at:

[osgoodepd.ca/personal-injury-law](http://osgoodepd.ca/personal-injury-law)

## Program Chairs

Richard M. Bogoroch  
Bogoroch & Associates LLP

Susan E. Gunter  
Dutton Brock LLP

## Date and Time

November 7, 2018  
9:00 a.m. to 4:30 p.m. EST  
In Person or Webcast

Online Replay:  
December 12, 2018  
9:00 a.m. to 4:30 p.m. EST

## Location

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



# 14TH ANNUAL UPDATE

## Personal Injury Law & Practice

Personal injury continues to be an evolving, high-stakes area of law. Recent cases, practice changes and regulatory developments make it more important than ever to stay up-to-date.

This comprehensive conference brings you the latest information from a faculty of respected personal injury experts. They will guide you through the most pivotal recent decisions and legislative initiatives, yielding practical tips you can immediately apply. Discussion will include such issues as:

- The year's most important cases for personal injury litigators
- The most pressing problems in paediatric injury cases
- Advancing or defending concussion claims
- Threshold cases: update and commentary
- New mandatory Standard Form Contingency Fee Agreement
- Professional responsibility and the near future of personal injury practice

### Who Should Attend?

- Personal injury lawyers
- In-house litigation counsel
- Insurance professionals: claims examiners and managers, adjusters
- Litigation law clerks

#### What attendees said about previous offerings of this program:

*“Excellent... Great sessions focusing on a number of areas of value...just the right amount.”*

**Lorne Sabsay**, Sabsay Lawyers

*“Incredibly insightful program by seasoned experts...useful for both the plaintiff and insurance defence bars.”*

**Amer Pasalic**, Dentons Canada LLP

*“The Personal Injury Update is what goes in my calendar every year.”*

**Patrick Murphy**, Donnelly & Murphy

## Agenda

**8:30 a.m.**

**Registration and Continental Breakfast**

**9:00 a.m.**

**Chairs' Welcome and Introductory Remarks**

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

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

**9:10 a.m.**

**The Year's Most Important Cases For Personal Injury Litigators**

**David Lackman**, Gluckstein Personal Injury Lawyers

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

**10:00 a.m.**

**Young and Old, Part I: Overcoming Problems in Paediatric Injury Cases**

**Tammy R. Ring**, Lerner LLP

A checklist of key concerns and solutions in this difficult area, including:

- Estimating and appropriately documenting future care requirements
- Court approvals: what's needed and how this differs locally
- Navigating relationships with family members and service providers
- To whom should settlement funds be paid?

**10:45 a.m.**

**Refreshment break**

**11:00 a.m.**

**Young and Old, Part II: Elder Care/Nursing Home Injury Cases Update**

**Lauren N. Bloom**, Blouin Dunn LLP

**Melissa Miller**, Howie Sacks and Henry LLP

The assisted-living-facility-demographic is growing and putting pressure on limited space and staff resources. Liability issues faced by such facilities can only become more prominent. They can involve complex situations that raise questions about the extent and quality of care provided or even abuse of residents by staff or by other residents. This session provides practical insights for plaintiffs' and defendants' counsel in areas including video surveillance, privacy issues, capacity issues, and the balance of responsibilities between the facility and the legal guardian.

**11:45 a.m.**

### Collateral Benefits Update

**Stephen G. Ross**, Rogers Partners LLP

Explore the current status of this rapidly-changing procedural law—including the 2018 OCA five-judge-panel cases, *Cadieux* and *Carroll*:

- Deducting “apples from apples”: the matching principle and *Gurniak*
- The split-and-deduct and net claims approaches
- Trust and assignment mechanisms, the matching principle and consistency of approach
- The impact of liability splits on trusts and assignment mechanisms
- Implications for the framing of jury questions

**12:15 p.m.**

### Networking Lunch

**1:15 p.m.**

### Advancing/Defending Concussion Claims

**Chris T.J. Blom**, Miller Thomson LLP

**Heidi Brown**, Bogoroch & Associates LLP

Mild traumatic brain injury – ‘the invisible injury’ – is often misdiagnosed, and symptoms can take a long time to appear. Plaintiffs' counsel must retain experts to establish damages and to causally link symptoms to the alleged tort. Defence counsel and insurers vigorously defend these cases on the basis of credibility and causation.

This session will assist both plaintiffs' and defence/insurer's counsel in proving or disproving the mild-to-moderate brain injury and assessing the risks of proceeding to trial.

**1:45 p.m.**

### SABS and LAT Update, 2017-2018

**Andrea Lim**, Dutton Brock LLP

Get fully up-to-date in such areas as:

- Navigating LAT Practice and Procedure amendments
- Judicial review vs. reconsideration of LAT decisions
- Extending and working around the LAT limitation period
- The basis for awarding costs at the LAT
- How will AB claims for marijuana be affected by Bill C-45?
- Must-know current caselaw regarding CAT, attendant care, the MIG, assessments and more

**2:15 p.m.**

### Reassessing Causation After *Sacks v. Ross*

**Simon Clements**, Stieber Berlach LLP

Does the but-for test for causation work in negligence cases for acts of omission? How does the SCC's test in *Clements* get translated into jury questions? In *Sacks*, the OCA changed the test applied by the trial judge, articulating a two-step test; in *Surujdeo*, the Court adopted the trial decision's test in *Sacks*. How should lawyers think about these conflicting cases?

**2:45 p.m.**

### Refreshment break

**3:00 p.m.**

### Threshold Motions: Update and Commentary

**Evelyn Ten Cate**, Foster Townsend LLP

Our speaker, experienced in acting for plaintiffs and defendants, will take you through a “model motion”, illustrating how expert counsel can go beyond the standard

template in proving (or disproving) that the plaintiff has suffered permanent, sufficiently serious functional impairment. Failure to pick the right cases from the start can have disastrous consequences; and even experienced counsel must proceed carefully to provide the level of granular detail that will give a judge enough to work with – the key minutiae that will make or break the case.

**3:30 p.m.**

### The New Mandatory Standard Form Contingency Fee Agreement: What You Need To Know

**Tara M. Sweeney**, Soloway Wright LLP

The Law Society of Ontario's proposed mandatory standard form contingency fee agreement (with the accompanying Know Your Rights document) is something which every personal injury practitioner in the province needs to understand. In this session, the chair of the Advocates' Society Task Force in this area will deepen your understanding of this significant regulatory initiative, its practical implications, and the ethical and professional issues it will generate.

**4:00 p.m.**

### Professional Responsibility and the Near Future of Personal Injury Practice

**Ian Gold**, Thomas Gold Pettingill LLP

**M. Claire Wilkinson**, Martin & Hillyer Associates

- Referral fee rules: has the PI bar been affected?
- Second opinions in taking over files: what do the Rules require?
- Conflict of interest in fee negotiation, adverse costs insurance, settlement and proceeding to trial: practical advice on handling the challenges

**4:30 p.m.**

### Program ends

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## Chairs

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LLP

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Dutton Brock LLP

## Faculty Includes

**Chris T.J. Blom**  
Miller Thomson LLP

**Andrea Lim**  
Dutton Brock LLP

**Lauren N. Bloom**  
Blouin Dunn LLP

**Melissa Miller**  
Howie Sacks and Henry  
LLP

**Heidi Brown**  
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**Tammy R. Ring**  
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**Evelyn Ten Cate**  
Foster Townsend LLP

**David Lackman**  
Gluckstein Personal  
Injury Lawyers

**M. Claire Wilkinson**  
Martin & Hillyer  
Associates

## Registration Details

### Fee per Delegate

**\$695 plus HST**

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

### 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 is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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