

Are you prepared to  
handle this complex,  
high stakes litigation?

## Managing and Litigating Motor Vehicle Accident Claims

A comprehensive and practical short course for plaintiff and defence counsel. Topics include:

- The pros and cons of the proposed Bill 198 reform initiatives
- Changes to the threshold: working up the claim to meet the new threshold
- The aftermath of *Loftus v. Robertson*: how will this case change the 1% rule going forward?
- Are Mary Carter Agreements still relevant after *Laudon v. Roberts*?
- Accident benefits – what's available and when are they available?
- Canadian trends in personal injury damage awards
- Strategies for proving and defeating loss of income claims
- Delving into the new Rules of Civil Procedure and their implications
  - new court powers on a motion
  - certification requirements for experts
  - changes to applications and timing for mediation
  - new time limits for discovery
- How do experts approach the issue of chronic pain?
- Defence and plaintiff strategies for litigating a threshold motion

**Plus! Don't miss the Optional Post-Conference Workshop:  
*Choosing Experts and Using Their Reports to Win Your Case***



### DATES & TIME

March 23 - 24, 2010  
9:00 a.m. - 4:00 p.m. EDT/EST

### OPTIONAL WORKSHOP

March 25, 2010  
9:00 a.m. - 12:00 p.m.

### LOCATION

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

### CHAIRS

Leonard H. Kunka  
Thomson, Rogers

Susan E. Gunter  
Dutton Brock LLP

Conference  
Webcast  
Available



# Managing and Litigating Motor Vehicle Accident Claims

A comprehensive and practical guide to motor vehicle accident litigation for plaintiff and defence counsel

**M**otor vehicle accident litigation is complex and the stakes can be high. Taking on a motor vehicle accident file can be a daunting task for the uninitiated. As well, the pending reform of Bill 198 and its proposed changes and the new Rules of Civil Procedure as of January 2010 will have a significant impact on motor vehicle accident claims and how motor vehicle litigation is handled.

Whether you're a defence or plaintiff counsel, in order to secure the best results for your client and to avoid making serious and costly errors, it is critical that you have a thorough knowledge of the law, and the strategies and tactics for winning your case.

*Osgoode Professional Development's 3<sup>rd</sup> Annual Managing and Litigating Motor Vehicle Accident Claims* program was designed to give you in-depth coverage of the key areas of motor vehicle accident litigation. An exceptional faculty of top litigators from the plaintiff and defence bar, experienced mediators and medical professionals will give you a comprehensive and practical guide to winning motor vehicle accident cases. They will guide you through the pitfalls that lie in wait for the unwary, and how to avoid them. You will learn not only what the law is today but where it is going with proposed Bill 198 amendments and the new civil procedure rules. You'll also get up-to-the-minute practical advice, strategies, tips and tools you need to know to win your case.

**Plus!** Don't miss the optional half-day workshop, *Choosing Experts and Using Their Reports to Win Your Case*, for a thorough overview of the principles and fundamentals governing selecting, analyzing and using expert reports to win your case.

**Register now by visiting** [www.osgoodepd.ca](http://www.osgoodepd.ca), **calling** 416.597.9724 **or** 1.888.923.3394, **emailing** [opd-registration@osgoode.yorku.ca](mailto:opd-registration@osgoode.yorku.ca) **or faxing** 416.597.9736.

## Chair

**Leonard H. Kunka**  
Thomson, Rogers

**Susan E. Gunter**  
Dutton Brock LLP

## Faculty

L. Craig Brown, Thomson, Rogers  
Catherine A. Bruder, Adair Morse LLP  
Mark Elkin, Thompson, Tooze, McLean, & Elkin  
Frank K. Gomberg, Teplitsky, Colson LLP  
Richard C. Halpern, Thomson, Rogers  
Dr. Brian Kirsh, Medical Director, Chronic Pain Management Unit, Hamilton Health Sciences  
Richard A. Levin, Levin Barristers  
David J. Levy, Howie, Sacks & Henry LLP  
Christopher R. Martyr, Dutton Brock LLP  
Linda Matthews, Forget & Matthews LLP  
John R. McCarthy, Will Barristers: Morin & Miller LLP

S. Wayne Morris, Dutton Brock LLP  
Dale V. Orlando, McLeish Orlando LLP  
David L. Silverstone, Sigurdson, Courtlander, Burns & Smagata  
Philippa G. Samworth, Dutton Brock LLP  
D. Keith Smockum, Smockum Zarnett Percival LLP  
Stacey L. Stevens, Thomson, Rogers  
Stanley C. Tessis, Laxton Glass LLP  
William C. Wolfe, Fireman Wolfe LLP  
Linda Wolanski, Bogoroch & Associates

# Agenda

Day One: Tuesday, March 23, 2010

**8:30** Registration and Continental Breakfast

**9:00** Welcome and Introduction from the Chairs

Leonard H. Kunka, Thomson, Rogers

Susan E. Gunter, Dutton Brock LLP

**9:10** Proposed Changes to Auto Insurance Legislation and Their Impact

**Moderator**

Leonard H. Kunka, Thomson, Rogers

**Panellists**

Richard C. Halpern, Thomson, Rogers

Philippa G. Samworth, Dutton Brock LLP

On November 2, 2009 the Minister of Finance for Ontario introduced various proposed amendments to automobile insurance. They arise from the Financial Services Commission's March 2009 Five Year Review Report for automobile insurance. The Report will be the blueprint for the pending reform of Bill 198 and if implemented will dramatically impact motor vehicle litigation in Ontario. This session will give you the latest information on the Bill 198 reform initiatives and what you need to know to transition to the new legislation.

- Are the changes necessary?
- Will the changes actually be implemented?
- Changes in the tort deductible
- Definition of 'permanent serious impairment'
- Monetary and other limitations on medical examinations
- Changes to benefits
  - optional housekeeping and attendant care
  - reduced medical/rehabilitation benefits in non-catastrophic cases

**10:15** Refreshment Break

**10:30** Is the 1% Rule Gone? Discussion of the Court of Appeal's Decision in *Loftus v. Robertson*

David L. Silverstone, Sigurdson, Courtlander, Burns & Smagata

John R. McCarthy, Will Barristers: Morin & Miller LLP

The recent Ontario Court of Appeal's decision in *Loftus v. Robertson* establishes a new interpretation regarding joint tortfeasors in automobile accidents. How will this case change the "1% rule" going forward? Hear from the lawyers who argued the Court of Appeal decision.

**11:15** Are Mary Carter Agreements Still Relevant? The Aftermath of the *Laudon v. Roberts* Case

Linda Matthews, Forget & Matthews LLP

L. Craig Brown, Thomson, Rogers

In Ontario, Mary Carter Agreements have been used infrequently but effectively in complex litigation as a risk management tool. Prior to the Court of Appeal decision, these agreements have been used as a tool to guarantee a minimum result for plaintiffs, to cap the potential financial exposure to defendants and to increase the pressure on the non-contracting defendant. Is the rule against double recovery paramount or are there ways to get around it? Are there other tactical or strategic reasons to use a Mary Carter Agreement or Perreinger Agreement? How should contracts be structured to avoid the application of the *Laudon* reasoning?

**12:15** Luncheon

**1:15** The Top Accident Benefits Cases You Cannot Ignore and Their Implications

Stanley C. Tessis, Laxton Glass LLP

Statutory accident benefits are a complex area of motor vehicle insurance law that has gone through rapid changes in recent years. This area of law is very fast moving in terms of its claims and dispute resolution processes, and is subject to multiple limitation periods laid down in the *Insurance Act* and particularized in the Statutory Accident Benefits Schedule legislation. Mr. Tessis will talk about the recent accident benefit cases of note focusing his analysis from both the plaintiff's and defence counsel's perspective.

**2:15** Refreshment Break

**2:30** Damages Assessment Panel

**Moderator**

Frank K. Gomberg, Teplitsky, Colson LLP

**Panellists**

William C. Wolfe, Fireman Wolfe LLP

D. Keith Smockum, Smockum Zarnett Percival LLP

Staying on top of the most recent trends in damages awards is essential if you want to obtain the best settlement for your client. This panel of experienced litigators will discuss the most recent case law and

# Agenda

trends plus give you the insight and strategies you need to assess damages and structure successful settlements.

- Canadian trends in personal injury damage awards: what factors are influencing damage awards?
- Calculating future care costs claims
  - when do you need an expert's report?
  - what are reasonable future care costs?
  - evidentiary foundation for future care costs
- Updates on general damages assessments
- Proving and defeating loss of income claims

## 4:00 Day One Adjourns

Day Two: Wednesday, March 24, 2010

## 8:30 Continental Breakfast

## 9:00 Recap and Introduction from the Chairs

Leonard H. Kunka, Thomson, Rogers  
Susan E. Gunter, Dutton Brock LLP

## 9:05 How Will Auto Claims be Impacted by the New Rules of Civil Procedure?

### Moderator

Susan E. Gunter, Dutton Brock LLP

### Panellists

S. Wayne Morris, Dutton Brock LLP  
Linda Wolanski, Bogoroch & Associates  
Catherine A. Bruder, Adair Morse LLP  
Dale V. Orlando, McLeish Orlando LLP

On January 1, 2010, significant changes to the Rules of Civil Procedure came into effect. This panel of experienced practitioners will examine the key changes that will impact motor vehicle accident claims, including:

- Simplified procedures and Small Claims Court changes
- Changes to monetary limits
- Expert Evidence – Rule 53
  - certification requirements
  - serving of reports
  - details required in reports
  - research conducted by experts

- Summary Judgments – Rule 20
  - new court powers on a motion
  - cost sanctions relaxed
  - bad faith penalties
- Mandatory Mediation – Rule 24.1
  - changes to applications and timing
- Discovery – Rules 29.1, 29.2, 30 and 31
  - proportionality in discovery
  - new time limits for discovery
  - developing a discovery plan

*Note: There will be a refreshment break at 10:30 a.m.*

## 12:00 Luncheon

## 1:00 Litigating Chronic Pain

Dr. Brian Kirsh, Medical Director, Chronic Pain Management Unit, Hamilton Health Sciences  
David J. Levy, Howie Sacks & Henry LLP

Pain is subjective and must be assessed on a case-by-case basis and on its own facts. At the end of the day, success at trial depends on the credibility of the plaintiff and plaintiff and defence counsel's preparation and strategy.

This session will start with a medical expert's perspective on how he deals with chronic pain, how to approach a chronic claim patient and the analysis and assessments required. This will then be followed by several chronic pain hypotheticals which Dr. Kirsh will analyze and which will be discussed by the speakers. Ample time will be allowed for questions.

- How do experts approach the issue?
- What is the success rate for breaking the chronic pain cycle?
- How do you test for malingering?

## 2:15 Refreshment Break

## 2:30 Defence and Plaintiff Strategies for Litigating a Threshold Motion

Richard A. Levin, Levin Barristers  
Mark Elkin, Thompson, Tooze, McLean, & Elkin

A Bill 198 "threshold motion" brought by a defendant for a declaration that a plaintiff's claim for non-pecuniary general damages does not fall within the exception to s. 267.5 (5) (b) of the *Insurance Act* places the burden of persuasion on the plaintiff and the standard of proof is a balance of probabilities.

## Agenda

Preparing for a motion requires a great deal of time, energy and financial outlay in order to persuade the trier of fact to arrive at a favourable interpretation of the threshold definition. As well, one must determine the boundaries in terms of “thresholds” and “chronic pain”. What do these terms mean? What kind of objective proof is required?

In this session, experienced counsel will provide you with the strategies you need to know to litigate a threshold motion.

### 4:00 Program Concludes

#### Optional Workshop

##### *Choosing Experts and Using Their Reports to Win Your Case*

Thursday, March 25, 2010 9:00 a.m. - 12:00 p.m.

**Stacey L. Stevens, Thomson, Rogers**

**Christopher R. Martyr, Dutton Brock LLP**

In a motor vehicle accident case, the strength of your claim will often be based on your experts' evidence. The rules for expert evidence under Rule 53 are changing and new duties are being imposed on expert witnesses including mandatory requirements for expert reports.

This interactive, hands-on workshop will give you the tools to get the evidence you need to win your case. The workshop will cover such topics as:

- Understanding the changes to Rule 53
  - certifying in writing their duty to the court
  - mandatory requirements for expert reports
  - new deadlines for service of reports
  - description of the research conducted by the expert
- Using the new rules to obtain evidence
  - discovery plan: what form will you use?
  - motion scheduling: when and how?
  - proportionality: how does this affect experts' briefs?
- New deadlines for service of reports

**Don't miss this opportunity to delve into this important topic in an interactive small-group setting.**

**Stacey L. Stevens** has helped her clients and their families receive over \$2 million in compensation since joining Thomson, Rogers in 2006. She has represented people injured in car and motorcycle accidents, slips and falls, boating accidents, medical malpractice and who have been denied disability benefits. Although her office is in Toronto, Stacey maintains her “small town” roots. She and her family live in Central Ontario, and many of her clients are from Simcoe County, Durham Region, Kawartha Lakes and surrounding communities.

**Christopher R. Martyr** has recently joined Dutton Brock LLP after practising insurance defence litigation at a full service downtown Toronto law firm. Christopher has a general insurance defence litigation practice and has acted on behalf of insurers on various personal injury, general liability, property and subrogation matters in addition to providing opinions on insurance coverage issues. Christopher has been involved in appeals and motions before the various levels of court in Ontario. His court experience also includes trial work with appearances before the Ontario Superior Court of Justice and various administrative tribunals.

### Who Should Attend

- Personal injury plaintiff lawyers
- Personal injury defence lawyers
- Mediators, arbitrators and settlement specialists
- Accident benefit specialists
- In-house and external counsel to the automobile insurance industry
- Insurance industry professionals in automobile claims, including claims specialists and underwriters

# Registration

Don't miss your opportunity to get up-to-date in this complex area of law

Register me for:  Motor Vehicle Accident Claims  Conference only  Conference plus Workshop

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

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Conference only: \$1395 plus 5% GST for a total of \$1,464.75. Conference plus workshop: \$1595 plus 5% GST for a total of \$1674.75. Workshop only: \$350 plus 5% GST for a total of \$367.50. Fees include attendance, program materials, continental breakfast, lunch (conference only), and break refreshments. Please inquire about financial assistance. Group discounts are available for both on site and webcast participants. Visit [www.osgoodepd.ca](http://www.osgoodepd.ca) for details.

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## CLE Credits

Approved in accordance with the requirements of the LSUC Certified Specialist Program, Barreaux du Québec, BC CPD, and the NY CLE Board (for transitional and non-transitional lawyers). Note: NY CLE Credits are not available for webcast participants. BC CPD webcast participants must contact us for further information.

## Payment Options

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## 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 and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

## Dates & Times

March 23 - 24, 2010 - 9:00 a.m. - 4:00 p.m. EDT/EST

Optional Workshop: Thursday, March 25, 2010

9:00 a.m. - 12:00 p.m.

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

Dress is business casual.

## Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

## Location

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