

ESTATE LITIGATION:

The Practical Guide for Legal Professionals

Estate issues that turn into litigation are often complex and highly charged. Learn the skills and up-to-date practice points you need to confidently advocate for your client in this challenging area.

Over three evenings, our experienced faculty will walk you through the steps and skills that you would need to be a successful advocate on behalf of your client, including:

- Analyzing complex considerations during the initial client meeting
- Explaining to your client their options for orders, applications and motions
- Understanding evidence involved in contentious proceedings
- Applying the latest updates in case law to scenarios presented by your client

Register today at:

osgoodepd.ca/estatelitigation

Program Chairs

Ian Hull

Hull & Hull LLP

Suzana Popovic-Montag

Hull & Hull LLP

Date and Time

May 14, 21 and 28, 2019

Three evening sessions

6:00 p.m. – 9:00 p.m.

In Person or Webcast

Online Replay: June 17, 2019

Location

**Osgoode Professional
Development**

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

Estate Litigation: *The Practical Guide for Legal Professionals*

Estate litigation is a world of its own. You need to understand this specialized area of law, expertly navigate the estate litigation process and recognize the unique challenges that come with dealing with estate matters.

In this three-evening program, our **faculty of experienced estate litigators** will take you through the foundations, best practices and latest updates in estate litigation. Our expert faculty will unpack the process of estate litigation and prepare you for the many special and practical considerations that you need to keep in mind to successfully advocate for your client.

Using **real life case studies** and **step-by-step analyses**, this program will help you to:

- Evaluate information to be obtained at the first client meeting
- Deal with the legal issues involved in a will challenge
- Analyze duties related to dealing with those who may have diminished capacity
- Identify essential limitation periods
- Explain to your client the various applications, motions and orders in the estate litigation process
- Appropriately object to Certificates of Appointment
- Argue claims against the Estate pursuant to the *Estates Act*
- Understand the evidence involved in contentious proceedings
- Learn your obligations and the steps in locating missing beneficiaries
- Obtain the latest case law updates on the issue of costs and unjust enrichment

Who Should Attend

- Both experienced wills and estates practitioners who want to refresh their knowledge of the basics, and those newer to wills and estates practice

Agenda

SESSION ONE: MAY 14, 2019

In this first of three evenings, our expert faculty will walk to you through considerations during the initial client consultation, issues in will challenges, how to make the most out of opportunities to mediate, and the various limitation periods and orders that you need to keep in mind during the litigation process.

5:30 p.m.

Dinner

6:00 p.m.

Introduction and Overview of Program

6:10 p.m.

- Obtaining Information at the First Client Meeting
- Spotting the Legal Issues in Will Challenges, including:
 - Formal Validity and Due Execution
 - Substantive Validity, Testamentary Capacity, Undue Influence, Fraud and Mistake
 - Standing in Will Challenges
- Understanding the Role of Professionals in Protecting Individuals with a Potential for Diminished Capacity and Undue Influence

7:30 p.m.

Refreshment Break

7:45 p.m.

- Preparing for and making the most of mediation
- Understanding discoverability, intervening factors, exceptions, proof, and general practice points related to limitation periods

- Recognizing the presumptions, procedural rules, test and admissible evidence regarding proving lost or destroyed wills
- Making Orders for Assistance – the types of orders available to you in particular scenarios scenarios, including:
 - Order to accept or refuse appointment, order to file statement of assets of the estate, order for further particulars, order to pass accounts and order for other matters

SESSION TWO: MAY 21, 2019

Building on the topics discussed in the first session, Session Two will explore various issues related to Certificates of Appointment, dependant support claims, claims against the estate pursuant to the *Estates Act*. The second half of this session will delve into a discussion about appointing an estate trustee during litigation and appointing a litigation guardian, as well as applications or motions for directions and submitting rights to the court.

5:30 p.m.

Dinner

6:00 p.m.

- Dealing with Revocation or Return of Certificate of Appointment
- Understanding Dependant Support Claims, including:
 - Who qualifies?
 - What are the limitation periods?
 - What are the factors considered by the court?
- Commencing Claims Against the Estate Pursuant to the *Estates Act*, including:
 - Application for order allowing claim
 - Powers and orders of a court
- Objecting to Issuing a Certificate of Appointment and best practice points

7:30 p.m.

Refreshment Break

7:45 p.m.

- Appointing an Estate Trustee during Litigation
- Appointing a Litigation Guardian
- Commencing an Application or Motion for Directions, including service, order, pleadings and the effect of failure to file pleadings
- Submitting Rights to the Court

SESSION THREE: MAY 28, 2019

The course will culminate in a discussion on evaluating evidence in contentious proceedings and locating missing beneficiaries. Our expert faculty will share the 'evidence cheat sheet'; the fundamentals of dealing with evidence where the proceedings are contentious. They will also take you through the latest case law and timely issues related to costs, deemed undertakings and unjust enrichment.

5:30 p.m.

Dinner

6:00 p.m.

- Understanding Evidence in Contentious Proceedings, including:
 - Determining onus
 - Medical witnesses as evidence
 - Examination for discovery
- Breaking down the Evidence Cheat Sheet, including:
 - Corroboration – what constitutes meaningful corroboration
 - Lay witness evidence
 - Admissibility of business records and expert opinion evidence generally
 - Use and admissibility of retrospective opinions on testamentary capacity

- Hearsay
- Past recollection recorded/present recollection revived
- The rule in *Browne v. Dunn*
- Locating Missing Beneficiaries, including:
 - The legal obligation of the estate trustee to locate missing heirs
 - How to identify, locate and notify a missing heir

7:30 p.m.

Refreshment Break

7:45 p.m.

- Discussion of latest case law and issues in:
 - Dealing with Costs in Estate Litigation
 - i. Analysis of the modern approach to costs in estate litigation
 - ii. Review of *McDougald Estate v. Gooderham* and *Sweetnam v. Williamson Estate*
 - iii. A close look at 'When should the estate pay costs? Does the estate pay all costs?'
 - The Deemed Undertaking Rule and Estate Litigation
 - i. Review of underlying principles in *Juman v. Doucette*
 - ii. Evaluation of the deemed undertaking rule
 - Unjust Enrichment in Will Challenge Matters
 - i. Examination of the trilogy of unjust enrichment in Canada: *Murdoch v. Murdoch*, *Rathwell v. Rathwell* and *Pettkus v. Becker*
 - ii. Discussion of new developments since the trilogy

Register today at:

[osgoodepd.ca/
estatelitigation](http://osgoodepd.ca/estatelitigation)

Co-Chairs

Ian Hull
Hull & Hull LLP

Suzana Popovic-Montag
Hull & Hull LLP

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Angelique Moss
Casey & Moss LLP

Kimberly Whaley
WEL Partners

Here's what participants of past *OsgoodePD* Wills & Estates programs had to say:

“Great faculty, interesting anecdotes, very knowledgeable.”

Jenny Kirshen
Associate, Gene Colman Family Law Centre

“Very personable speakers kept issues practical and provided many helpful examples.”

Valerie J. Tingey
Professional Corporation

Registration Details

Fee per Delegate
\$795 plus HST

***Special offer:** Bundle pricing of **\$1295 plus HST** for this program **PLUS** *Estate Dispute Mediation for Counsel* (June 5, 2019)

Fees include attendance, program materials, dinner and break refreshments. Group discounts are available. Visit 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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