

THE OSGOODE CERTIFICATE IN MOTOR VEHICLE ACCIDENT LAW AND PRACTICE: *Tort and Accident Benefits*

Injury law relating to motor vehicles is a practice area where **only those with a pronounced edge in expertise will prevail.**

Encompassing the critical need-to-know aspects in **personal injury and accident benefits** practice, from **both the plaintiffs' and defendants' /insurer's perspective**, you will:

- Acquire the essential knowledge and skills to successfully navigate the complex system and effectively advocate for your clients
- Learn where the pitfalls are and how to avoid or surmount them
- Build your practice skills in these still-evolving areas, and have your most pressing questions answered from senior members of the Bench and bar

PLUS: You will get the opportunity to apply what you have learned in **hands-on workshops**, drawn from real-world cases and get **individualized feedback**

Register today at:

osgoodepd.ca/MVA

PROGRAM DIRECTORS

Maia L. Bent
Lerners LLP

Todd McCarthy
Flaherty McCarthy LLP

Alexander M. Voudouris
Senior Litigator, Pace Law Firm

REGISTRATION DETAILS

April 5, 2022: 9:00 a.m. – 4:30 p.m. ET

April 12, 2022: 9:00 a.m. – 5:00 p.m. ET

April 19, 2022: 9:00 a.m. – 5:00 p.m. ET

April 26, 2022: 9 a.m. – 5:15 p.m. ET

May 3, 2022: 9:00 a.m. – 4:00 p.m. ET

Online, Live

Can't make the date?

Registration includes 120-day unlimited, online access to the recorded program.



The Osgoode Certificate in Motor Vehicle Accident Law and Practice: *Tort and Accident Benefits*

Transform your practice

Guided by a faculty of experienced counsel, you will not just learn what you need to know in Tort and AB, but you will also gain a critical understanding of the substantive elements of practice.

Using real-life examples and practical exercises, you will learn-by-doing and get individualized feedback.

Recent years have seen a rapid evolution in personal injury law affecting both Torts and Accident Benefits (AB) practice. From the opening of the file to the hearing or trial, personal injury law and accident benefits cases are complex, with multiple steps and potential pitfalls along the way.

To maintain a competitive edge and advance your clients' interests, you must have a broad depth of understanding across both Tort and AB law, including the case law and the complex framework of legislation and regulations for both regimes.

Designed for the busy legal professional and scheduled over five non-consecutive one-day modules, this **intensive Osgoode certificate – the first of its kind in Canada** – will give you the know-how and skills you need to handle injury files effectively as well as efficiently, on both the tort and AB sides, and from plaintiffs' and defendants'/insurer's perspectives, combined with the opportunity to practice core skills in hands-on skills workshops.

You will engage with a multidisciplinary faculty of experts and get **individualized feedback** as you apply your learning and demonstrate your skills in a supportive, no-risk learning environment.

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Space is limited to ensure interactivity. Register now to secure your spot.



Covering all aspects of practice, you will learn:

- The legislative framework that governs MVA cases in Ontario on both the Tort and AB sides (*Insurance Act*, SABS, LAT Common Rules, *Rules of Civil Procedure* and New Simplified Procedure in Non-Jury Actions), and how these intersect
- Substantive doctrines and major Tort issues, including causation, foreseeability, and remoteness
- The different heads of damages, and key distinctions
- Evidence and discovery in Tort and AB cases
- How to assess the client and the case, including strengths and weaknesses of the case and developing a theory of the case
- How to manage a case from start to finish, and understand the many steps along the way
- Tactics for advancing your case at mediation and pretrials (Tort)/case conferences (AB)
- Effective preparation and presentation techniques of your case for trial or arbitration

PLUS! Working in small groups guided by faculty members, you will get to practice what you have learned in series of realistic and hands-on practical exercises.

Who Should Attend

- Injury law/personal injury lawyers (plaintiff and defence/insurer) in Ontario
- Accident Benefits lawyers (plaintiff/applicant and defence/respondent/insurer counsel) in Ontario
- Litigation paralegals in Ontario
- Litigation law clerks in Ontario
- Insurance industry professionals

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Drawing on the expertise and experience of leading members of the Bench and bar, including:

Program Directors



Maia L. Bent
Lerners LLP



Todd McCarthy
Flaherty McCarthy LLP



Alexander M. Voudouris
Senior Litigator, Pace Law Firm

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Connolly Obagi LLP

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**The Hon. Justice
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Agenda

MODULE 1

April 5, 2022 – 9:00 a.m. to 4:30 p.m.

The Legislative Regime That Governs MVA Cases: Tort and AB

An overview of key legislative provisions and the analytical framework, including the Rules of Civil Procedure and the New Simplified Procedure for non jury actions.

Common rules at LAT and policies under the OAP will also be explored.

The Tort of Negligence

A comprehensive, practical review of the key substantive law for practicing in the MVA claims field:

- Joint and several liability and its impact on contributory negligence and legislated liability
- ‘Protected and unprotected’
- Causation and standard of proof: the “but-for” vs “real and substantial risk”
- Statutory obligations in relation to negligence and their interaction with the common law
- Remoteness and foreseeability in the MVA context

The Threshold and Limitations in the Tort Context

An in-depth analysis of the threshold to sue for pain and suffering arising from car accidents and related issues, including

- Proving or disproving the standard/threshold
- Expert reports/testimony needed
- Discoverability and effect on statutory limitations
- Key factors that impact the threshold
- Threshold considerations in non-jury actions vs. jury actions

Liability, Causation, and Burdens of Proof

Overview of the but-for test of causation and the SCC trilogy on causation and analyzing the but-for test vs. material contribution test. You will also analyze:

- Do these remain competing tests?
- Is there a new test for material contribution?
- Different burdens of proof
- Reasonable and substantial possibility (the test for future pecuniary loss)

Damages and Deductions

Explaining and clarifying the law in this area of practice, this module will review:

- Punitive vs. aggravated damages: why it matters in practical ways (e.g. in pleadings)
- Common law cap: general nonpecuniary damages
- Statutory deductions you must know
- What is or is not compensatory damages?
- What is or isn’t covered by liability insurance?
- Strict matching approach and the code for the deduction and assignment of collateral benefits

The Family Protection Endorsement, Uninsureds and Underinsureds, and Joint and Several Liability Among

Motorists and Other Tortfeasors

- Identifying who it covers
- The relevant limitation period
- Insurance considerations and joint and several liability of Tortfeasors (both protected and unprotected)
- Different coverage for underinsured vs. uninsured
- Timelines regarding notice in the Regulation, in relation to uninsured or unidentified

MODULE 2

April 12, 2022 – 9:00 a.m. to 5:00 p.m.

Principles of First-Party Insurance and the Duty of Utmost Good Faith

We will examine the Duty of Utmost Good Faith, caselaw, and the quest for consumer protection:

- Resolving ambiguous legislation
- The shifting burden of proof when an insurer asserts an exclusion from coverage
- How the Duty cuts both ways and applies in some very practical scenarios, and effect on course of conduct
- The impact of the consumer protection element

Benefits, Part 1: The “Three Silos” of Benefits (The Relationship between CAT, the Minor Injury Guideline, and Everything In-Between)

The session begins the analysis of benefits and the “Three Silos”, including:

- Does the plaintiff/applicant fall under CAT, the Minor Injury Guideline (MIG), or in-between, and what is the burden of proof?
- Monetary limitations (caps) appropriate to each
- The interaction of being in MIG on other benefits
- Does “MIG” define types of injury or severity of injuries?
- Role of chronic pain in being a MIG, CAT, or in between

Benefits, Part 2: Specified Benefits and Attendant Care

All advocates in MVA matters need a solid understanding of both Tort and AB remedies and the interface between the two, including:

- What is included in a specified benefit?
- Monetary limits on specified benefits where they apply
- The process for applying for a specified benefit
- Time duration limits and monetary limits
- Retroactive attendant care entitlement
- IRB, housekeeping, caregiver, and non-earner benefits

Benefits, Part 3: Optional Benefits

- What is encompassed by the term optional benefits?
- Different types of optional benefits and their monetary limits
- Pursuing lawsuits against brokers and insurance companies

Benefits, Part 4: Collateral Benefits and Post-Accident Income

- CPP-Disability benefits
- ODSP Ontario, Ontario Works and LTD, EHC (extended health care) and EI

- Post-accident income as a deduction from payment of AB quantum

The Minor Injury Guideline (MIG)

- An analysis of leading caselaw
- When can an insurer conduct an Insurance Examination
- How to get out of/escape the MIG
- Chronic pain and the MIG
- The MIG determination and its effect on attendant care

Catastrophic Injury: A Closer Look

- The two CAT definitions: pre- and post-June 1, 2016
- Meeting the standard for a CAT designation and specific timelines
- The different categories and how they are determined
- CAT or non-CAT: borderline cases
- Causation and the but-for test in CAT cases

Loss Transfer and Priority Disputes

Analyzing loss transfer and priority disputes from both sides:

- The difference between the two and implications on adjustments of claims
- Strategic considerations: should insureds become involved in priority disputes?
- Examinations Under Oath (EUOs) under a priority dispute

Limitations and Discoverability in the AB Context

Address the discoverability of a cause of action, implications on limitation periods, and subsequent LAT jurisprudence in light of *Tomec v. Economical Mutual Insurance*.

You will also examine whether one benefit can have two different limitation periods, as well as the applicability of the *Licence Appeal Tribunal Act*

Reconsiderations, Appeals, and Judicial Review

Delve into the options for taking a case to the next stage of the hearing process:

- When are reconsiderations, appeals, and judicial review available?
- Can or should you pursue two or three of these concurrently?
- The standard of review after Vavilov: reasonableness vs. correctness
- What is the test on a reconsideration?
- The difference in available options between interim versus final orders

Strategic Considerations and the Tort/AB Interface

What considerations govern whether one pursues remedies in Tort or AB or both?

Learn the implications of choice of remedy, in such practical areas as deductibility of benefits, availability of costs, and timelines. You will also examine the impact on liability in pursuing compensation in Tort versus what you’d normally get in AB.

MODULE 3

April 19, 2022 – 9:00 a.m. to 4:45 p.m.

Preliminary Considerations: Pre-Assessment File Review and Assessing the Case

- What is the nature and evidence of the complaint?
- Determining whether the case is within your competence and interest as a practitioner
- First questions to be addressed and spotting of potential red flags
- Economic viability of the case, and if there is a path to compensation open to the client (and to counsel)

Assessing and Managing Client Expectations and Access to Justice Issues

Effective communication and client management are crucial skills required in injury law practice. Review the best practices, as well as pitfalls to avoid, including:

- Representations to avoid making
- For plaintiffs: explaining contingency fees
- For insurers: litigation plans and budgets
- Key factors and information you must explain to the client
- Common areas of potential professional negligence

Identifying All Potential Parties

A critical element of case strategy and management. Learn the essential factors and steps to follow (and what to avoid):

- Casting a potentially wide net
- Dangers of waiting too long to identify a party
- Third-party defendants added by defendants
- Family Law Act claimants
- Appointment of litigation guardians and administrators

Shaping the Theory of the Case: Plaintiff and Defendant Perspectives

Every case must be viewed through the lens of “what will this look like at trial”, even if it never gets that far. Keys for getting the best from every case:

- What will the case look like at a hearing or trial?
- Drafting effective pleadings
- Jury or no jury?
- Lawyers as storytellers: what’s the story and how to present it best

The Big Picture: What Will You Have to Prove or Disprove and What Evidence Is Required?

- Evidence needed for each element of the case
- Before and after witnesses
- Lay and expert witnesses
- For defence: the importance of external events

Investigations, Surveillance, Non-Expert Witnesses, and the Affidavit of Documents

A comprehensive overview of investigations and surveillance in litigation:

- The science and art of surveillance and working with private investigators
- Common ethical and professional issues
- Obtaining and understanding medical information
- How to make the most of social media
- Obtaining criminal records/background searches
- The corporate defence affidavit of documents
- Useful tips for municipal cases

Discoveries (Tort) and Examinations Under Oath (AB)

- Conduct of the discovery/EUO
- Post-discovery/EUO to-do list (including undertakings, refusals and post-discovery memoranda)
- Rule 36: videorecorded examinations for parties and witnesses

Experts: Drilling Down Further

- When are experts required? What areas of expertise to pursue? How many should you use?
- Educating the expert in the law
- What is required in a report and laying the foundation for testimony
- Related ethical and professional obligations
- Critically evaluating one’s own expert

MODULE 4

April 26, 2022 – 9:00 a.m. to 5:15 p.m.

The Advocacy Process

Mediation

- Preparing for mediation: practical tips and step-by-step guidance
- How to determine whether to proceed as a global mediation (dealing with AB and Tort issues together) or separate mediation
- Parties at global mediations: a who’s who
- Conduct of the mediation – realistic best practices
- Settling the case and documenting the settlement at mediation

Pretrials and Case Conferences

- Purpose of pretrial/case conferences and differences between these versus mediation
- Conduct of the pretrial/case conference – realistic best practices
- Settling the case at pretrial or case conference and documenting the settlement

Common Motions in MVA Cases

What are the most common motions in motor vehicle accident cases and when/how to use them in:

- Appointing litigation guardian for infants or persons under disability
- Threshold motions
- Motions in chambers

Preparing for the Trial and/or Arbitrations

- Witness preparation
- Filing of documents
- Demonstrative evidence
- Jury selection
- Online trials and arbitrations

Openings and Closings

How to bookend your case with effective and evocative presentations. The session will also discuss the different approaches involved depending on the type of hearing.

Examinations and Cross-Examination in the MVA Case

Cases often hinge on how you question witnesses. Learn the do’s and don’ts and official and unofficial rules to know when questioning witnesses and key strategies and approaches.

Issues Commonly Arising During and After Trial or LAT Arbitration

Review the common issues encountered at the hearing stage and afterward, including:

- Settlement during the course of trial
- How many defence medicals?
- “Doubling up” on experts
- Mid-hearing strategies
- Assessing the prospects for appeals

Ethical and Professional Issues Panel

Get practical instruction from experts with diverse practice experience on how to handle common ethical and professional issues which arise in injury law practice:

- Knowing where the line is and how to avoid crossing it
- Relations with other parties and their counsel
- Cultural competency for injury lawyers
- The key elements of ethical advocacy

MODULE 5

May 3, 2022 – 9:00 a.m. to 4:00 p.m.

Case Study and Workshops: Putting it All Together – Where the Rubber Meets the Road*

Over this intensive day, you will **work in small groups** and apply what you’ve learned over the previous four modules, in a series of **hands-on and practical exercises facilitated by faculty members**.

Using **fact scenarios drawn from real-world Tort and AB cases**, you will work your way through the **life of a file from start to finish**, focusing on important issues and facets of the case and reinforcing their knowledge and skills. You will draw on the course materials to apply the law, concepts, and learned strategies, while moving through all the steps of a case.

Individualized feedback, and breakout groups and discussions moderated by faculty will be combined with debriefs and sharing of views to enhance your learning.

**This session will not be recorded. Live attendance is required.*

Registration Details

Fee Per Delegate: \$2,995.00 plus tax

Newly Licensed*: 50% off regular rate plus tax

**This fee applies to newly licensed professionals within the past 2 years*

Fees include attendance, electronic materials, and technical support. Visit www.osgoodepd.ca/financial-assistance for details 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 21 days prior to the program date. If a cancellation request is made with less than 21 days' notice, a \$150 administration fee will apply. No other refund is available.

For Further Program-Related Information, Please Contact:

Stephen Ahad, Program Lawyer at 647.459.1054
or email sahad@osgoode.yorku.ca

Certificate of Program Completion

You will receive a certificate upon completion of **The Osgoode Certificate in Motor Vehicle Accident Law and Practice: Tort and Accident Benefits**.

Participants must successfully pass an online multiple-choice assessment within 30 days of the last program module to obtain the Certificate.

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