

ESTATE LITIGATION

The Practical Guide for Legal Professionals

Estate disputes are often highly charged, giving rise to unique litigation challenges. Equip yourself with the up-to-date knowledge needed to effectively represent your client in this complex area.

Over the course of three sessions, our faculty of experienced litigators will delve into the processes and topics that you need to understand, including:

- Obtaining relevant information from your client during the first meeting
- Discoverability and the use of intervening factors and exceptions to establish limitation periods
- Onus, admissibility and other considerations regarding evidence in contentious proceedings
- Current case law on costs, unjust enrichment and the deemed undertaking rule

PROGRAM CHAIRS

Ian Hull
Hull & Hull LLP

Suzana Popovic-Montag
Hull & Hull LLP

REGISTRATION OPTIONS

Online, Live:
September 21, 28 and
October 6, 2022
4:00 p.m. – 7:00 p.m. ET

Online Replay:
November 14, 2022

Can't make the date?
*Registration includes 120-day
unlimited, online access to the
recorded program.*

Register today at:
[osgoodepd.ca/
estate-litigation](https://osgoodepd.ca/estate-litigation)

Estate Litigation

The Practical Guide for Legal Professionals

Estate litigators must possess a variety of specialized skills to succeed in this unique practice area.

Over the course of three evenings, our program brings together experts in estate litigation to walk you through the basics, best practices and important updates in estate litigation.

Breaking down the process of estate litigation and offering practical guidance, our faculty will help you to:

- Obtain relevant information and documents from your client at the first meeting
- Recognize your responsibilities when dealing with persons with a potential for diminished capacity and undue influence
- Prepare for mediation and settlement of an estate matter
- Identify applicable limitation periods that you must know
- Explain to your client the various applications, motions and orders in the estate litigation process
- Appropriately object to a Certificate of Appointment
- Argue and respond to claims against an estate pursuant to the *Estates Act*
- Deal with evidence in contentious proceedings
- Understand the process of locating missing beneficiaries
- Keep up to date on the latest case law regarding costs, the deemed undertaking rule and unjust enrichment

Who Should Attend

- Experienced wills and estates practitioners who want to review the basics of estate litigation and those interested in estate advocacy

Register today at:

osgoodepd.ca/estate-litigation

Agenda

MODULE ONE: SEPTEMBER 21, 2022

During the first evening of the program, our faculty of industry experts will guide you through various basic elements of estate litigation, including tips on conducting your first meeting with a client, ascertaining relevant limitation periods and preparing for mediation and potential settlement.

4:00 p.m.

Introduction by Chairs and Overview of the Program

4:10 p.m.

- Information to obtain at the first client meeting
- Legal issues in the challenge to a will, such as:
 - Due execution of formal wills
 - Holograph wills
 - Substantive validity, testamentary capacity, undue influence, fraud and mistake
 - The parties: who has standing in will challenges?
- The lawyer's role in protecting individuals with a potential for diminished capacity or undue influence

5:30 p.m.

Refreshment Break

5:45 p.m.

- Preparing for mediation and settlement, including:
 - Understanding the purpose of the mediation
 - Drafting mediation documents and minutes of settlement

- Limitation periods: discoverability, intervening factors, proof and exceptions
- The procedural rules and legal test for proving that a will has been lost or destroyed, and the types of evidence that are admissible regarding the content of a lost or destroyed will
- Understanding how to obtain orders for assistance, including:
 - The types of orders that may be sought
 - The availability of orders in particular scenarios
 - The procedure for obtaining orders for assistance

MODULE TWO: SEPTEMBER 28, 2022

Moving beyond the foundation that our faculty created in module one, this second session will examine a variety of the issues often encountered in contentious estate litigation and give you the procedural know-how needed to manage such matters as dependant support claims, the appointment of a litigation guardian, seeking directions from and submitting rights to the Court.

4:00 p.m.

- Objecting to the issuance of a certificate of appointment: procedures and best practice points
- Dealing with the revocation or return of a certificate of appointment
- Claims for dependant support against the estate:
 - Who qualifies?
 - What are the limitation periods?
 - What factors and evidence will the court consider?
- Commencing claims pursuant to the *Estates Act*
 - Application for order allowing claim against the estate
 - Powers of the court relating to liquidated and unliquidated claims

5:30 p.m.

Refreshment Break

5:45 p.m.

- Understanding when and how to seek the appointment of an estate trustee during litigation
- Litigation guardians of minors and mentally incapable persons: the process of appointment and procedural rules
- Applications and motions for directions from the court, including:
 - Service, order, pleadings and the procedure where a statement of claim has been served
 - The effect of failing to file pleadings
- Statement of submission of rights to court

MODULE THREE: OCTOBER 6, 2022

In this culminating session, our faculty will share their practiced techniques for managing the more complex processes and issues that every estate litigator encounters, like passing accounts and locating missing beneficiaries and the submission of evidence in a contentious matter.

4:00 p.m.

- Navigating applications to pass accounts: procedure, entitlement, compensation and objections to accounts
- Dealing with evidence in contentious proceedings, including a discussion of onus, examinations for discovery and medical witnesses
- Analyzing the evidence cheat sheet, covering such topics as:
 - What constitutes meaningful corroboration?
 - The admissibility of business records,

- expert opinion evidence and retrospective opinions regarding testamentary capacity
- Past recollection recorded/present recollection revived
- Application of the rule in *Browne v. Dunn* to estate matters
- Understanding the estate trustees' obligation to locate missing beneficiaries

5:30 p.m.

Refreshment Break

5:45 p.m.

- Discussion of the latest case law and issues concerning:
 - Costs in estate litigation
 - i. Development of the modern approach to costs since *McDougald Estate v. Gooderham*
 - ii. Payment of costs by the estate, blended costs awards and costs against lawyers personally
 - The deemed undertaking rule
 - i. *Juman v. Doucette*: the underlying principles of the rule
 - ii. Order for examination of a non-party witness
- Unjust enrichment in will challenges
 - i. Analyzing developments since the Supreme Court of Canada trilogy: *Murdoch v. Murdoch*, *Rathwell v. Rathwell* and *Pettkus v. Becker*
 - ii. Remedies in estate matters

Co-Chairs

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Registration Details

Fee per Delegate: \$995 + TAX

Newly Licensed*: \$497.50 + TAX

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

Fees include online attendance, electronic materials, and technical support. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details.

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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