

PROSECUTING AND DEFENDING PROFESSIONAL DISCIPLINE CASES 2023

“This was one of the most informative and advanced education sessions I have ever attended. Excellent!”

Sophia Ruddock
Ontario Nurses Association

The essential update you need to succeed in this challenging area of litigation.

In the professional discipline process, a thorough and current understanding of substantive law, procedure, and strategic considerations is a must.

Whether you are a lawyer defending a professional in disciplinary proceedings or represent a regulator, this annual program gives you the tools you need. Covering all aspects of a file, including:

- Key duties and powers in the professional regulatory milieu
- The investigation phase: early resolution, examinations, inquiries, and interviews
- Pre-hearing preparations and proceedings: what you need to know for 2023 and beyond
- Effective advocacy before regulatory tribunals
- The discipline hearing: emerging issues, advocacy tips, and cost strategies

PROGRAM CHAIRS

Jeremy Devereux and
Linda Fuerst of
Norton Rose Fulbright
Canada LLP

REGISTRATION OPTIONS

April 18, 2023:

Online (Live)

9:00 a.m. – 4:45 p.m. ET

OR

May 23, 2023:

Online (Replay)

9:00 a.m. – 4:45 p.m. ET

Can't make the date?

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

Register today at:

[osgoodepd.ca/
disciplinecases](https://osgoodepd.ca/disciplinecases)

Prosecuting and Defending Professional Discipline Cases 2023

The stakes are high in professional discipline proceedings. For the professional, years of education and experience, reputation, and livelihood are on the line. For the regulator, there is pressure to vigorously protect the public interest and respond to allegations of misconduct, incompetence, or incapacity in a fair and timely manner.

This annual *OsgoodePD* program brings together an outstanding faculty of professional regulatory defence and prosecution counsel to share insights and provide a thorough review of the essentials you must know to succeed in this area. Working through all aspects of file, including:

The Investigative Phase

- Duties and powers
- Examinations, interviews, and inquiries
- Prospects for early resolution
- Navigating your client through the process

Pre-Hearing Preparations and Proceedings

- Familiarizing yourself with tribunal practices
- Pursuing/resisting interim orders
- Dealing with concurrent civil and criminal proceedings

The Discipline Hearing

- Factors affecting the determination of the appropriate penalties
- Costs: considerations and strategies

Topics Include

- The duties and powers of regulators throughout the discipline process
- Examinations, interviews, inquiries: impact of virtual proceedings, process changes
- Strategy for imposition of interim orders and interpretation
- The impact of parallel investigations and proceedings
- Conduct of hearing: in writing/electronic/oral presentation
- Challenging a professional discipline decision
- Changing societal values and expectations impacting disciplinary proceedings and decisions

Who Should Attend

- Counsel who represent regulated professionals
- Counsel who prosecute on behalf of professional regulators
- Investigators and staff of professional regulatory bodies
- Members of complaints and discipline committees

Register today at:

osgoodepd.ca/disciplinecases

Agenda

9:00 a.m.

Chairs' Welcome & Introductory Remarks

9:05 a.m.

Assessing Duties and Powers

Jaan Lilles

Lenzner Slaght LLP

Ahmad Mozaffari

Steinecke Maciura LeBlanc

The opening segment will provide a succinct review of the duties and investigative powers of professional regulatory bodies, along with the common legal tools for challenging them.

- Challenging use of the power to summons
- Challenging ex parte investigation orders
- Duties of investigators and regulatory college staff
 - Duty of good faith, neutrality and reasonableness
 - Duty to provide notice of complaint or investigation
- The professional's duty to co-operate and its limits
 - Availability of protections against compelled testimony
 - Co-operating with a power to inquire into and examine

9:50 a.m.

Documentary Requests and Production

Fredrick Schumann

Stockwoods LLP

Janice Wright

Wright Temelini LLP

As is so often the case in contested matters, competence in managing the production/requests for documentary evidence is a must in professional regulatory hearings. Delve into the vital issues, including:

- Demands for production
 - Preservation and protection of electronic records
 - Results of internal investigations and privilege
 - PIPEDA obligations and privacy issues
 - Limits on the power to inspect
 - How production demands might affect disclosure obligations
- Anticipating the use of search and seizure powers
 - What to do when an investigator arrives with a warrant
- *Charter* considerations at the production stage
- Solicitor-client privilege
 - What can be claimed; challenging claims

10:35 a.m.

Break

10:50 a.m.

Examinations, Interviews, Inquiries

Dana Carson

Crawley MacKewn Brush LLP

Colin Johnston

Lenczner Slaght LLP

Professional regulators must follow detailed procedures outlined by their own enabling statutes, as well as laws and rules of more general application, when looking into the impugned conduct of their members. Delve into essential facets of the investigative process:

- Best practices for preparing the client
- Entitlement to pre-examination disclosure
- Prudent practices and planning for the conduct of investigations
- The privilege against self-incrimination
- The impact of parallel investigations by police or other agencies on examinations

11:35 a.m.

Preparing for the Hearing

Nisha Dhanoa

Hunter Liberatore Law LLP

Cait Sainsbury

Borden Ladner Gervais LLP

Once a case has advanced to the hearing stage, a whole set of important considerations come into play. This session will provide a thorough overview of the process and necessary steps:

- Familiarizing yourself with the tribunal practices
- Pre-hearing conferences
- Anticipating the other side's positions
- Severing allegations or respondents: strategic considerations
- Witness preparation
 - Interviewing witnesses preliminary to hearing
 - Vulnerable witnesses
- Materials preparation
 - Assessing expert reports: do you need a reply report?
 - Conduct of hearing: in writing/electronic/oral presentation
- Disclosure, including:
 - How to determine if disclosure is complete
 - Procedures for challenging adequacy of disclosure
 - Obtaining access to third-party documents
- Getting information about staff conduct

- Applying the implied undertaking rule
- Initial fairness issues:
 - The right to counsel and adjournments
 - Alleging bias
 - Validity and interpretation of the definition of misconduct

12:35 p.m.

Lunch Break

1:15 p.m.

Interim Proceedings: Scope and Strategy

Glynnis Hawe

Paliare Roland Rosenberg Rothstein LLP

Interim proceedings are often overlooked. However, these are a crucial phase of professional discipline matters. Gain a critical understanding of this process and recent developments:

- Interim order powers under the *Regulated Health Professions Act*
- A review of key case law
- The consequences of interim orders on future prosecutions and penalties

1:45 p.m.

The Hearing: Penalties, Costs, Settlements

David A. Hausman

Fasken Martineau DuMoulin LLP

Sylvia Samuel

Senior Enforcement Counsel, IIROC

Addressing best practices, this session will examine the crucial issues that advocates should always consider at the hearing stage of a case.

- Pitfalls of settlement: avoiding or addressing them
- Using admissions made in other proceedings
- Is it possible to negotiate too good a deal?
- Penalty guidelines and the use of prior decisions
- Effective evidence and its presentation
- Assessment of costs in disciplinary proceedings
- Challenging the tribunal staff's claim for costs

2:30 p.m.

Break

2:45 p.m.

Ethical and Professional Issues in Professional Discipline Practice

John Fabello

Torys LLP

Jane Waechter

Legal and Regulatory/Adjudicator/Director

Using realistic fact situations that illustrate how to effectively address practice quandaries that you will face sooner or later in professional discipline work, you will analyze:

- Best practices for representation
- How to be a respectful, yet effective, advocate
- Understanding and managing ethical dilemmas.

Given the complexity of the issues, and evolving obligations, there will be ample time for questions and discussion.

3:30 p.m.

Court Challenges to Professional Discipline Decisions

Brookelyn Kirkham

Polley Faith LLP

Elisabeth Widner

Legal Office, College of Physicians and Surgeons of Ontario

What is the process for challenging a decision rendered by the disciplinary panel? Evaluate the evidentiary hurdles and legal standards involved, as well as important factors that influence decision making. The session will cover:

- The level of deference afforded to disciplinary bodies on questions of law upon judicial review
- Interpreting originating statutes
- Changing societal values and behavioral expectations reflected in disciplinary hearing decisions

4:00 p.m.

Effective Advocacy Before Regulatory Tribunals

Tim Moseley

Chief Adjudicator, Capital Markets Tribunal

Effective advocacy before regulatory tribunals is critical to success. This session will provide:

- Guidance on what does and doesn't work before tribunals
- The impact of government policy on tribunals
- An overview of the challenges for counsel in matters involving unrepresented parties

4:45 p.m.

Program Ends

“Really got a lot of value out of the day.”

Marianne Wright, Unit Commander, Legal Services, Toronto Police Service

Chairs

Jeremy Devereux and Linda Fuerst of
Norton Rose Fulbright Canada LLP

Faculty Includes

Dana Carson
Crawley MacKewn Brush LLP

Nisha Dhanoa
Hunter Liberatore Law LLP

John Fabello
Torys LLP

David A. Hausman
Fasken Martineau DuMoulin LLP

Glynnis Hawe
Paliare Roland Rosenberg
Rothstein LLP

Colin Johnston
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Legal and Regulatory/
Adjudicator/Director

Elisabeth Widner
Legal Office,
College of Physicians and
Surgeons of Ontario

Janice Wright
Wright Temelini LLP

Registration Details

Fee per Delegate: \$695 + TAX

Newly Licensed*: \$347.50 + TAX

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

Fee includes program registration, electronic program materials and 120-day unlimited online access to program archive. Group discounts and financial assistance 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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This program is approved for LAWPRO Risk Management Credit.

“Enjoyed the sessions on the specifics of hearing mechanics. (The faculty were) Well prepared. Smooth execution. Well spoken.”

Keith Hadden, Executive Staff Officer, The Alberta Teachers' Association

“Covered an exceptionally broad scope of substantive and practical considerations in a condensed time period.”

Jason W. J. Woycheshyn, Bennett Jones LLP

“Panels were uniformly excellent.”

James B. Camp, Camp Advocacy P.C.

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