

# THE LITIGATOR'S GUIDE TO REAL ESTATE, CONSTRUCTION AND LEASING DISPUTES



The key information and strategies you'll need when a real estate dispute crosses your desk, including:

- How recent cases like *Atlas Block* and *Iona Contractors* represent a potential "Copernican revolution" for the construction bar
- The liability of real estate agents and brokers in such areas as failure to disclose, misrepresentation, drafting deficiencies, etc.
- Making use of experts in real estate litigation, from disputes over contaminated land to rent review arbitrations
- Mapping out potential consequences and opportunities when a construction project runs into financing and other crises
- Mitigating losses and identifying solutions in retail insolvencies
- Document preservation and collection: what you want your client to find for you
- Ethical and professional issues facing counsel involving in real estate litigation, mediation or arbitration

From abortive real estate transactions to construction, commercial leasing and environmental disputes –equip yourself with the experts' knowledge and practical advice

**Boost your ability to handle these often highly technical disputes with confidence and authority**

REGISTER NOW AT  
[WWW.OSGOODEPD.CA](http://WWW.OSGOODEPD.CA)



## Chairs

**Robert Cohen**  
*Cassels Brock & Blackwell LLP*

**Stephen Richard Morrison**  
C. Med, C.Arb, FCI Arb  
*Stephen Richard Morrison ADR Inc.*

## Date and Time

**February 10, 2016**  
9:00 a.m. - 4:45 p.m. EST

## Location

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

**Webcast Available**

## THE LITIGATOR'S GUIDE TO *REAL ESTATE, CONSTRUCTION AND LEASING DISPUTES*

Real estate disputes draw on a complex body of common and statute law. Whether your client is involved in

- a troubled construction project
- a deteriorating commercial leasing relationship
- a retail insolvency
- an abortive real estate transaction
- a deal that triggers the potential liabilities that can arise from contaminated land, or
- a commission dispute with a real estate agent

it's necessary for you to supplement your existing strategic and procedural savvy as a litigator with an understanding of often highly technical aspects of real property law and practice.

This program will provide you with the best current advice and insights from real estate specialists, litigators with extensive experience in resolving these disputes in or out of the courtroom, a senior insolvency specialist, and a distinguished judge who wrote the standard text on real estate remedies. All in all, a rare opportunity to acquire what you as counsel must know across a sprawling range of contexts and cases.

### WHO SHOULD ATTEND

- General or commercial litigators involved in the litigation, mediation or arbitration of disputes involving real estate interests
- In-house litigation counsel
- Litigation law clerks



### Chairs

**Robert Cohen**

*Cassels Brock & Blackwell LLP*

**Stephen Richard Morrison**

*C. Med, C.Arb, FCI Arb*

*Stephen Richard Morrison  
ADR Inc.*

### Faculty

**Sharon Addison**

*McLean & Kerr LLP*

**Sandra D. Astolfo**

*Torkin Manes LLP*

**Sam Babe**

*Aird & Berlis LLP*

**Bryan J. Buttigieg**

*Miller Thomson LLP*

**Steve Ferguson**

*Senior Director  
Alvarez & Marsal Canada*

**Linda Galessiere**

*McLean & Kerr LLP*

**Wolfgang Kaufmann**

*Daoust Vukovich LLP*

**The Hon. Justice**

**Paul M. Perell**

*Superior Court of Justice  
(Ontario)*

**Todd Robinson**

*Cassels Brock &  
Blackwell LLP*

**Reuben M. Rosenblatt**

*Q.C., LSM  
Minden Gross LLP*

**E. Patrick Shea**

*LSM, CS  
Gowling Lafleur  
Henderson LLP*

**Bryan B. Skolnik**

*Gardiner Roberts LLP*

**Melvyn L. Solmon**

*Solmon Rothbart  
Goodman LLP*

**David S. Ward**

*Cassels Brock &  
Blackwell LLP*

**REGISTER NOW** by visiting  
**[osgoodepd.ca/realestatedisputes](https://osgoodepd.ca/realestatedisputes)**

# AGENDA

**8:30**

## **Registration and Continental Breakfast**

**9:00**

## **Chairs' Welcoming Remarks**

**9:05**

## **Damages and Specific Performance in Abortive Real Estate Transactions**

**The Hon. Justice Paul M. Perell**, *Superior Court of Justice (Ontario)*

The election of remedies is always an important strategic choice that can have a dramatic effect on the course of litigation. Beginning with the leading SCC decision in *Semelhago v. Paramadevan*, courts have revisited the relationship between the remedies of specific performance and damages in far-reaching ways. Justice Perell will trace the continuing evolution of this relationship and its practical lessons for litigators, in cases such as *Southcott* and *Matthew Brady Self Storage Corp v. InStorage*.

**9:50**

## **Litigator's Guide To Real Estate Agents' and Brokers' Liability**

**Bryan B. Skolnik**, *Gardiner Roberts LLP*

When a real estate transaction goes sideways the potential liability of the real estate agent or broker must be considered. Liability may arise at various stages of the transaction, involving for example

- Failure to adequately explain the nature and scope of the agreement or particular provisions
- Failure to disclose deficiencies or other material information
- Misrepresentation or breach of fiduciary duty
- Agents 'acting as lawyers' and drafting agreements of purchase and sale (and related schedules) which contain serious deficiencies.

The fact that agents carry insurance also makes them a good potential source of recovery. Negligence apart, agents can also become embroiled in contractual disputes concerning commissions and listing agreements. In this session, a counsel with specialized experience in this area will explain what litigators must bear in mind in acting for or against agents and brokers in a variety of commonly-encountered contexts.

**10:30**

## **Refreshment Break**

**10:45**

## **Litigating or Settling Commercial Leasing Disputes**

**Wolfgang Kaufmann**, *Daoust Vukovich LLP*

**Sharon Addison**, *McLean & Kerr LLP*

Two experts provide essential insights into the leasing disputes that are most likely to lead to mediation, arbitration or litigation, along with key statutory provisions, up-to-date caselaw, and strategic advice. Includes:

- Lease defaults, forfeitures and terminations
- Application for interpretation of the lease
- Obtaining injunctive relief
- Landlord's obligation to mitigate and calculating further loss of rent

**12:00**

## **Luncheon**

**12:45**

## **Disputes Arising from Troubled or Failing Construction Projects**

**Sam Babe**, *Aird & Berlis LLP*

**Todd Robinson**, *Cassels Brock & Blackwell LLP*

From contractor insolvency to overly-zealous unpaid trades rushing to lien, numerous roadblocks and issues can derail an otherwise smooth construction project. Using realistic examples of "projects from hell", our speakers will discuss the rights, obligations and potential liabilities of property owners, general contractors, subcontractors, suppliers, trust and lien claimants, secured creditors, trustees and receivers and lending institutions, the strategic choices they face, and potential remedies and creative solutions. Including: an update on *Royal Bank of Canada v. Atlas Block* and the potential impact of the Alta. C.A.'s recent decision in *Iona Contractors*.

**1:45**

## **Tenant's Insolvency: The Effect on Landlords' Rights and Obligations**

**Steve Ferguson**, *Senior Director, Alvarez & Marsal Canada*

**Linda Galessiere**, *McLean & Kerr LLP*

**E. Patrick Shea**, *LSM, CS, Gowling Lafleur Henderson LLP*

**David S. Ward**, *Cassels Brock & Blackwell LLP*

This panel combines experienced litigation and insolvency practitioners to provide insights into how the insolvency of a tenant can impact a landlord. Topics will include:

- Strategies to protect the landlord's interests where the tenant bankrupts or attempts to reorganize.
- Impact of insolvency proceedings on the exercise of distraint
- Tenants' disclaimers of lease and claims by landlords for damages
- Balancing rights on forced assignments of leases
- Balancing the landlord's rights under a lease with value maximization in the context of on-site liquidation sales
- Managing leasehold issues in a retailer insolvency

**2:45**

## **Refreshment Break**

## AGENDA (cont'd)

**3:00**

### Resolving/Litigating Disputes Involving Contaminated Land

**Bryan J. Buttigieg**, *Miller Thomson LLP*

Environmental disputes can arise at almost any stage in a real estate transaction. The unusual confluence of common law, a complex regulatory regime, and engineering and market perceptions make this a tricky area to navigate. This session will address some of the complex issues that can arise when contaminated land becomes the subject of a legal dispute and the best options for addressing them.

**3:45**

### Ethical and Professional Issues In Litigating Real Estate Disputes

**Sandra D. Astolfo**, *Torkin Manes LLP*

**Reuben M. Rosenblatt, Q.C.**, *LSM, Minden Gross LLP*

**Melvyn L. Solmon**, *Solmon Rothbart Goodman LLP*

**Stephen Richard Morrison, C. Med, C.Arb, FCI Arb**  
(Moderator), *Stephen Richard Morrison ADR Inc.*

An interactive and incisive discussion of fact situations which incorporate ethical/professional issues for litigation counsel in these kinds of cases.

**4:45**

### Program Concludes



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSUC.



#### Eligible CPD/MCLE hours:

Eligible CPD/MCLE hours: LSUC (ON):  
7.0 Hours (6.0 substantive; 1.0 professionalism)

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian jurisdictions. To inquire about credit eligibility, please contact [cpd@osgoode.yorku.ca](mailto:cpd@osgoode.yorku.ca)

## REGISTRATION

Please complete all registrant information.

### The Litigator's Guide To Real Estate, Construction and Leasing Disputes

I will attend: ☐ On site ☐ Via webcast (single viewer) ☐ Online Replay

Unable to attend? Please contact us to order the Materials/Program On Demand

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Firm/Company: \_\_\_\_\_

Practice Area: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

Prov: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

☐ Add me to your mailing list

☐ Delete me from your mailing list

☐ I do not wish to be contacted by e-mail

Priority Service Code  
(from mailing label below)

1 5 6 6 0 L

#### Payment Options

☐ Cheque enclosed (payable to York University – HST# R119306736)

☐ Bill my credit card: ☐ VISA ☐ Mastercard

Card# \_\_\_\_\_

Expiry: \_\_\_\_\_

Signature: \_\_\_\_\_

Payment amount: \$ \_\_\_\_\_

#### Fee Per Delegate

**\$525 plus HST**

Fees include program materials and (for onsite registrants) continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca](http://www.osgoodepd.ca) for details. Please inquire about financial assistance.

#### Date & Time

February 10, 2016

9:00 a.m. – 4:45 p.m. EST

**Online Replay: March 31, 2016**

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

Dress is business casual.

#### Location

Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3

#### 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 (less \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.



## 4 Convenient Ways to Register

1. **MAIL** your registration form to:  
Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3
2. **ONLINE** at  
[www.osgoodepd.ca/realestatedisputes](http://www.osgoodepd.ca/realestatedisputes)
3. **FAX** your registration  
to 416.597.9736
4. **CALL US** at 416.597.9724  
or 1.888.923.3394