



## 2016 INSURANCE COVERAGE SYMPOSIUM

CPD: 5 hours Substantive, 1 hour Professionalism

Chairs: Wendy Johnston QC - McInnes Cooper, Halifax; David Mackenzie, Blaney's, Toronto

### Agenda

8:45-9:00 **Opening Remarks, Co-Chairs: Wendy Johnston QC, McInnes Cooper & David R. Mackenzie, Blaney McMurtry LLP**

9:00-10:00 **Duty to Defend**

- Intro to Duty to Defend
- Pre-tender Defence Costs, Allocation of Defence Costs and Overlapping Insurance
- Consequences of Wrongful Failure to Defend
- What Terminates Insurer's Duty to Defend
- Obligations to Disclose Policy Limits – Cross Canada Review
- Ethical Considerations for Defence Counsel: The Tripartite Relationship  
**Catherine Keyes, TD Bank Group, Toronto**  
**Joyce Tam, Thomas Gold Pettingill LLP**

10:00-10:40 **Reservation of Rights**

- When and Whether to Issue a Reservation of Rights Letter
- Circumstances Where Conflict May Require Independent Counsel Be Paid by Insurer  
**Christa Brothers Q.C., Stewart McKelvey, Halifax**

10:40–10:55 *Morning Break*

10:55-11:30 **Duty to Defend: The Quebec Perspective**

- The Impact that Public Order Civil Code of Quebec Articles have on the Duty to Defend
- Evolving Case-law re the Use of Extrinsic Evidence
- Pre-tender Defence Costs, Allocation of Defence Costs and Overlapping Insurance
- Consequences of a Wrongful Failure to Defend
- The Termination of the Duty to Defend
- The Unique Quebec Law Limitations Period Applicable to the Duty to Defend  
**Nicholas J. Krnjevic, Robinson Sheppard Shapiro, Montreal**

11:30-12:15 **Legal and Practical Considerations for Manuscript Policies**

- Manuscript policies – their preparation and negotiation. We will consider the increased demand for bespoke policies, when they are used, their benefits and pitfalls
- The court's approach to the interpretation of manuscript policies. We will review how certain interpretative principles, such as reasonable expectations and contra proferentem, have been applied in manuscript policies and endorsements.
- Sattva and beyond: coverage litigation involving bespoke policies: How does the Supreme Court's decision affect the scope of evidence available for in coverage disputes?
- Practical considerations for parties who negotiate bespoke wordings

**Roderic McLauchlan**, Clyde & Co, Toronto

**Aisha Khan**, Markel Canada, Toronto

12:15-1:00 *Lunch*

1:00-1:45 **Getting a LEG Up: Recent Developments in Connection with the Faulty Design and Workmanship Exclusion**

Recent developments concerning the faulty design and workmanship exclusion, including discussion of Ledcor v. Northbridge Insurance et al, PCL Constructors v. Allianz Global Risks et al, and Acciona v. Allianz Global Risks et al decisions. An appeal of the Ledcor decision will be heard at the SCC in March. A leave application in connection with Acciona decision is outstanding. The discussion will focus on the scope of the faulty design and workmanship exclusion on various wordings, and will discuss current issues concerning interpretation of the exclusion.

**Greg Tucker QC**, Owen Bird LC, Vancouver

1:45-2:30 **Don't Be the Weakest Link – Managing Cyber Risk**

A discussion of the information and technology risks that insurance lawyers face, the steps they should be taking to protect the information that they have, as well as the cyber-insurance they should have in place in case things go wrong

Panel: **Patrick Bourk**, Integro, Toronto

**Ian Hu**, LawPro, Toronto

2:30-2:45 *Afternoon Break*

2:45-4:00 **Emerging Issues in Cyber Risk**

Revolutionary Technology v. Traditional Insurance Coverage: Over the next decade 3D printing, drones, self-driving vehicles and wearable technology will stretch and disrupt well established liability frameworks and, as a consequence, the P&C industry's traditional coverages. This presentation will discuss the coverage issues arising from these revolutionary emerging technologies from both the Canadian and American perspectives.

Panel: **Heather Sanderson**, Sanderson Law, Calgary

**Kathleen B. Browne**, SwissRe, New York

4:00 -4:15 **Closing Remarks**