

# STUART ZACHARIAS

## Appeals

PARTNER

*"The Court of Appeal is 'a court of error correction'. Identifying what is, or is not, a reversible error is the essence of appellate advocacy. This involves myriad legal and procedural nuances."*

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### PROFESSIONAL HISTORY

- ◆ Stuart has acted on matters before the Ontario Superior Court of Justice, Divisional Court and Court of Appeal, and the Supreme Court of Canada
- ◆ Member, CBA Task Force on Justice Issues Arising from COVID-19 (2020-2021)
- ◆ Chair, National Civil Litigation Section, Canadian Bar Association (2019-2020)
- ◆ Co-Chair, Education Committee, Health Law Group, Lerners LLP (2018 – present)
- ◆ Vice-Chair, National Civil Litigation Section, Canadian Bar Association (2018-2019)
- ◆ Practice Group Leader, Appeals Group, Lerners LLP (2016 to 2018)
- ◆ Secretary-Treasurer, National Civil Litigation Section, Canadian Bar Association (2017-2018)
- ◆ Communications Officer, National Civil Litigation Section, Canadian Bar Association (2016-2017)
- ◆ Skills Instructor, The Advocates' Society (2015 to present)
- ◆ Member, Research Ethics Board, Mount Sinai Hospital (2014-2019)
- ◆ Executive Member, National Civil Litigation Section, Canadian Bar Association (2014-2015)
- ◆ Partner, Lerners LLP (2011)
- ◆ Associate, Lerners LLP (2007-2011)
- ◆ Judicial Clerk to The Honourable Allan Lutfy, Chief Justice of the Federal Court (Ottawa) (2005-2006)

### NOTEWORTHY CASES

- ◆ *Murphy v. Savoie* (2019, C.A.) – Stuart acted for the plaintiff in successfully opposing the defendant insurer's appeal from a motion decision which found the plaintiff to be an insured under the OPCF 44R family protection endorsement to her spouse's employer's auto insurance policy, arising from a pedestrian knock-down accident.
- ◆ *Martin v. City of Barrie* (2018, C.A.) – Stuart successfully represented the City on this appeal from a trial judgment dismissing the action against the City. The plaintiff alleged a breach of the *Occupiers' Liability Act* arising from an injury sustained on a snow slide at the City's annual "Winterfest" event. The Court of Appeal agreed with the trial judge that the City met the standard which was one of reasonableness, not perfection.
- ◆ *Smith v. Attorney General (Ontario) et al.* (2019, C.A.): Stuart represented the Durham Regional Police on this appeal, with leave, from a decision of the Divisional Court which reversed a motion decision refusing to strike the police crossclaim against the co-defendant Crown Attorneys. The case arose from a complex murder investigation and raised the novel issue of whether an investigating police force can claim indemnity from Crown Attorneys who provided legal advice with respect to the conduct of the investigation.
- ◆ *Farley v. Ottawa Police Services Board* (2017, C.A.): Stuart successfully represented the Ottawa Police on this appeal by the plaintiff, against whom Stuart had acted for the Ottawa Police in obtaining summary judgment. The court affirmed the granting of summary judgment based on determinations made in the underlying criminal proceedings, principally the Court of Appeal's order for a second trial – which meant that a reasonable, properly instructed jury could find guilt beyond a reasonable doubt. The plaintiff's application for leave to appeal to the Supreme Court of Canada was dismissed.
- ◆ *Azzeh v. Legendre* (2017, C.A.): Stuart successfully represented the City of Greater Sudbury on this appeal from a motion adding it as a defendant. The court reversed the motion decision and held that the proposed claim against the City was barred by the 10 day notice period in the *Municipal Act*. The court also provided helpful guidance on the application of the *Limitations Act* where a litigation guardian is involved. The co-defendant's application for leave to appeal to the Supreme Court of Canada was dismissed.

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- ◆ *R. v. Bingley* (2017, S.C.C.): Stuart acted for the intervener, Canadian Civil Liberties Association, in an appeal regarding the *Criminal Code* provisions with respect to evaluation of drug impaired driving.
- ◆ *Baum ats Brown* (2016, C.A.): Stuart acted for the appellant from a motion for summary judgment, on an appeal which clarified s. 5(1)(a)(iv) of the *Limitations Act, 2002*.
- ◆ *Pickering ats Rausch* (2013, C.A.): Stuart acted for the successful defendant in obtaining leave to appeal to the Court of Appeal, arising from a Rule 21 motion dealing with the scope of a municipality's duty of care in the context of by-law enforcement.
- ◆ *Barrie ats McHardy* (2012, S.C.J.): Stuart acted for the successful defendant in obtaining leave to appeal to the Divisional Court, arising from a motion for summary judgment based on a statutory bar contained in the *Municipal Act*.
- ◆ *Durham Regional Police ats Mohamed et al.* (2011, S.C.J.): Stuart acted for the successful defendants, on an appeal from a Master's order which dismissed the plaintiffs' motion for production of any complaint and discipline records. The Master's decision was upheld and also found to be correct based on a subsequent decision of the Divisional Court.
- ◆ *Vaidyanathan ats Leek et al.* (2011, C.A.): Stuart acted for the successful appellant, on an appeal which examined the applicability of Rule 21 to a pre-trial consideration of the duty to mitigate damages.
- ◆ *Caston ats Alves* (2010, C.A.): Stuart acted for the successful respondent, on an appeal which affirmed the enforcement of a settlement which included a provision that the opposing party sign a Release.
- ◆ *Darnley et al. ats Alexis* (2009, C.A.): Stuart acted for the successful respondent/intervenor, on an appeal which clarified that the Limitations Act, 2002 applies to claims for damages under the Canadian Charter of Rights and Freedoms. The appellant's application for leave to appeal to the Supreme Court of Canada was dismissed.

## ACHIEVEMENTS

- ◆ Recognized in the Canadian Legal Lexpert Directory for Medical Negligence (2022-2023)
- ◆ Selected by peers for inclusion in "Best Lawyers™ in Canada" for Health Care Law (2018-2023), Insurance Law (2021-2023), Medical Negligence (2021-2023), and Professional Malpractice Law (2022-2023)
- ◆ Certified as a Specialist in Civil Litigation by the Law Society of Ontario
- ◆ Named by Lexpert in its 2014 Guide to the Leading U.S./Canada Cross-border Litigation Lawyers in Canada as a "Litigation Lawyer to Watch"
- ◆ In 2012, Stuart was the recipient of the Richard B. Lindsay QC Exceptional Young Lawyer Award. This award is given annually to one member of Canadian Defence Lawyers of up to 10 years at the bar.

## SELECTED PRESENTATIONS/PUBLICATIONS

- ◆ Presenter, "Medical-Legal Risks of Residency", University of Toronto Faculty of Medicine, April 4, 2023
- ◆ Presenter, "Defending Sexual Abuse Claims: An Overview", Society of Public Insurance Administrators of Ontario (SPIAO), December 2, 2022
- ◆ Presenter, "Transition to Residency: Medical-Legal Issues", University of Toronto Faculty of Medicine, February 25, 2022
- ◆ Presenter, "4th Annual Update on Civil Litigation", Canadian Bar Association Law Series, September 15, 2021
- ◆ Presenter, "Transition to Residency: Medical-Legal Issues", University of Toronto Faculty of Medicine, March 3, 2021
- ◆ Presenter, "Update on Key Civil Litigation Cases Across Canada", Canadian Bar Association Law Series, September 15, 2020
- ◆ Presenter, "Transition to Residency: Medical-Legal Issues", University of Toronto Faculty of Medicine, January 8, 2020
- ◆ Presenter, "Annual Update: Key Civil Litigation Cases in Canada", Canadian Bar Association Webinar Series, September 24, 2019
- ◆ Presenter, "Waiver of Solicitor-Client Privilege: Tips and Traps", The Canadian Bar Association, April 30, 2019
- ◆ Presenter, "This Year's Need-to-Know Government Liability Cases", the Canadian Institute's 25th Annual Provincial/Municipal Government Liability Conference, April 2, 2019
- ◆ Presenter, "Transition to Residency: Medical-Legal Issues", University of Toronto Faculty of Medicine, January 9, 2019
- ◆ Co-Presenter, "Update on Key Civil Litigation Cases Across Canada", Canadian Bar Association Webinar Series, November 8, 2018
- ◆ Presenter, "Transition to Residency: Medical-Legal Issues", University of Toronto Faculty of Medicine, January 11, 2018
- ◆ Panelist, "Mastering Winning Discovery Techniques", The Advocates' Society, October 30, 2017
- ◆ Presenter, "Police Liability", Society of Public Insurance Administrators of Ontario (SPIAO), September 22, 2017
- ◆ Co-author with C. Kirk Boggs, "*Hill v. Hamilton-Wentworth Regional Police Services Board: A Review of the Tort of Negligent Police Investigation 10 Years Later*", Municipal Liability Risk Management, May 2017 ([Read article](#))
- ◆ Presenter, "The Civil Ramifications of Negligent Investigations", Kingston, April 4, 2017
- ◆ Presenter, "Transition to Residency: Medical-Legal Issues", University of Toronto Faculty of Medicine, January 11, 2017
- ◆ Presenter, "Representing Police Services Boards", The Canadian Institute's Law of Policing Conference, June 16, 2016
- ◆ Co-Presenter, "Civil Appeals: An Overview of Issues, Procedure and Ethics", Continuing Professional Development session held in Windsor, Ontario,

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June 20, 2016

- ◆ Presenter, "Waiving Solicitor-Client Privilege: Tips and Traps", Canadian Bar Association Webinar Series, September 8, 2015
- ◆ Presenter, "Expert Evidence: An Overview", Ontario Association of Landscape Architects, January 20, 2012
- ◆ "The uncertain boundary between complaints and lawsuits against police", Lawyers Weekly — Focus on Civil Litigation, May 27, 2011 ([Read online](#))
- ◆ Legal tutor — Informed Consent, University of Toronto Faculty of Medicine, 2009 — present
- ◆ Co-author with C. Kirk Boggs, "Demonstrative Evidence: Basic Guidelines for its Proper and Effective Use", presented at the Canadian Institute's Personal Injury Settlements conference, January 25, 2010
- ◆ "Conflicting decisions create confusion over Charter damages", Lawyers Weekly — Focus on Constitutional Law, April 16, 2010 ([Read online](#))
- ◆ Co-author with Jasmine Akbarali, "Limitation periods curb delay — not rights", Lawyers Weekly — Focus on Civil Litigation, September 3, 2010 ([Read online](#))

## MEMBERSHIPS

- ◆ Law Society of Ontario
- ◆ Canadian Bar Association
- ◆ The Advocates' Society

## EDUCATION

- ◆ Admitted to Ontario Bar (2005)
- ◆ Bachelor of Laws, University of Manitoba (2004)
- ◆ Bachelor of Arts, University of Manitoba (2001)

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