

# ELIZABETH GRACE

*Insurance Defence*

**PARTNER**

*"Defending not-for-profit and public agencies means understanding the challenging mandates and giving a voice to their frontline workers and managers who deliver important services. Without these agencies and their staff, society would be a poorer place. It is an honour to be able to provide them with legal support and representation."*

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## PROFESSIONAL EXPERIENCE

- ◆ Partner, Lernalers LLP (2001 to present)
- ◆ Associate lawyer, Lernalers LLP (1995-2001)
- ◆ Clerk to former Chief Justice of Canada, Antonio Lamer, Supreme Court of Canada, Ottawa (1993-1994)
- ◆ Summer Student, Advocacy Resource Centre for the Handicapped (ARCH), Toronto (1993)
- ◆ Summer Student, Attorney General for Ontario, Constitutional Division, Toronto (1992)
- ◆ Summer Student, Blake, Cassels & Graydon, Toronto (1991)
- ◆ Research Assistant to professors at Queen's University and Simon Fraser University (1986-1990)

## REPRESENTATIVE WORK

- ◆ Elizabeth is a partner of Lernalers LLP who has practiced civil litigation since being called to the bar in 1995. Her work focuses on claims arising out of sexual and physical abuse. Her experience also extends to discrimination and harassment claims, professional negligence, health and employment-related matters, and commercial disputes. She has acted in a number of significant cases, including the public inquiry into water safety in Walkerton, Ontario on behalf of the Medical Officer of Health.
- ◆ Elizabeth has experience litigating on behalf of corporations (large and small), insurers, governments, First Nations, public entities such as school boards and children's aid societies, and educational facilities. She has represented clients before the Ontario Superior Court of Justice and Court of Appeal, the Federal Court, the Supreme Court of Canada, commissions of inquiry, coroner's inquests and various administrative tribunals, including the Human Rights Tribunal of Ontario.

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## NOTEWORTHY CASES

- ◆ *C.O. v. Williamson*, 2020 ONSC 6793 – secured Mareva injunction against judgment debtor defendant on behalf of plaintiff
- ◆ *C.O. v. Williamson and Trillium Lakelands District School Board*, 2020 ONSC 3874 (CanLII) – historical sexual abuse trial on behalf of plaintiff against school board based on its high school music teacher’s sexual assaults and its inadequate post-assault response to disclosure
- ◆ *Lavelle v. The Hospital for Sick Children et al.*, 2019 ONSC 5855 – health-related litigation on behalf of multiple physicians
- ◆ *Larman v Mount Sinai Hospital*, 2014 ONCA 923, affirming 24 April 2014, Toronto CV-09-375484 (Ont S.C.J.) – appeal upholding summary judgment in medical negligence case
- ◆ *Rosenthal v. Rosenthal*, 2014 ONSC 317 – historical sexual abuse trial, served as amicus curiae (ie. “friend of the court”)
- ◆ *Turner v. Ma*, 2012 ONSC 71 – medical negligence trial involving physician and nursing care
- ◆ *Pakarian v. Chen et al*, 2012 HRTO 156 (and other related decisions) – human rights application involving numerous proceedings
- ◆ *Bajouco v. McMaster*, 2011 HRTO 569 (CanLII) – human rights application against a psychiatrist who performed an IME
- ◆ *Urie v. Peterborough Regional Health Centre et al*, 2010 ONSC 4226 - health-related litigation on behalf of multiple physicians
- ◆ *Kramarz v. KMH Cardiology & Diagnostic Centres*, [2007] O.J. No. 3258 (S.C.J.) – health-related litigation on behalf of physician
- ◆ Actions by multiple plaintiffs against the Anglican Church of Canada and Scouts Canada, between years 2005 to 2014 – sexual abuse litigation on behalf of numerous First Nation plaintiffs
- ◆ *N.G. v. Upper Canada College*, [2004] O.J. No. 1202 (C.A.) and [2003] O.J. No. 5183 (S.C.J.) – sexual assault/abuse litigation against private school on behalf of plaintiff
- ◆ *K.L.B. v. British Columbia*, 2003 SCC 51; *E.D.G. v. Hammer*, 2003 SCC 52; and, *M.B. v. British Columbia*, 2003 SCC 53 – abuse litigation on behalf of intervener, Nishnawbe Aski Nation
- ◆ *Walkerton Inquiry* (2000-2001) – public inquiry on behalf of Medical Officer of Health and public health unit administrator
- ◆ *Drabinsky v. KPMG* (1998-2003) – professional liability litigation on behalf of the accounting firm
- ◆ *Stevens v. Canada* (1998) – appeals in Federal Court of Appeal
- ◆ *Sears Canada v. Davis Inquest* (coroner of) (1997), 201 O.A.C. 60 (Div. Ct.) – judicial review of coroner’s ruling
- ◆ Chippewas of Sarnia Band v. AG of Canada et al. (various decisions at all levels of court, between 1996-2000) – aboriginal rights/class action litigation on behalf of First Nation)

## ACHIEVEMENTS

- ◆ Selected by her peers for inclusion in The Best Lawyers in Canada for Personal Injury Litigation, Health Care Law, Medical Negligence, Administrative and Public Law and Professional Malpractice Law (2016 - 2021)
- ◆ Recognized as one of Canada’s Top 25 Most Influential Lawyers for her commitment to advocating on behalf of victims of sexual abuse, Canadian Lawyer Magazine, 2014
- ◆ Recipient of the Women’s Law Association of Ontario President’s Award, June 2014

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- ◆ Recipient of Lexpert Zenith Award for Leading Women Lawyers, 2013
- ◆ Frequently consulted by news media, including CBC News (Radio, Television and online), Toronto Star, Globe and Mail, Toronto Sun, Hamilton's CHCH Television News, The Motts radio show, Maclean's Magazine, Aboriginal Peoples Television Network (APTN)
- ◆ Frequently consulted by law media, including Law Times, The Lawyers Weekly, The Lawyer's Daily, Canadian Lawyer Magazine
- ◆ Interviewed for Chatelaine Magazine article "Judgment call", October 1998
- ◆ While studying for her Bachelor of Laws degree at Osgoode Hall Law School, Elizabeth received numerous academic awards, including in 1993 the Bronze Medal and the J.S.D. Tory Research and Writing Award. Before attending law school, she was awarded the Commonwealth Scholarship to complete post-graduate work in Development Studies in the United Kingdom (1987-1989), as well as numerous other scholarships and prizes through her undergraduate and graduate studies.

## SELECTED PRESENTATIONS/PUBLICATIONS

### Publications (several cited by Canadian courts, including the Ontario and Alberta Courts of Appeal)

- ◆ "[Criminal v. Civil: How the Criminal Process Can Impact a Parallel Civil Process](#)", For the Defence, Criminal Lawyers Association Newsletter, Vol. 38, No. 2 – July 2017, 18-24
- ◆ Co-author, "School's still out on vicarious liability", The Lawyers Weekly, June 21, 2013
- ◆ "How distinct limitations apply to assault claims", The Lawyers Weekly, February 4, 2011
- ◆ "Trend develops for higher sexual abuse non-pecuniary awards", The Lawyers Weekly, February, 2010
- ◆ "Judging Cause and Effect: Challenges and Trends in Assessing Damages in Sexual Abuse Cases", in Law Society of Upper Canada Special Lectures 2005: The Modern Law of Damages (Irwin Law, 2006)
- ◆ Co-author, "Pathways to Justice for Residential School Claimants: Is the Civil Justice System Working?", ch. 5 in Aboriginal Rights Litigation, eds. J.E. Magnet and D.A. Dorey (Butterworths, 2003)
- ◆ Co-author, *Civil Liability for Sexual Abuse and Violence in Canada* (Butterworths, 2000) (this book has been quoted by courts across the country, including Ontario's Court of Appeal)
- ◆ "Case Comment: *R. v. Mills* - Production of Health Records in Criminal Sexual Abuse Cases" (1999-2000) 1:3 Journal of Women's Health and Law 279
- ◆ "Compelled Production from Third Parties of Health Records in Sexual Abuse Cases: Legal Principals and Procedures and Guidelines for Health Care Providers" (1999-00) 1:1 Journal of Women's Health and Law 59
- ◆ Co-author, "Vesting Mothers with Power They Do Not Have: The Non-Offending Parent in Civil Sexual Assault Cases" (1994) 7:1 Canadian Journal of Women and the Law 184
- ◆ "Professional Misconduct or Moral Pronouncement: A Study of 'Contentious' Teacher Behaviour in Quebec" (1993) 5:1 Education and Law Journal 99

### Presentations

- ◆ Speaker on panel "Institutional Liability: Where We Are and What's Ahead", at Civil Sexual Assault: Critical and Emerging Issues, Osgoode Professional Development Program, February 25, 2021 (virtual)
- ◆ Presenter on panel re: merits/demerits of 'soft' vs 'hard' openings by counsel, at the Osgoode Dispute Resolution LLM – Mediation Advocacy course, led by Justice Todd Archibald and Frank Gomberg, February 2, 2021 (virtual)
- ◆ Speaker, "Civil Sexual Assault Claims - Developing a Robust, Efficient and Fair Claims Process", 25th Annual Provincial/Municipal Government Liability Conference, The Canadian Institute, April 2, 2019
- ◆ Co-Chair of Osgoode Professional Development Program on Current and Emerging Issues in Civil Sexual Assault, February 26, 2018

- ◆ Speaker on “Civil Liability for Sexual Abuse: A Means of Achieving Accountability in the Campus Context?”, National Conference on Campus Sexual Assault for Higher Education Administrators, Ryley Conferences Group, Toronto, December 8, 2017
- ◆ Speaker at The Osgoode Short Course in Mediation Advocacy on "Advocacy Choices Assessed", Toronto, December 2013, September 2014 and February 2017
- ◆ Presenter at The Osgoode Civil Sexual Assault Webinar Series: “The Guide to Bringing/Defending Civil Sexual Assault Claims” on February 10, 2015
- ◆ Speaker at the Toronto Interactive Anaesthesia 2013 Conference, Toronto, November 30-December 1, 2013
- ◆ Invited by Crown Law Office – Civil, Ministry of the Attorney General of Ontario, to speak at the plenary session on ethics at its annual summer conference, where topic was “Ethical Challenges in Representing (and Opposing) Vulnerable Clients”, July 11, 2012, Hamilton, Ontario.
- ◆ Regular speaker at The Canadian Institute’s semi-annual conferences on Institutional Liability for Sexual Assault, Abuse and Harassment, Toronto (1999 to 2010)
- ◆ Speaker at National Judicial Institute’s Supreme Court of British Columbia Education Seminar, on Equality Rights and Assessment of Damages in Personal Injury Cases, Victoria, May 22, 2008
- ◆ Speaker at Ontario Victim Services Secretariat, Crown Training Conference on Issues Related to Violence Against Women, “Redress for Abuse Victims Through the Civil Courts: Disclosure and Production Issues that Arise when there are Criminal Proceedings”, Toronto, March 6, 2008
- ◆ Speaker at Law Society of Upper Canada’s “Special Lectures 2005: The Modern Law of Damages”, Toronto, April 20-21, 2005
- ◆ Speaker at the Sex Crimes Crown School held every summer in London, Ontario (2002 to 2005)
- ◆ Speaker at Health Law Forum/HIROC’s “Meeting the Standard of Care: Challenging Issues in Patient Safety” conference, where delivered paper “Vicarious Liability for Intentional Wrongdoing in the Health Care Context”, Toronto, May 29, 2001
- ◆ Delivered paper on “The Assertion of Aboriginal and Treaty Rights in the Chippewas of Sarnia Litigation”, Pacific Business & Law Institute, Vancouver (2001)
- ◆ Speaker at Canadian Psychoanalytic Society & The International Psychoanalytic Association’s “Confidentiality & Society: Psychotherapy, Ethics and the Law” conference, where delivered paper “Compelled Production of Health Records in Civil and Criminal Sexual Assault Proceedings”, Montreal, October 13-15, 2000
- ◆ Case Comment: R. v. Mills - Production of Health Records in Criminal Sexual Abuse Cases (1999-2000), 1:3 Journal of Women’s Health and Law 279
- ◆ Compelled Production from Third Parties of Health Records in Sexual Abuse Cases: Legal Principles and Procedures and Guidelines for Health Care Providers, (1999-00) 1:1 Journal of Women’s Health and Law 59
- ◆ Speaker at Osgoode Hall Law School’s Continuing Legal Education/Professional Development Program’s “Confidentiality and Access to Health Care Information” conference, where delivered paper “Access to Victims’ Records in Sexual Assault Proceedings”, Toronto, September 23-24, 1999
- ◆ Speaker at various other conferences relating to sexual abuse litigation and the compelled production of confidential third party (including medical) records in criminal and civil proceedings

## MEMBERSHIPS AND COMMUNITY WORK

- ◆ Law Commission of Ontario, Board of Governors, Member-at-large and Project Committee Member, June 1, 2018 to May 30, 2021 appointment term
- ◆ Member of Advisory Committee to CCLISAR (Canadian Centre for Legal Innovation in Sexual Assault Response), effective January 2020 – non-profit, non-partisan organization devoted to improving understanding and responses to sexualized violence

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- ◆ Member of Cross-Canada Legal Advisory Team to “Rosa”, effective January 2020 – digital platform for those experiencing workplace sexual harassment
- ◆ Invited panellist for #AfterMeToo Civil Roundtable, filmed at Globe and Mail Toronto head office, December 5, 2017
- ◆ Invited member of working group that drafted the *Guide for the Provision of Legal Services in Cases Involving Claims of Sexual Abuse*. This guide was approved by the Equity and Aboriginal Issues Committee of the Law Society of Upper Canada and then formally adopted by Convocation on January 26, 2012, and is available on the Law Society’s website at <http://rc.lsuc.on.ca/jsp/equity/index.jsp>
- ◆ Ontario Bar Association’s Working Group on McMurtry Victim Compensation Review, representing OBA’s Feminist Legal Analysis (FLAC) Section, 2008
- ◆ Ontario Bar Association’s Health Law, Aboriginal Law and Feminist Legal Analysis Sections
- ◆ National Association of Women and the Law (NAWL), including Board of Directors (1995 to 2000)

## EDUCATION

- ◆ Admitted to Ontario Bar (1995)
- ◆ Bachelor of Laws, Osgoode Hall Law School, York University (1993)
- ◆ Master of Philosophy, University of Sussex, England (1989)
- ◆ Bachelor of Arts (Honours), Queen’s University (1987)

## PERSONAL INFORMATION

- ◆ In her leisure time, Elizabeth enjoys spending time with her family and collecting contemporary Canadian art, canoeing, reading, music, theatre and film.