

STUART ZACHARIAS

Specialty Risk and Insurance

PARTNER

"Justice is not a one-sided process."

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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)

AREAS OF FOCUS

- ◆ Police Liability
- ◆ Institutional Sexual Abuse Claims
- ◆ Building Code Claims
- ◆ Municipal Road Liability
- ◆ Serious Personal Injury Claims
- ◆ Policy Interpretation / Coverage

NOTEWORTHY CASES

- ◆ *Breen v. Lake of Bays* (2021, S.C.J.; 2022, C.A.): Stuart represented the defendant municipality at trial in an action alleging negligent issuance of a building permit and negligent building inspection of a 5,000 square foot cottage which was constructed between 1989 and 1991. The trial judge allowed the action in part, finding that the municipality was liable for certain alleged Building Code deficiencies, but not others. Stuart assisted with the appeal, on the primary issue of whether the municipality had discretion on which inspections to conduct given that the Building Code Act of the day did not explicitly mandate inspections (as distinct from the subsequent legislation). While not going so far as to say a municipality necessarily had to conduct each and every potential inspection enumerated in the Building Code, the court held that in this case a final inspection was required by the "overall purpose" of the legislation existing at the time. However, the court reversed the trial judge's findings of liability for certain non-Code compliant features of the cottage, holding that the test for liability is not merely that there is non-compliance with the Code; rather, it has to be shown that a reasonable building inspector would have noticed the issue. The court also held that municipalities are not liable for issues caused by poor workmanship or poor maintenance by the owner, as distinct from derogations from the Code that a reasonable building inspector should have noticed.
- ◆ *Decision No. 960/21* (2021, ONWSIAT): Stuart successfully represented the applicant First Nation on an application under s. 31 of the Workplace

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Safety and Insurance Act, resulting in a determination that the plaintiff's lawsuit against the First Nation was statute-barred as the plaintiff was a worker in the course of her employment when the subject incident occurred.

- ◆ *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.
- ◆ *City of Pickering ats Rausch* (2017, S.C.J.): Stuart successfully defended the municipality at trial in an action alleging that negligent enforcement of a by-law caused the plaintiff to kill a number of wild boars on her property resulting in economic loss of approximately \$2 million. The plaintiff also alleged malicious prosecution in connection with a charge under the by-law. All claims were dismissed and the court expressed significant difficulty with the plaintiff's credibility.
- ◆ *Ottawa Police ats Farley* (2016, S.C.J.): Stuart acted for the Ottawa Police Services Board in successfully obtaining summary judgment dismissing the plaintiff's claim. After a jury convicted the plaintiff of first degree murder, he appealed and the Court of Appeal ordered a new trial based on a technical error in the trial judge's charge to the jury. Following his acquittal at the second trial, the plaintiff sued the police for malicious prosecution, negligent investigation and alleged breach of Charter rights. Summary judgment was granted, however, based on determinations 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.
- ◆ *Barrie ats Martin* (2016, S.C.J.): Stuart successfully defended the City of Barrie at trial in a claim arising from an alleged injury on a snow slide at the City's "Winterfest" event. The court held that there was no breach of the Occupiers' Liability Act.
- ◆ *DRPS ats Smith* (2016, S.C.J.): Stuart acted for the Durham Regional Police in successfully opposing the co-defendant Crown's motion to strike the crossclaim, which advanced a novel claim for indemnity based on legal advice provided to the police during the course of an alleged "Mr. Big" investigation conducted in 2009 regarding a murder in 1974.
- ◆ *Martin v. Attard Plumbing Ltd.* (2015, S.C.J.): Stuart acted for the plaintiff in obtaining partial summary judgment in a subrogated action arising from water damage, wherein the court held that there was an implied warranty of fitness of the part installed by the defendant contractor.
- ◆ *Gore Mutual Insurance Company ats Imola* (2014, S.C.J.): Stuart acted for the successful insurer in opposing an application for a declaration that it owed a duty to defend, in a matter where coverage had previously been denied on the ground, amongst others, of the exclusion for intentional or criminal acts.
- ◆ *Brant ats Demets* (2013, S.C.J.): Stuart acted for the successful defendant in obtaining summary judgment declaring that both the third party insurer and a co-defendant owed a duty to defend the plaintiff's claim.
- ◆ *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*.
- ◆ *Gore Mutual Insurance Company ats Hayward* (2011, S.C.J.): Stuart was the trial lawyer for the defendant insurer in an action arising from a denial of coverage following a fire loss.
- ◆ *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.
- ◆ *Durham Police ats Murphy* (2011, S.C.J.): Stuart acted for the successful defendants in opposing a motion to amend a claim on the ground that the proposed allegations were statute-barred.
- ◆ *Sault Ste. Marie Police ats Charette* (2011, S.C.J.): Stuart acted for the successful defendants in opposing a motion to withdraw admissions and for partial summary judgment.
- ◆ *Brant ats Mannen* (2011, S.C.J.): Stuart acted for the successful third party in obtaining summary judgment dismissing the third party claim as statute-barred.
- ◆ *Timmins ats Rekela-Morrish* (2011, S.C.J.): Stuart was the trial lawyer for the City of Timmins in successfully defending a claim of alleged roadway non-repair.
- ◆ *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.
- ◆ *Barrie Police ats Bilotta* (2010, S.C.J.): Stuart acted for the successful defendants on a motion to strike improper allegations against the Police Services Board.
- ◆ *Scugog ats Deering* (2010, S.C.J.): Stuart was part of the defence team at the multi-week liability trial of multiple actions against the municipalities alleging roadway non-repair in the context of a serious motor vehicle accident, resulting in a split liability decision.
- ◆ *Brantford ats Herbert* (2010, S.C.J.): Stuart was part of the defence team at the multi-week liability trial of an action arising from a serious cycling accident on a recreational trail, resulting in a split liability decision.

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

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- ◆ 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, "Defending Sexual Abuse Claims: An Overview", Society of Public Insurance Administrators of Ontario (SPIAO), December 2, 2022
- ◆ Presenter, "4th Annual Update on Civil Litigation", Canadian Bar Association Law Series, September 15, 2021
- ◆ Presenter, "Update on Key Civil Litigation Cases Across Canada", Canadian Bar Association Law Series, September 15, 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
- ◆ Co-Presenter, "Update on Key Civil Litigation Cases Across Canada", Canadian Bar Association Webinar Series, November 8, 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, "Update and Overview: Key Cases From the Past Year and Upcoming Legal Trends", The Canadian Institute's Provincial Municipal Government Liability Conference, February 7, 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, June 20, 2016
- ◆ Presenter, "Sharing the Road: Use of Bicycles and ATVs", The Canadian Institute's Provincial/Municipal Government Liability Conference, January 28, 2016
- ◆ Presenter, "Waiving Solicitor-Client Privilege: Tips and Traps", Canadian Bar Association Webinar Series, September 8, 2015
- ◆ Presenter, "Legal claims A to Z: preparing the case and working with counsel from initial notice through trial", Ontario Municipal Insurance Exchange (OMEX), March 21, 2014
- ◆ Presenter, "Minimum Maintenance Standards under the Municipal Act" from a defence perspective, The Canadian Institute's Provincial Municipal Government Liability Conference, February 27, 2014
- ◆ Presenter, "Minimizing Risk Arising from Aging Infrastructure", Society of Public Insurance Administrators of Ontario (SPIAO), September 27, 2013
- ◆ Presenter, "Battle of the Forms: An overview regarding authorizations to conduct independent medical examinations", Canadian Defence Lawyers Annual Accident Benefit Symposium, April 25, 2013 ([Read paper](#))
- ◆ Presenter, "Expert Evidence: An Overview", Ontario Association of Landscape Architects, January 20, 2012
- ◆ Co-author with C. Kirk Boggs, "Trails and Tribulations: Liability Exposure in the Recreational Realm", presented at the Federated Press Provincial and Municipal Liability Conference, May 30, 2011 ([Read article](#))
- ◆ "The uncertain boundary between complaints and lawsuits against police", Lawyers Weekly – Focus on Civil Litigation, May 27, 2011. ([Read article](#))
- ◆ 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 article](#))
- ◆ Co-author with Jasmine Akbarali, "Limitation periods curb delay – not rights", Lawyers Weekly – Focus on Civil Litigation, September 3, 2010. ([Read article](#))

MEMBERSHIPS

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

EDUCATION

LEARNERS

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

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