

The 6th Annual National Forum Administrative Law & Practice

This essential annual update, from the developers of the part-time LLM in Administrative Law, will give you all the latest developments in administrative law, along with thought-provoking discussion of key issues, including:

- New Supreme Court pronouncements on tribunals' relationship with the *Charter*
- Tribunal governance and accountability
- Procedural fairness in discretionary decision-making
- Procedural issues in public inquiries
- Crafting effective accountability regimes
- Recent developments in aboriginal administrative law
- Self-represented litigants and access to administrative justice
- Advocacy before tribunals
- Consistency in administrative decision-making

Special Guest Speaker

Jennifer Stoddart, Privacy Commissioner of Canada

Chairs

Lorne Sossin, Dean, Osgoode Hall Law School

Michael H. Morris, General Counsel, Public Law, Department of Justice Canada



DATES & TIME

October 18 - 19, 2010

9:00 a.m. - 4:45 p.m. EDT/EST

LOCATION

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

Webcast
Available



The 6th Annual National Forum Administrative Law & Practice

Are you on top of all the important changes in administrative law?

The field of administrative law is complex and diverse, constantly evolving in many directions. It's difficult to stay on top of the many important changes. But as an administrative law lawyer, tribunal counsel, or a lawyer advising the crown in any public law capacity, you know you can't give the best advice unless you are current on the latest developments.

Osgoode's annual **Administrative Law** program has become an important touchstone for many who work in the public law arena. You will get expert advice and guidance from the leading practitioners, adjudicators, academics, and judges on such issues as the latest pronouncements from the Supreme Court of Canada on tribunals' relationship with the *Charter*; new legislation on tribunal governance and accountability, developments in Aboriginal administrative law, tips on administrative advocacy, and much, much more.

No matter how public and administrative law impacts your practice or your duties as a decision-maker, you won't want to miss this opportunity to hear from the most distinguished gathering of experts in the field.

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chairs

Lorne Sossin, Dean
Osgoode Hall Law School

Michael H. Morris, General Counsel
Public Law, Department of Justice Canada

Faculty

The Hon. Justice Deena F. Baltman
Ontario Superior Court of Justice

Robert A. Centa, Paliare Roland Rosenberg
Rothstein LLP

Joseph K. Cheng, Counsel, Department of
Justice Canada

Doug Ewart, Senior Advisor, Administrative
Justice Reform Project, Environment and Land Tribunals
Ontario

Soraya Farha, Vice-Chair, Health Services Appeal
and Review Board and Member, Health Professions
Appeal and Review Board

Linda L. Gehrke, Lobbyist Registrar, City of Toronto

Avvy Go, Clinic Director, Metro Toronto Chinese
& Southeast Asian Legal Clinic

Michael Gottheil, Executive Chair, Environment and Land
Tribunals Ontario

Brian Gover, Stockwoods LLP Barristers

Laverne Jacobs, University of Windsor Law School

Katherine Laird, Executive Director, Human Rights Legal
Support Centre

Linda Lamoureux, Chair, Health Professions Appeal
and Review Board

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP

Nicholas McHaffie, Stikeman Elliott LLP (Ottawa)

Leslie M. McIntosh, General Counsel, Crown Law
Office – Civil, Ministry of the Attorney General Ontario

Lynn Morrison, Integrity Commissioner, Ontario

Jessica Orkin, Marlys Edwardh Professional Corporation

Chris G. Paliare, Paliare Roland Rosenberg
Rothstein LLP

Arthur Pape, Pape Salter Teillet Barristers & Solicitors

Andrew Pinto, Pinto Wray James LLP

Peter Ruby, Goodmans LLP

Karen E. Shepherd, Commissioner of Lobbying, Canada

Jennifer Stoddart, Privacy Commissioner of Canada

Lorne Waldman, Lorne Waldman & Associates

Kerry Wilkins, Counsel, Ministry of the Attorney
General, Ontario

Gus Van Harten, Osgoode Hall Law School

Gary Yee, Chair, Ontario Social Benefits Tribunal

Joaquin Zuckerberg, Counsel
Consent and Capacity Board

Agenda

Day One: Monday, October 18, 2010

8:15 Registration and Continental Breakfast

9:00 Welcome and Introduction from the Chairs

9:05 The Year in Review: Key Recent Developments in Administrative Law

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP

A succinct overview of key administrative law cases from the past year, giving context to the ongoing flow of jurisprudence. The session will also highlight potential issues to watch, and will provide an introduction to many issues taken up in more detail in later presentations.

9:50 The Limits of Federal Court Jurisdiction: The Final Chapter?

Nicholas McHaffie, Stikeman Elliott LLP (Ottawa)

Joseph K. Cheng, Counsel, Department of Justice Canada

Peter Ruby, Goodmans LLP

Moderator

Michael H. Morris, General Counsel, Public Law Department of Justice Canada

With the Supreme Court poised to rule on the pivotal *Telezone* series of cases, public law counsel and civil litigators may hope for some certainty and direction on the correct scope of the Federal Court's jurisdiction and the ability to bring civil actions arising from crown decisions or actions. This panel will update you and explore the implication of the Supreme Court rulings.

Note: In the event the SCC decisions are not released by the program date, an alternate topic and panel will be presented in this time slot.

- The history of the conflict: *Grenier, Telezone, Manuge*
- What factors have historically governed whether an action can be brought and where judicial review is the required procedure?
- The SCC decision in the *Telezone* cases: making sense of the judgment, and how it will affect future proceedings
- What, if any, questions are left unanswered by the court's rulings?

11:00 Refreshment Break

11:15 Tribunal Governance and Accountability: Ontario's New Legislation

Laverne Jacobs, University of Windsor Law School

Gary Yee, Chair, Ontario Social Benefits Tribunal

Andrew Pinto, Pinto Wray James LLP

Moderator

Doug Ewart, Senior Advisor, Administrative Justice Reform Project, Environment and Land Tribunals Ontario

Ontario has passed legislation introducing some significant new parameters for such issues as tribunal governance,

tribunal policy making, and the appointment process. This legislation provides an interesting case study from which to examine many perennial questions about how administrative bodies can best be held accountable while maintaining independence.

- Highlights and overview of the significant changes in Ontario by the *Adjudicative Tribunals Accountability, Governance and Appointments Act*
- Viewing the Ontario legislation in a broader context: how well does it fit with the goals of administrative justice?
- The tribunal appointment process – accountability, merit, and control
- The consequences of increased public scrutiny of tribunal governance
- How much power do tribunals have under the new regime?
- Do tribunals have both sufficient power and guidance to meet accountability demands?
- Examining the government's own accountability to tribunals
- Communications strategies for tribunals
- Building stakeholder relationships
- Examining the precise relationship between transparency, accountability, and independence
- The pros and cons of tribunal clustering

12:30 Networking Luncheon

1:30 Procedural Fairness in Discretionary Decisions

Leslie M. McIntosh, General Counsel, Crown Law Office – Civil, Ministry of the Attorney General Ontario

Lorne Waldman, Lorne Waldman & Associates

Lorne Waldman, Lorne Waldman & Associates

- The Ont CA decision in *Mavi* (leave to SCC granted) and its implications
- When does the use of permissive language in legislation give rise to discretion?
- Defining political discretion: drawing the line between administrative decision making and executive action
- To what extent do dictates of procedural fairness apply to discretionary decisions?
- Review of discretionary decisions – how much deference is appropriate?
- Comparison of the courts' approach to different types of discretionary decisions – what we can surmise

2:30 Refreshment Break

2:45 Public Inquiries: A New Frontier for Procedural Justice

Gus Van Harten, Osgoode Hall Law School

Robert A. Centa, Paliare Roland Rosenberg Rothstein LLP

Public inquiries seem to be used with increasing frequency to investigate a wide range of issues or events, sometimes potentially substituting for – or perhaps hoping to avoid – other administrative or civil processes. This session will provide a reflective look at this unique type of proceeding, including recent examples and potential challenges for those involved.

Agenda

- The purposes and limits of public inquiries
- How can inquiries achieve efficient but fair process?
- Potential challenges to openness and independence
- The unique role of judges conducting inquiries
- The role of Commission Counsel: what it is, what it is not
- Comparison of inquiries with other administrative hearing processes
- Lessons from the Cornwall Inquiry and others
- How do parameters for counsel change when inquiries have a policy focus?

3:45 Advocacy Before Tribunals

Chris G. Paliare, Paliare Roland Rosenberg Rothstein LLP

Brian Gover, Stockwoods LLP Barristers

The Hon. Justice Deena F. Baltman, Ontario Superior Court of Justice

Moderator

Katherine Laird, Executive Director, Human Rights Legal Support Centre

- Knowing your tribunal, and tips for ensuring you have as much information as possible
- Re-calibrating your presentation to the context: which techniques and tactics should you “leave in the courtroom” and which ones should you bring to the tribunal hearing?
- Evidence and objections: what are the standards? What is the best strategy?
- Tips on reading the adjudicator or panel
- Scheduling and adjournments: understanding the tribunal’s perspective
- Judicious use of written submissions

4:45 Day One Adjourns

Day Two: Tuesday, October 19, 2010

8:30 Continental Breakfast

9:00 Self-Represented Litigants and Access to Justice

Lorne Sossin, Dean, Osgoode Hall Law School

Linda Lamoureux, Chair, Health Professions Appeal and Review Board

Avvy Go, Clinic Director, Metro Toronto Chinese & Southeast Asian Legal Clinic

- The challenges of self-representation in administrative hearings – strategies to make it work
- Administrative process design to facilitate access
- Does the content of procedural fairness change where the litigant is self-represented
- Can special procedures for self-represented litigants constitute unfairness to other litigants not offered such procedures?
- What courts have said about the content of fairness in the

case of self-represented parties

- Self-representation by choice vs. by necessity: does it or should it matter?
- Plain language – are we doing all that we can?
- In what circumstances should self-representation be discouraged?
- How best to utilize “duty” counsel arrangements

10:15 Refreshment Break

10:30 Recent Developments in Aboriginal Administrative Law

Arthur Pape, Pape Salter Teillet Barristers & Solicitors

Kerry Wilkins, Counsel, Ministry of the Attorney General, Ontario

As courts continue to work to define their role in relation to aboriginal duties, rights, and self government, aboriginal issues continue to be a fertile ground for the application of both constitutional and administrative law principles. This year, the Supreme Court has released and will be releasing several very significant judgments addressing these issues. The panel will update you on these rapidly evolving principles.

- *Little Salmon/Carmacks First Nation*: an update on this very important story
- Judicial review of aboriginal governance decisions: how should it be approached? When should a court intervene? Is *Lafferty v. Tlicho* only the tip of the iceberg?
- The role of tribunals in applying and interpreting the duty to consult: *Carrier Sekani Tribal Council*
- What effect, if any, does the SCC’s *Conway* decision have on tribunals’ role in adjudicating the duty to consult?
- Other recent aboriginal law cases that public law lawyers should keep in mind
- The evolution of the duty to consult, and the court’s oversight of the duty

11:45 Networking Luncheon

Luncheon Special Guest Speaker

Jennifer Stoddart, Privacy Commissioner of Canada

1:00 The Challenge of Crafting Effective Accountability Regimes: Striking the Balance

The roles of the Integrity and Lobbying Commissioners provide fascinating case studies in the application of administrative law principles in a very unique regulatory context. This panel will look at the integrity and lobbying regulation schemes and discuss some of the broader implications and lessons that can be drawn from the experience of these officers.

Karen E. Shepherd, Commissioner of Lobbying, Canada

Lynn Morrison, Integrity Commissioner, Ontario

Linda L. Gehrke, Lobbyist Registrar, City of Toronto

Moderator

Michael H. Morris, General Counsel, Public Law Department of Justice Canada

Agenda

- Lobbying and accountability: finding the right balance
- Overview of the municipal, provincial and federal schemes
- The role of an accountability officer: in what ways is the role similar to other adjudicative roles, and how different is it?
- Is there an inherent tension between independence and delegated authority, and how can this best be addressed?
- Comparison: how have legislators differed in their choices?
- Managing registry systems
- Defining the regulated group – how to draw a reasonable line
- Emerging issues: lobbyists and conflict of interest; recent guidance on Federal Rule 8 on conflict of interest
- Accountability beyond lobbying: the other facets of “regulating” public integrity

2:15 New Frontiers in Consistency of Decision-Making: Guidelines, Test Cases, and Institutional Innovations

Michael Gottheil, Executive Chair, Environment and Land Tribunals Ontario

Soraya Farha, Vice-Chair, Health Services Appeal and Review Board and Member, Health Professions Appeal and Review Board

- Defining the appropriate level of consistency: what do we (or should we) really mean by consistency in administrative adjudication?
- Striking the balance between consistency and maintaining independent decision-making – an ongoing challenge
- When are guidelines appropriate?
- Guideline development: stakeholder input, consultations, notice and comment rules
- When to make guidelines public/keeping guidelines confidential
- Promoting consistency through Case Management procedures: triage and case assignment
- Full board discussions and Decision Review: promoting principled, well reasoned decisions
- The role of tribunal counsel in encouraging consistency: some do’s and don’ts

3:30 Refreshment Break

3:45 *R v. Conway: The Continuing Evolution of Tribunals’ Relationship with the Charter*

Jessica Orkin, Marlys Edwardh Professional Corporation

Joaquin Zuckerberg, Counsel, Consent and Capacity Board

The recent Supreme Court of Canada decision in *Conway* represents a new guidepost for administrative tribunals in dealing with *Charter* claims. This panel will explore the background to this important decision and its importance going forward for *Charter* claims at administrative bodies.

- Review of prior approaches to *Charter* remedies at tribunals
- The new test for “court of competent jurisdiction”
- When will a tribunal not have *Charter* remedies?
- “Consolidation” of the former lines of jurisprudence on tribunals and constitutional claims: is the decision helpful? What new directions does it point to?
- Making sense of remedial powers in the context of a tribunal’s specific mandate
- What role does discretion play now?
- Does this decision alter anything held in *Trachemontagne*?

4:45 Chairs’ Wrap-up and Program Concludes

Who Should Attend

- Lawyers who appear before boards, agencies or tribunals
- Government counsel
- Tribunal counsel
- Tribunal and board members
- Adjudicators
- Regulators

Registration

Please complete all registrant information.

"Very good, great speakers, timely/relevant topics, good materials, well-run conference."
John Dodsworth, (2008)

Register me for: **Administrative Law and Practice**

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

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Fee Per Delegate

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Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available for both on site and webcast participants. Visit www.osgoodepd.ca for details. Please inquire about financial assistance and CLE credits.

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Approved in accordance with the requirements of the **LSUC Certified Specialist** program, **Barreau du Québec**, **BC CPD** and **NY CLE Board** (for transitional and non-transitional lawyers). **Note:** NY CLE Credits are not available for webcast participants. BC CPD webcast participants must contact us for further information.

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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 \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Dates & Times

October 18 - 19, 2010
9:00 a.m. - 4:45 p.m. EDT/EST
Please arrive a half hour early for sign-in and material pick-up.
Dress is business casual.

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