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"Excellent program"

Jim Smith, Ministry of the
Attorney General, Crown Law
Office (2011)

8th Annual Conference on Crown Liability

This timely one-day update will give you the latest information and valuable insights into important new law and practice developments, including:

- The impact of the SCC's recent decision in *R. v. Imperial Tobacco Canada Ltd.* on the Crown's liability in tort – how it extends existing caselaw and the practical implications for those suing or defending the government
- The extent, if any, to which the Crown is subject to a higher standard than ordinary litigants in the conduct of litigation and in approaches to settlement
- Growing awareness of how international trade agreements and the law applicable to their interpretation can be used to challenge trade transactions to which the Crown is a party
- The SCO's decision in *Keewatin* and its implications for the protection of aboriginal rights (including but not limited to rights explicitly articulated in treaties)
- Class actions involving the Crown – what trends can be discerned regarding the kinds of actions arising and the best practices for managing them, from certification to settlement?

Plus! Optional Pre-Conference Workshop - *The Legal Framework of Crown Litigation: Navigating the Procedural Maze*

Chairs

Joseph K. Cheng, Counsel, Department of Justice (Canada)

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP

Malliha Wilson, Assistant Deputy Attorney General, Legal Services Division
Ministry of the Attorney General (Ontario)



DATE & TIME

Friday, February 17, 2012
9:00 a.m. - 4:45 p.m. EDT/EST

OPTIONAL WORKSHOP

Thursday, February 16, 2012
2:00 p.m. - 5:00 p.m.

LOCATION

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

Conference
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8th Annual Conference on Crown Liability

What past attendees said:

"I always enjoy the mix of plaintiff/defence counsel... it makes for lively discussion and good representation of different perspectives"

"All of the speakers and chairs were excellent...All of the panels very helpful and informative. One of the best CLEs I have attended!"

"Very helpful. In particular, it is great that key cases are included"

"The materials are excellent and will be useful"

The Crown – both federal and provincial – continues to find itself a target of litigation, whether in class actions or more generally. Both plaintiffs' and Crown counsel need to meet the challenges posed in this continuously developing area – challenges that embrace the nature and scope of liability, the procedures and best practices involved in suing or defending the government, and the far-reaching consequences for the public interest.

As a government lawyer, private practitioner or in-house litigation counsel, you need the insights and tools which an expert faculty will place before you in this eighth annual *Osgoode Professional Development* program. Like its well-received predecessors, it will guide you through the latest developments – and help you over the gravest pitfalls – in civil litigation involving public authorities. *Crown Liability* has established a reputation as an outstanding guide to the relevant substantive law, procedural rules and winning strategies and tactics in the field.

Don't miss this opportunity to hear from the experts and to pose your most pressing questions to them!

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

Joseph K. Cheng, Counsel, Department of Justice (Canada)

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP

Malliha Wilson, Assistant Deputy Attorney General, Legal Services Division
Ministry of the Attorney General (Ontario)

Faculty

Barry W. Appleton, Appleton & Associates

David R. Byers, Stikeman Elliott LLP

Lise G. Favreau, Counsel, Ministry of the Attorney General (Ontario), Crown Law Office – Civil Law

Katherine Hensel, Hensel Barristers

Urszula Kaczmarczyk, Senior General Counsel
Immigration Law Division, Department of Justice (Canada)

James Kendik, Crown Counsel, Deputy Director
Ministry of the Attorney General (Ontario)
Crown Law Office – Civil Law

Prof. Lewis N. Klar, Q.C., Faculty of Law
University of Alberta

Robert H. Ratcliffe, Crown Counsel
Ministry of the Attorney General (Ontario)
Crown Law Office – Civil Law

John Rowinski, Law Office of John Rowinski

Gina M. Scarcella, General Counsel
Department of Justice (Canada)

Gail Sinclair, General Counsel, Regulatory Law
Division (Public Law), Department of Justice (Canada)

Michael Solursh, Counsel, Legal Services Branch
Ministry of Economic Development and Innovation
(Ontario)

M. Philip Tunley, Stockwoods LLP

Paul Vickery, Director General and Senior General
Counsel, Management of Class Actions and Mass
Litigation, Department of Justice (Canada)

Grant Wedge, Counsel, Ministry of the Attorney
General (Ontario), Crown Law Office – Civil Law

Owen Young, General Counsel, Aboriginal Law
Department of Justice (Canada)

8:30 Registration and Continental Breakfast

9:00 Welcome and Introduction from the Chairs

9:10 *R. v. Imperial Tobacco Canada Ltd.: Has Government's Tort Liability Been Narrowed Even Further?*

Prof. Lewis N. Klar, Q.C., Faculty of Law, University of Alberta

Professor Klar's annual appearance at this program is always eagerly anticipated. This year his talk will make particular reference to the SCC's recent decision in *Imperial Tobacco* and focus on issues such as:

- The narrower negligent statement category for representations made by governments
- The difficulty facing plaintiffs who seek to succeed against government on the basis of public interest statutes
- The types of relationships between the parties required for public authority liability
- The broadening of the scope of the "policy" immunity for governmental decisions – to what extent has the confusing dichotomy between policy and operational activities of government been clarified?

10:00 Refreshment Break

10:15 Unwrapping *Imperial Tobacco*: The Practical Implications for Plaintiffs and Defendants in Litigation Involving the Crown

Prof. Lewis N. Klar, Q.C., Faculty of Law, University of Alberta

Lise G. Favreau, Counsel, Ministry of the Attorney General (Ontario), Crown Law Office – Civil Law

Paul Vickery, Director General and Senior General Counsel Management of Class Actions and Mass Litigation, Department of Justice (Canada)

The discussion on *Imperial Tobacco* and its relationship to previous caselaw continues, as Prof. Klar is joined by two expert government counsel to discuss the most pertinent lessons to be drawn from the case going forward, including when third-party claims for contribution may be brought.

11:30 Ethical and Professional Issues in Crown Litigation

M. Philip Tunley, Stockwoods LLP

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP

Malliha Wilson, Assistant Deputy Attorney General, Legal Services Division, Ministry of the Attorney General (Ontario)

Urszula Kaczmarczyk, Senior General Counsel, Immigration Law Division, Department of Justice (Canada)

- Can the Crown "fight dirty" – or is it held to a higher standard than other officers of the court? What's permitted and what's prudent?
- If the Crown is indeed held to a higher standard, how does this play out in practical terms in such areas as motions to strike, disclosure/production or requesting and enforcing cost orders against plaintiffs in litigation involving the public interest?
- What are the greater practical risks for the Crown as a litigant and what role may non-economic factors play in the conduct of litigation and the decision to settle?
- Tough judgment calls for the Crown arising from (for example) disclosure problems related to the involvement or relevance of multiple Ministries in a suit and plaintiffs' potential use of freedom-of-information legislation

12:30 Luncheon

1:15 The Impact of International Trade Law on Suits Against the Crown

Barry W. Appleton, Appleton & Associates

Michael Solorsh, Counsel, Legal Services Branch Ministry of Economic Development and Innovation (Ontario)

- International trade agreements (WTO, NAFTA, etc.) and the main obligations of Canada and the provinces under them
- The types of remedies available for breaches under different trade agreements
- Implementing adverse international rulings and the interplay with domestic policy and potential suits
- How do domestic courts read domestic law in light of international law?
- To what extent can government programs be challenged under international trade law
- The *Samsung* deal and other contemporary transactions

2:30 Refreshment Break

2:40 Aboriginal Treaty Rights: What's the Extent of the Crown's Obligation to Protect?

Katherine Hensel, Hensel Barristers

Grant Wedge, Counsel, Ministry of the Attorney General (Ontario) Crown Law Office – Civil Law

Owen Young, General Counsel, Aboriginal Law Department of Justice (Canada)

- What remedies are available in relation to historic wrongs (including those relating to flooding, destruction of fish and game, and failure to consult aboriginal communities)?
- How can the Crown reconcile its obligations to protect treaty rights and to act in the public interest, where these are or appear to be conflicting?
- What differences are there between the protection of treaty rights specifically and non-treaty specific aboriginal rights in general? How can the spirit or intent of treaties come to be recognized in law?
- How does the SCO's decision in *Keewatin* change the existing law?

3:30 What's Distinctive About Class Actions When the Crown is a Party?

Robert H. Ratcliffe, Crown Counsel, Ministry of the Attorney General (Ontario), Crown Law Office – Civil Law

David R. Byers, Stikeman Elliott LLP

Gina M. Scarcella, General Counsel, Department of Justice (Canada)

- Managing multiple claims from different provinces
- Conduct and judgment calls re: settlement and settlement discussions
- Trends in the kinds of actions being seen
- Relevance of restrictions on the damages recoverable against the Crown, including the developing area of constitutional damages and their scope

4:45 Program Concludes

Optional Pre-Conference Workshop

The Legal Framework of Crown Litigation: Navigating the Procedural Maze

Thursday, February 16, 2012: 2:00 p.m. – 5:00 p.m.

James Kendik, Crown Counsel, Deputy Director, Ministry of the Attorney General (Ontario), Crown Law Office – Civil Law

John Rowinski, Law Office of John Rowinski

Gail Sinclair, General Counsel, Regulatory Law Division (Public Law) Department of Justice (Canada)

Bringing or defending a legal claim against the government raises unique challenges. A practitioner unfamiliar with this procedural terrain faces an uphill struggle to manoeuvre effectively through it. This perennially highly-rated workshop will give you the procedural information you need concerning government liability—whether you're acting for or against the Crown. Topics include:

- The statutory framework governing proceedings in Federal Court and provincial Superior Court
- Identifying the proper forum
- Limitation periods, identifying the parties, notice requirements
- How is the procedure affected when a claim is made against both the Crown and a private defendant?
- Intervenors and standing – the rules
- Applications for judicial review
- Essential procedural considerations in Federal Court
- Effective disclosure strategies
- The *Freedom of Information and Protection of Information Act* and government disclosure
- The scope of Crown privilege
- The time-frame for discovery
- Costs for and against the Crown

Don't miss this popular workshop. Register early.



LSUC (ON) CPD: pending; approved with the Barreau du Québec, BC CPD, Law Society of New Brunswick, Northwest Territories, Nunavut and Manitoba for 7.25 credit hours (3 hours for the workshop) for CPD requirements; the New York CLE Board for 8.5 credit hours (3.5 hours for the workshop) in the Area of Professional Practice for transitional and non-transitional lawyers. Eligible for CLE/Insurance Premium Credits Program offered by the Law Society of PEI and for Alberta CPD credit with the Law Society of Alberta.

Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

Registration

Please complete all registrant information.

Register me for: Crown Liability Course plus Workshop Course only

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

(Note: Workshop not available via webcast)

Unable to attend? The live webcast and/or program materials are available within 5 business days following the program. Please contact us to order.

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Fees include attendance, program materials, continental breakfast, lunch (conference only) 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 CPD credits.

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Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

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.

Dates & Times

Friday, February 17, 2012

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

Optional Workshop: February 16, 2012

2:00 p.m. - 5:00 p.m.

Please arrive a half hour early for sign-in and material pick-up. Dress is business casual.

Location

Osgoode Professional Development
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