The program that provides annual ‘one-stop shopping’ for significant developments in civil suits involving the Federal or Provincial Crown.

Including:

• What the Supreme Court’s decision in Daniels v. Canada means for Crown litigators

• Significant new class action decisions (including Endean) with implications for public litigation

• Challenges in documentary discovery against the Crown

• The Crown’s duty of good faith post-Bhasin: how high is high enough?

• Strategic choices in appointing an amicus

• Resolving ethical/professional conundrums in Crown litigation

Register today at:
osgoodepd.ca/crownliability
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 13th annual OsgoodePD 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.

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

### Who Should Attend?

- Lawyers acting for the Federal or Provincial Crown
- Private-bar lawyers with suits against the Crown
- Litigation law clerks and paralegals

**Our participants say it best:**

*Best thing [was the] breadth of legal issues which, while disparate, all resonate for counsel who act for the Crown.*

Lisa Thiele, Senior General Counsel, Canadian Nuclear Safety Commission

*A very worthwhile conference—an embarrassment of riches.*

Robert H. Reynolds Q.C., Legislative Assembly of Alberta

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### Agenda

**8:30**
**Registration and Continental Breakfast**

**9:00**
**Chairs’ Introductory Remarks**

**9:05**
**Recent Developments in Negligence Affecting Crown Liability**

Prof. Erika Chamberlain, Western Law, Western University

Prof. Bruce Feldthusen, Faculty of Law (Common Law), University of Ottawa

Professors Chamberlain and Feldthusen’s annual review of this area is one of the most eagerly-anticipated features of this conference. This year’s session addresses:

- Negligence duties and government benefits
- Do unique public duties allow the courts to usurp the traditional constitutional separation of powers between government and courts?
- What recent police liability cases and *Paton Estate v OLGC* reveal about the utility of the proximity test in claims of negligent failure to prevent harm.

**10:00**
**Refreshment break**

**10:15**
**The Daniels Case and Metis Rights**

Andrew Lokan, Palaire Roland Rosenberg Rothstein LLP

Jason Madden, Pape Salter Teillet LLP

The Supreme Court of Canada’s 2016 decision has forever changed the landscape of Métis and non-status Aboriginal rights in areas including the honour of the Crown, representation and standing issues, claims processes and access to programs and benefits for Métis and non-status Indians. This session – featuring two of the counsel involved in the case – will explore the decision’s practical significance for counsel involved in Crown litigation.
Recent Law on Jurisdiction In Suits Involving the Federal and Provincial Crown

Kathryn A. Hucal, Senior Counsel, Public Safety & Defence Division, Justice Canada


12:00 Lunch

12:45 Class Actions Roundup

Shantona Chaudhury, Pape Barristers Professional Corporation

Paul B. Vickery, Barrister & Solicitor, [formerly] Senior General Counsel, Civil Litigation Branch, Justice Canada

Christopher Wayland, Counsel, Crown Law Office—Civil, Ministry of the Attorney General (Ontario)

An overview of recent class action decisions with implications for Crown litigators, including:

- The SCC’s decision in Endean holding that class action judges have jurisdiction to sit outside their home provinces to administer national settlements
- The SCC’s grant of leave to appeal in Fontaine, dealing with the right of residential-school survivors to decide for how long their records should be retained
- The “sixties scoop” cases dealing with foster care and adoption by non-aboriginal families of aboriginal children, and their claim of loss of aboriginal identity

Along with other recent decisions such as Good v. Toronto (Police Services Board) and Mancinelli v. Barrick Gold

1:35 Overcoming Key Procedural Challenges In Crown Litigation

Role of the Amicus in Public Litigation Where the Federal or Provincial Crown Is a Party

Anil K.S. Kapoor, Kapoor Barristers

- When do you need an amicus?
- The terms of appointment
- What powers do you want the amicus to have?
- Do you want the amicus’s assistance in challenging privilege claims?
- Strategic choices in relation to the amicus

Contracts: Duty of Good Faith and Whether the Crown Has a “Higher Obligation”?

Geoff R. Hall, McCarthy Tétrault LLP

Paul Sheridan, Counsel, Crown Law Office—Civil, Ministry of the Attorney General (Ontario)

This session will consider how, in the wake of the SCC’s landmark Bhasin decision, the doctrine of good faith applies to the Crown’s contractual obligations. Is the Crown is subject to a “higher” duty and, if so, what is its nature and how will it play out in differing contexts?

3:15

Ethical and Professional Issues In Crown Litigation

Sarah T. Kraicer, Counsel, Constitutional Law Branch, Ministry of the Attorney General (Ontario)

Michael H. Morris, Senior General Counsel, Public Safety & Defence, Justice Canada

Philip Tunley, Stockwoods LLP

An interactive discussion of how to best to meet the ethical and professional challenges which government and private-bar counsel find themselves confronting throughout the various stages of litigation involving the Federal or provincial Crown. The discussion will focus on realistic case scenarios and emphasize real-world solutions.

4:45 Program ends

Optional Pre-Conference Workshop

February 27, 2017 (1:30-4:30 p.m.)

The Legal Framework of Crown Litigation: Navigating the Procedural Maze

Note: Workshop only available in person.

Falguni Debnath, Counsel, Government Law Services—Extraditions, Justice Canada

Heather Mackay, Counsel, Crown Law Office—Civil, Ministry of the Attorney General (Ontario)

Raivo Uukkivi, Cassels, Brock & Blackwell LLP

A practitioner unfamiliar with the unique challenges of litigation involving the Federal or Provincial Crown faces an uphill struggle. This perennially-highly-rated workshop covers a broad range of key areas including proper forum, limitations, standing, effective disclosure strategies, Crown privilege and costs against the Crown.
13th Annual Conference on Crown Liability

Register today at: osgoopedp.ca/crownliability

OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSUC.

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