

13TH ANNUAL CONFERENCE ON CROWN LIABILITY

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

Program Chairs:

Joseph K. Cheng, Counsel,
Business, Regulatory and
Extradition Law Division,
Justice Canada (Ontario
Regional Office)

Andrew Lokan, Paliare Roland
Rosenberg Rothstein LLP

Tom D. McKinlay, Counsel,
Crown Law Office-Civil, Ministry
of the Attorney General (Ontario)

Program Details:

DATE AND TIME:

February 28, 2017

9:00 a.m. – 4:45 p.m. EST

Webcast available

Online Replay: April 4, 2017

**Optional Pre-Conference
Introductory Workshop:**

February 27, 2017

1:30-4:30 p.m.

LOCATION

**Osgoode Professional
Development**

1 Dundas St. West, 26th Floor
Toronto, ON

13TH ANNUAL CONFERENCE ON Crown Liability

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, Paliare 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.

11:15

Recent Law on Jurisdiction In Suits Involving the Federal and Provincial Crown

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

Including discussion of the 2016 decisions in *Canada v. Peigan* [F.C.A.] and *Babington-Browne v. Canada*, in which the Court of Appeal For Ontario grappled with the interpretation of the *Crown Liability Proceedings Act*.

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

Robin K. Basu, General Counsel, Constitutional Law Branch, Ministry of the Attorney General (Ontario)

Chantelle A. Blom, Counsel, Crown Law Office—Civil, Ministry of the Attorney General (Ontario)

Christine Mohr, Senior General Counsel, Justice Canada (Ontario Regional Office)

A practical panel dealing with procedural pitfalls, solutions and opportunities in relation to three key areas: interlocutory motions, documentary discovery against the Crown, and Crown privilege (both statutory and at common law).

2:20

Refreshment break

2:30

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

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

3:45

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.

Chairs

Joseph K. Cheng, Counsel, Business, Regulatory and Extradition Law Division, Justice Canada (Ontario Regional Office)

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP

Tom D. McKinlay, Counsel, Crown Law Office—Civil, Ministry of the Attorney General (Ontario)

Faculty

Robin K. Basu, General Counsel, Constitutional Law Branch, Ministry of the Attorney General (Ontario)

Chantelle A. Blom, Counsel, Crown Law Office—Civil, Ministry of the Attorney General (Ontario)

Prof. Erika Chamberlain, Western Law, Western University

Shantona Chaudhury, Pape Barristers Professional Corporation

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Jason Madden, Pape Salter Teillet LLP

Sunil Mathai, Counsel, Crown Law Office—Civil, Ministry of the Attorney General (Ontario)

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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)

Registration Details

Fee per Delegate

\$595 + HST

With optional introductory workshop, \$795 + HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/group-booking for details. Please inquire about financial assistance.

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 is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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