

THE CIVIL LITIGATOR'S GUIDE TO TRIBUNAL ADVOCACY



Dispute resolution in the administrative law context differs from traditional civil litigation – and the skills needed for success in preparing and presenting cases before tribunals are also distinctive.

This new program provides insightful commentary *and* the opportunity to hone your tribunal advocacy skills in learn-by-doing workshops. Topics include:

- The courtroom habits that don't work in the tribunal context
- Understanding what drives your particular tribunal and how this influences your case
- The elements of success in prehearings, negotiations, and resolution of some or all issues without a hearing
- Using and/or creating summary dismissal processes
- How to raise and argue *Charter* issues before the tribunal
- Best approaches to the use of expert witnesses in administrative proceedings
- Your role in assisting the tribunal to understand the applicable law
- Balancing the need for rules with the need for fairness

From assessing the strengths and weaknesses of your case to closing statements – **learn how the experts do it!**

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Webcast Available (Day 1 Only)

Chairs

Luisa Ritacca, *Stockwoods LLP*

Matthew Horner, *Counsel, Ministry of the Attorney General (Ontario)
Constitutional Law Branch*

Date and Time

October 5 - 6, 2016

9:00 a.m. - 4:00 p.m. EDT

**Online Replay (Day 1 Only):
November 2, 2016**

Location

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

THE CIVIL LITIGATOR'S GUIDE TO TRIBUNAL ADVOCACY

Preparing for and conducting hearings before administrative tribunals presents challenges to the advocate which are distinct from those that arise in civil litigation. Counsel must understand these distinct challenges in order to put forward their clients' best case.

This new *OsgoodePD* program will help you meet these challenges. It will not only deepen your understanding of the decision-making process of a broad range of tribunals, but will also highlight proven strategies for making the process work for you and your clients. An optional second day will provide you with the opportunity to apply what you've learned to a realistic case study. You'll be able to practice your skills and to receive constructive, practical feedback from experienced faculty drawn from both the private and government bars. Emphasis will be placed on practical solutions rather than counsels of perfection. You'll leave with an enhanced toolkit of techniques and approaches, and with the conviction that there is indeed such an animal as "tribunal advocacy" that you can master!

WHO SHOULD ATTEND

This program is ideally suited for legal professionals with some prior litigation experience and interest in or exposure to administrative tribunals.



REGISTER NOW by visiting
osgoodepd.ca/CLGTA

Chairs

Luisa Ritacca
Stockwoods LLP

Matthew Horner
Counsel, Ministry of the Attorney General (Ontario), Constitutional Law Branch

Faculty

Neil M. Abramson
Torkin Manes LLP

Rothstein LLP

Amy Block
College of Physicians and Surgeons of Ontario

Emily Lawrence
Paliare Roland Rosenberg Rothstein LLP

Alexandra S. Clark
Director, Enforcement Litigation, Investment Industry Regulatory Organization of Canada

Bernard C. LeBlanc
Steinecke Maciura LeBlanc

Jennifer Cooper
Director, Litigation Ontario College of Trades

Danielle Meuleman
Crown Counsel, Ministry of the Attorney General (Ontario), Legal Services Branch, Environment and Climate Change

Sylvia Davis
Counsel, Ministry of the Attorney General (Ontario), Legal Services Branch, Environment and Climate Change

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Steinecke Maciura LeBlanc

Lonny J. Rosen
Rosen Sunshine LLP

Bonni Ellis
Lerners LLP

Kristi Sebalj
Registrar and Senior Legal Counsel, Ontario Energy Board

Jordan Glick
WeirFoulds LLP

Kristin Smith
Counsel, Ministry of the Attorney General (Ontario), Civil Law Division, Health and Long-Term Branch

Matthew R. Gourlay
Henein Hutchison LLP

Marc H. Spector
Steinecke Maciura LeBlanc

Daniel Guttman
Counsel, Ministry of the Attorney General (Ontario), Constitutional Law Branch

Elyse R. Sunshine
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Nader R. Hasan
Stockwoods LLP

Adrienne Telford
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Maureen A. Helt
Legal Counsel Ontario Energy Board

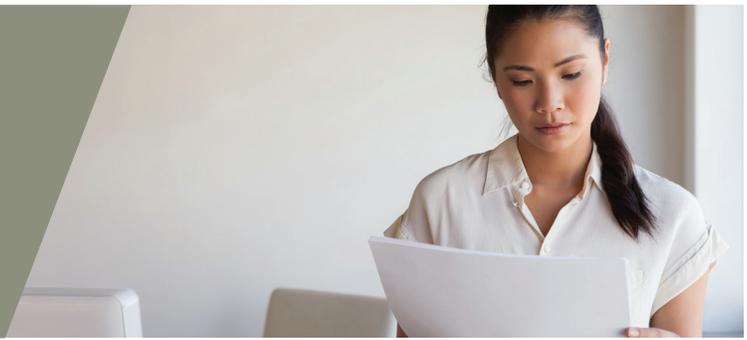
Maryth Yachnin
Industrial Accident Victims Group of Ontario (IAVGO) Community Legal Clinic

Daniel M. Huffaker
Counsel, Ministry of the Attorney General (Ontario) Constitutional Law Branch

Gary Yee
Licence Appeal Tribunal, Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO)

Jean-Claude Killey
Paliare Roland Rosenberg

Unlock the secrets of effective persuasion that apply to a broad variety of administrative tribunals



AGENDA

DAY 1: WEDNESDAY OCTOBER 5, 2016

8:30

Registration and Continental Breakfast

9:00

Chairs' Welcome and Introductory Remarks

9:10

What's Distinctive About Tribunal Advocacy?

JORDAN GLICK, *WeirFoulds LLP*

DANIEL M. HUFFAKER, *Counsel, Ministry of the Attorney General (Ontario), Constitutional Law Branch*

Given the diversity of tribunals and of the policies giving rise to them, to what extent can we speak of "tribunal advocacy" as a unified body of techniques that advocates can master and use?

- Common themes and practices across the tribunal spectrum
 - The impact of key provisions of the *Statutory Powers Procedure Act*
- What differentiates tribunal advocacy from courtroom advocacy and what shifts must counsel undergo to be as effective at one as at the other?
 - Which courtroom habits actually hamper tribunal advocates?
- Do different categories of tribunals – licensing, prosecution-based and benefit-based – raise different advocacy issues?
 - Making the determination of which skills to use before a given tribunal

10:00

Understanding What Drives Your Particular Tribunal

ALEXANDRA S. CLARK, *Director, Enforcement Litigation, Investment Industry Regulatory Organization of Canada (IIROC)*

JEAN-CLAUDE KILLEY, *Paliare Roland Rosenberg Rothstein LLP*

- What jurisdictional issues are most common and most troublesome?
 - Jurisdiction over parties
 - Jurisdiction over subject-matter
 - Jurisdiction over remedies

- What are the roles of the various parties?
 - Panel members
 - Tribunal counsel
 - Prosecutors

10:45

Refreshment Break

11:00

Investigation and Discovery in Tribunal Proceedings

i. The Advocate's Role at Prehearing Stage - Investigation and Discovery

LONNY J. ROSEN, *Rosen Sunshine LLP*

AMY BLOCK, *College of Physicians and Surgeons of Ontario*

- Does your client have a right to disclosure at the prehearing stage?
- Are there reciprocal disclosure obligations?
- To what extent (if any) is your client obliged to participate in the investigation?
- When can clients' statements be used against them?

ii. The Advocate's Role in Negotiations and Resolution

REBECCA C. DURCAN, *Steinecke Maciura LeBlanc*

OWEN REES, *Stockwoods LLP*

GARY YEE, *Licence Appeal Tribunal, Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO)*

- What are the processes available at various tribunals to encourage resolution short of a hearing?
 - At what stage of the process is resolution available?
 - Are there formal systems in place?
 - Effective use of informal discussions/tactics
- When to encourage resolution, in light of your professional obligation to do so *where appropriate*
- Negotiations short of full resolution
 - Case management
 - How to make a hearing more efficient
 - Addressing preliminary issues up front

AGENDA (Cont'd)

12:30

Lunch

1:15

The Hearing

i. Motions Before the Tribunal

SYLVIA DAVIS, *Counsel, Ministry of the Attorney General (Ontario), Legal Services Branch, Environment and Climate Change*

- Defining the scope of the proceeding: is a motion necessary?
- Balancing the need for the motion against the pressure to ensure an efficient process
- Using and/or creating summary dismissal processes
- Excluding evidence: arguments of law and/or efficiency
- How do you get in front of the tribunal before the hearing?
 - What are the operative rules?
 - Who should you communicate with – the Registrar? Tribunal Counsel?
 - Should the motion be heard before the ultimate decisionmaker/hearing panel?

1:50

ii. The Charter and the Tribunal

ADRIENNE TELFORD, *Cavalluzzo Shilton McIntyre Cornish LLP*

- What is the scope of a tribunal's *Charter* jurisdiction?
- How do *Charter* issues arise before a tribunal?
 - Validity of governing legislation
 - Statutory interpretation aids
 - Limits on the exercise of discretion
- How should a *Charter* issue be raised before the tribunal?
 - Is a Notice of Constitutional Question required?
 - Must/should the constitutional issue be bifurcated?
- Is special evidence required to support a *Charter* challenge?

iii. Calling Evidence Before the Tribunal

KRISTI SEBALJ, *Registrar and Senior Legal Counsel, Ontario Energy Board*

- What are the operative Rules?
 - Does the *SPPA* govern and why does that matter?
 - Strict rules of evidence vs. ensuring fairness
- Thinking outside of the trial box: evidence by way of affidavit, expert witness panels
- Are experts bound by the requirements of Rule 53? Is there an equivalent tribunal rule?
 - The role of lay (non-independent) experts before a technical board or tribunal

2:50

Refreshment Break

3:00

iv. Legal Argument Before the Tribunal

BONNI ELLIS, *Lerners LLP*

- How to help the tribunal make sense of the legal issues
- What is the tribunal's expertise and what aspects of the case fall outside it?
- Crafting written submissions to tribunals: are they just factums, or something else?
- Opening statements: when to make them and what should you say?

3:45

Final Questions From the Floor

4:00

Day One Concludes

DAY 2: THURSDAY OCTOBER 6, 2016

This skills training day will track the progress of a hypothetical administrative law file, and will open with plenary sessions providing you with the context you will need to maximize your participation in the skills workshops. In the small-group breakout sessions you will have ample opportunity to practice the techniques you have learned – and receive individualized feedback from our experienced faculty. Rounding out the day, the faculty will conduct a 'debriefing' plenary session, in which they will add additional commentary and tips as well as further directions for developing mastery in this challenging practice area. *Lunch included.*

8:30

Registration and Continental Breakfast

9:00

Introduction to the Case Study/Fact Scenario That Will Guide the Day's Exercises

Assessing the Strengths and Weaknesses of the Case

Participants will be divided into groups representing the opposing parties. The faculty will lead discussion as to the 'good facts/bad facts' facing each side. Also discussed:

- What evidence will be needed?
- How will it be obtained and marshalled?
- Do any preliminary motions need to be brought?

Preparing Your Case Brief

The faculty will demonstrate a mini-opening, mini-examination of a main witness and cross-examination of an opposing witness; then lead discussion and assist each small group in the preparation of witness outlines, opening statements and closings.

AGENDA (Cont'd)

Conducting Your Case

The faculty will now act as the decisionmakers. Participants will be divided into new groups and conduct a mini-hearing, the faculty providing a constructive critique of each presentation.

- Openings
- Examination of witnesses
- Cross-examinations
- Presentation of exhibits
- Closings

Debrief on the Mini-Hearings (full group)

The small groups will come together for a closing plenary session, with the faculty leading discussion on the most pertinent points emerging from the exercises, as well as further exploring the ethical and professional issues confronting counsel throughout the preparation and presentation of the case.

4:00

Program Concludes

Counsel conducting the sessions and offering individual feedback:

NEIL M. ABRAMSON, *Torkin Manes LLP*

JENNIFER COOPER, *Director, Litigation, Ontario College of Trades*

MATTHEW R. GOURLAY, *Henein Hutchison LLP*

DANIEL GUTTMAN, *Counsel, Ministry of the Attorney General (Ontario), Constitutional Law Branch*

NADER R. HASAN, *Stockwoods LLP*

MAUREEN A. HELT, *Legal Counsel, Ontario Energy Board*

EMILY LAWRENCE, *Paliare Roland Rosenberg Rothstein LLP*

BERNARD C. LeBLANC, *Steinecke Maciura LeBlanc*

DANIELLE MEULEMAN, *Crown Counsel, Ministry of the Attorney General (Ontario), Legal Services Branch, Environment and Climate Change*

MARC H. SPECTOR, *Steinecke Maciura LeBlanc*

KRISTIN SMITH, *Counsel, Ministry of the Attorney General (Ontario), Civil Law Division, Health and Long-Term Branch*

ELYSE R. SUNSHINE, *Rosen Sunshine LLP*

MARYTH YACHNIN, *Industrial Accident Victims Group of Ontario, (IAVGO), Community Legal Clinic*



How attendees described recent OsgoodePD administrative law programs:

“OVERALL, SUPERB”

Daniel Chitiz, *Chitiz Pathak LLP*

“VERY PRACTICAL INFORMATION AND CASES...RECENT AND RELEVANT TO WORKING IN ADMINISTRATIVE LAW”

Christine Langill, *Counsel, Department of Justice (Canada), Treasury Board Secretariat*

“THIS PROGRAM IS ESSENTIAL FOR ME TO HAVE AN OVERVIEW AND KEEP UP TO DATE.....EXCELLENT!”

Patricia Pledge, *Senior Counsel, Department of Justice (Canada), Legislative Services Branch*

“CONGRATULATIONS—EXCEEDED EXPECTATIONS, VERY INFORMATIVE”

Fulvio D. Fracassi, *CEO Laurentian Pilotage Authority*

“SMART, KNOWLEDGEABLE PRESENTERS...RELEVANT TOPICS”

Andrew John Roman, *FCI Arb*

“GREAT PRESENTERS, PAPERS [AND] WRITTEN MATERIAL”

Geoffrey P. Belch, *Corporation Counsel City Solicitor's Office, City of London*

“HIGH-QUALITY PRESENTERS WITH EXPERTISE ACROSS ACADEMIC, GOVERNMENT AND PRIVATE-LAW SPHERES”

Adam Zanna, *Counsel, Office of the Conflict of Interest and Ethics Commissioner*

“VERY GOOD CHOICE OF SPEAKERS. THEY MADE LEARNING EASY AND A PLEASURE. VERY HELPFUL...VERY WELL-ORGANIZED”

Talitha Nabbali, *Civil Litigation Section, Department of Justice (Canada)*

REGISTRATION

"BY FAR THE BEST ADMINISTRATIVE LAW PROGRAM I'VE ATTENDED...EXCELLENT CONTENT AND SPEAKERS"

Anne Tardif, CazaSaikaley LLP

The Civil Litigator's Guide to Tribunal Advocacy

I will attend: Day 1 (In-Person) Day 1 (Webcast) Day 2 (In-Person)
 Online Replay (Day 1)

Unable to attend? Please contact us to order the Materials/Program Archive.

Fee Per Delegate

Day 1 Only

\$595 plus HST

Day 1 available in-person on site or by live webcast.

Day 2 available in-person on site only.

Both Days

\$995 plus HST

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



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



Eligible CPD/MCLE hours:

LSUC (ON): 12.75 CPD hours
(3.0 Professionalism; 9.75 substantive)

LSUC (BC): 11.75 CPD hours

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian jurisdictions and the NY CLE Board. To inquire about credit eligibility, please contact cpd@osgoode.yorku.ca

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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 \$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.

Date & Time

October 5 - 6, 2016
9:00 a.m. - 4:00 p.m. EDT
Online Replay:
November 2, 2016 (Day 1 only).
Please arrive a half hour early for sign-in and material pick-up.
Dress is business casual.

Location

Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas St. W., 26th Floor
Toronto, ON M5G 1Z3



4 Convenient Ways to Register

1. **MAIL** your registration form to:
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3. **FAX** your registration to 416.597.9736
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