

THE CIVIL LITIGATOR'S GUIDE TO TRIBUNAL ADVOCACY

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

Dispute resolution in the administrative law context differs from traditional litigation—and the skills needed for success are also distinctive. This new program provides insightful commentary and skills-building opportunities. Topics covered include:

- Understanding what drives your particular tribunal
- Effective advocacy in prehearings, negotiations, and resolution without a hearing
- Using/creating summary dismissal processes
- Best approaches to expert witnesses in administrative proceedings
- Helping the tribunal understand the applicable law
- Balancing the need for rules with the need for fairness

Register today at:

osgoodepd.ca/tribunal-advocacy

Program Chairs

Luisa Ritacca, Stockwoods LLP

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

Program Details

DATES AND TIMES

Day One: October 16, 2017

8:30 am - 4:30pm EDT

In Person or Webcast

Day Two (Optional Skills

Workshop): October 17, 2017

8:30am - 4:00pm EDT

In Person

LOCATION

**Osgoode Professional
Development**

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

ONLINE REPLAY

November 30, 2017 (Day 1 Only)

THE CIVIL LITIGATOR'S GUIDE TO Tribunal Advocacy

Unlock the secrets of effective persuasion that apply to a broad variety of administrative tribunals. This program will not only deepen your understanding of the decision-making process of a broad range of tribunals, but will also highlight proven strategies and techniques 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 – and to receive constructive feedback from experienced faculty.

Topics Include

- How litigation counsel must modify their approach when addressing specialized boards or tribunals
- The advocate's role in negotiation and dispute resolution throughout the process: strategic and professional considerations
- Judging when a motion before the tribunal is really necessary
- Framing legal argument (including Charter arguments) effectively for the tribunal
- What adjudicators say regarding the matters advocates must not lose sight of

Who Should Attend?

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

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Agenda

Day 1: October 16, 2017

8:30 am

Registration and Continental Breakfast

9:00 am

Chairs' Welcome and Introductory Remarks

Luisa Ritacca, Stockwoods LLP

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

9:10 am

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, to what extent can we speak of "tribunal advocacy" as a unified body of techniques? How do we codify this in a manner 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 effective before tribunals?
- Do different categories of tribunals – licensing, prosecution-based and benefit-based – raise different advocacy issues?
- Determining the approach to take before a given tribunal

10:00 am

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 troublesome?
 - Jurisdiction over parties
 - Jurisdiction over subject-matter
 - Jurisdiction over remedies
- What are the roles of the various parties?

10:45 am

Refreshment Break

11:00 am

Investigation and Discovery In Tribunal Proceedings

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

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

David Gourlay, Solicitor, Legal Services Division (Litigation Section), City of Toronto

- What are the processes available at various tribunals to encourage resolution short of a hearing?
 - At what stage 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
 - Making the hearing more efficient
 - Addressing preliminary issues up front

12:30 pm

Lunch

1:15 pm

The Hearing

i. Motions Before the Tribunal

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

- Balancing the need for the motion against the pressure to ensure an efficient process
- Using/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?

ii. 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
- Evidence by way of affidavit, expert witness panels
- Are experts bound by Rule 53? Is there an equivalent tribunal rule?
 - The role of lay (non-independent) experts before a tribunal

iii. Legal Argument Before the Tribunal

Bonni Ellis, Lerner LLP

Emily Lawrence, Paliare Roland Rosenberg Rothstein 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?
- Written submissions to tribunals: are they just factums, or something else?
- Opening statements: when to make one and what to say
- What is the scope of a tribunal's *Charter* jurisdiction?
- How should a *Charter* issue be raised before the tribunal?
- Is special evidence required to support a *Charter* challenge?

3:30 pm

Adjudicators' Tips on Effective Tribunal Advocacy

Guidance from experienced adjudicators on what does and doesn't work before tribunals, in light of the distinctive character of tribunals, the impact of government policy on tribunals, and the challenges for counsel in matters involving unrepresented parties.

Paula Lombardi, Siskinds LLP

Luisa Ritacca (moderator)
Stockwoods LLP

The Hon. Justice Nancy J. Spies, Superior
Court of Justice (Ontario)

4:30 pm

Day One ends

Optional Workshop

Day 2: October 17, 2017

This optional 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 to 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 am

Registration and Continental Breakfast

9:00 am

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.

Conducting Your Case

The faculty will now act as the decisionmakers. Participants will be divided into new groups and conduct a mini-hearing, with the faculty providing a constructive and practical 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, and further exploring the ethical and professional issues confronting counsel throughout the preparation and presentation of the case.

4:00 pm

Program ends

Counsel conducting the Workshop sessions and offering individual feedback will include:

Daniel Guttman

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

Emily Lawrence

Paliare Roland Rosenberg Rothstein LLP

Bernard C. LeBlanc

Steinecke Maciura LeBlanc

Danielle Meuleman

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

Daniel Naymark

Naymark Law

John J. S. Park

Prosecution Counsel, Legal & Regulatory Affairs, Ontario College of Trades

Kristin Smith

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

Marc H. Spector

Director of Professional Regulation, College of Early Childhood Educators

Elyse Sunshine

Rosen Sunshine LLP

Maryth Yachnin

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

Leanna Yue, Manager of Professional Conduct, College of Early Childhood Educators

Drawing on the expertise and experience of leading lawyers and experts, including:

Program Chairs

Luisa Ritacca

Stockwoods LLP

Matthew Horner

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

Program Faculty

Amy Block

College of Physicians and Surgeons of Ontario

Alexandra S. Clark

Director, Enforcement Litigation, Investment Industry Regulatory Organization of Canada (IIROC)

Sylvia Davis

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

Rebecca C. Durcan

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Kristi Sebalj

Registrar and Senior Legal Counsel, Ontario Energy Board

Kristin Smith

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

Marc H. Spector

Director of Professional Regulation, College of Early Childhood Educators

The Hon. Justice Nancy J. Spies

Superior Court of Justice (Ontario)

Elyse Sunshine

Rosen Sunshine LLP

Maryth Yachnin

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

Leanna Yue

Manager of Professional Conduct, College of Early Childhood Educators

What attendees at last year's program said:

“*Fantastic program. A great overview of practicing before administrative tribunals... very informative, helpful presentations.*”

Lorne Sabsay, Sabsay Lawyers

“*Very useful and informative program.*”

Heather C. Mackay, Counsel, Ministry of the Attorney General, Crown Law Office—Civil

“*Top quality faculty!*”

David Neligan, Aird & Berlis LLP

“*Good substantive overview of tribunal advocacy practice issues.*”

Michael S. Rankin, McMillan LLP

Registration Details

Fee per Delegate

Day 1 Only: \$645 plus HST • Both Days: \$1195 plus HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/group-discounts 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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Eligible CPD Hours:

BOTH DAYS: LSUC (ON): 13h CPD (10h Substantive; 3h Professionalism)
Day 1 ONLY: 6h 45m CPD (6h 30m Substantive; 15m Professionalism)

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