

14TH 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:

- The year's most important cases in Crown liability identified and analyzed
- Recent developments in negligence with implications for Crown litigators: *George v Newfoundland and Labrador (NLCA)*, *Chingee v British Columbia (BCCA)*, and *Saadati v Moorhead (SCC)*
- Why the SCC's decision in *Thouin* came as a surprise to observers in the area of Crown immunity from statutory obligations
- What are the lessons for government lawyers implicit in current class actions?
- Realistic approaches to ethical and professional issues in Crown litigation

Register today at:

osgoodepd.ca/crownliability

Program Chairs

Joseph K. Cheng, Counsel,
Business, Regulatory and
Extradition Law Division,
Department of Justice (Canada)
(Ontario Regulatory 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:

March 21, 2018

9:00 a.m. – 4:15 p.m. EDT

In Person or Webcast

Online Replay: April 12, 2018

LOCATION

**Osgoode Professional
Development**

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

14TH 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 14th 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.

Also Including

- When can an independent tribunal or agency's regulatory processes make it a virtual stand-in for 'the Crown'?
- Potential challenges to government programs under international trade agreements with the EU and others
- What constitutes a sufficiently clear legislative intention to change the common law?

Who Should Attend?

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

Past attendees 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

Agenda

8:30 a.m.

Registration and Continental Breakfast

9:00 a.m.

Chairs' Welcome and Introductory Remarks

9:10 a.m.

The Year's Most Important Cases in Crown Liability

Michael H. Morris, Senior General Counsel, National Litigation Sector, Department of Justice (Canada), Ontario Regional Office

This session will provide you with an overview of the most significant judicial developments affecting Crown liability and litigation. Catch up on the cases you may have missed or did not have time to absorb fully, while gaining insights from a distinguished senior litigator along with a context for approaching the rest of the day's discussions.

9:50 a.m.

Recent Developments In Negligence Affecting Crown Liability

Prof. Erika Chamberlain, Western Law, Western University

This annual review of negligence cases affecting Crown liability will examine an apparent resurgence of “residual policy considerations” that negate the duty of care, the relationship between negligence and public nuisance, and the changing nature of damage in environmental and psychiatric harm cases.

10:45 a.m.

Refreshment break

11:00 a.m.

Chippewas of the Thames First Nation v. Enbridge and Clyde River (Hamlet) v. Petroleum Geo-Services Inc. and Their Impact On The Duty To Consult and Accommodate

Manizeh Fancy, Crown Law Office, Ministry of the Attorney General (Ontario)

Nader R. Hasan, Stockwoods LLP

This session will explore the significance and likely impact of these two 2017 decisions of the Supreme Court of Canada. Issues covered include:

- When and how can meaningful Crown consultation be carried out wholly through the regulatory process of an agency which is not, strictly speaking, 'the Crown' or an agent of the Crown?
- What statutory powers (procedural and remedial) must the agency possess in order to discharge its duty to consult and accommodate?
- What accommodation measures may the agency propose to respond to the concerns to which a proposed project gives rise on the part of indigenous groups?
- If the agency does not provide adequate consultation and accommodation, what further measures must the Crown itself provide?
- If the duty to consult is not 'the vehicle to address historical grievances', to what extent can it be said that historical context may inform the duty, as per *West Moberly*?
- What kinds of accommodation will achieve the object of 'balancing competing societal interests with Indigenous/treaty rights'?

12:00 a.m.

Lunch

12:45 p.m.

Recent Class Actions Litigation Involving the Crown

Sonal Gandhi, Counsel, Crown Law Office--Civil, Ministry of the Attorney General (Ontario)

John Kingman Phillips, Waddell Phillips LLP

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

- The Saskatchewan Court of Queen's Bench decision in *Purdue Pharma* refusing to approve the settlement of the OxyContin class action (re: settlement of subrogated claims of provincial governments)
- The Ontario Court of Appeal's decision in *Airia Brands* concerning the applicable test for determining jurisdiction over absent foreign claimants in a class action

- Correctional class actions – the consequences of the *Ogiamien* and *CCLA* decisions
- The consequences of *Merrifield v RCMP*, and the RCMP harassment class action settlement
- The juxtaposition of the Khadr settlement with *Merrifield* and the impact of the public outcry that followed Khadr
- The consequences for the pending class action re solitary confinement given the decision in the Civil Liberties action against HMQ
- The SCC's "in rem" decision in *Fontaine v. AGC* re: record retention and notice to the class re TRC rights
- The summary judgment decision in the 'Sixties Scoop' and how that will affect ongoing aboriginal class actions

1:35 p.m.

The Current State of Crown Immunity After *Canada (Attorney General) v. Thouin* [2017]

M. Kathleen McManus, Senior Counsel, National Litigation Sector (Atlantic Regional Office), Justice Canada

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

One of the most vexing questions in the area of crown immunity is how courts determine whether Parliament or the legislature intended to bind the Crown to a particular obligation.

The Supreme Court of Canada's decision in *Thouin* will impact how courts approach Crown immunity from statutory obligations generally and in particular the interpretation of legislation governing proceedings involving the Federal and provincial Crown. To the surprise of many, the SCC overturned Federal Court jurisprudence and explicitly rejected the Court of Appeal For Ontario's reasoning, which had applied the presumption of 'consistent expression' to make the Crown subject to third-party discovery obligations. The SCC held that this presumption could not, on its own, furnish a basis for finding that Parliament had changed the common law; rather, a clear expression of Parliament's intention to do so would be required. Our speakers will explore the meaning and practical significance of the decision.

2:20 p.m.

Refreshment Break

2:35 p.m.

The Impact of International Trade Law on Crown Liability

Michael D. Solursh, Counsel, Citizenship, Immigration & International Trade (Ontario)

The first update of this area at this program in six years, this session will revisit the critical areas, along with considering the possible impact of a trade agreement with the European Union.

- The main obligations of the Federal and provincial Crown under international trade agreements (WTO, NAFTA, etc.)
- The types of remedies available for breaches
- 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?

3:15 p.m.

Ethical and Professional Issues In Crown Litigation

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

The Hon. Justice Lise G. Favreau, Superior Court of Justice (Ontario)

Gina Scarcella, Senior Counsel (Public Safety and Defence), Justice Canada

An interactive discussion of how 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 rather than 'counsels of perfection'.

4:15 p.m.

Program Ends

Chairs

Joseph K. Cheng

Counsel, Business, Regulatory and Extradition Law Division, Department of Justice (Canada) (Ontario Regulatory Office)

Andrew Lokan

Paliare Roland Rosenberg Rothstein LLP

Tom D. McKinlay

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

Faculty

Prof. Erika Chamberlain

Western Law, Western University

Manizheh Fancy

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

The Hon. Justice Lise G.

Favreau
Superior Court of Justice (Ontario)

Sonal Gandhi

Counsel, Crown Law Office-- Civil, Ministry of the Attorney General (Ontario)

Nader R. Hasan

Stockwoods LLP

M. Kathleen McManus

Senior Counsel, National Litigation Sector (Atlantic Regional Office), Justice Canada

Michael H. Morris

Senior General Counsel, National Litigation Sector, Justice Canada

John Kingman Phillips

Waddell Phillips LLP

Gina Scarcella

Senior Counsel (Public Safety and Defence), Justice Canada

Paul Sheridan

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

Michael D. Solursh

Counsel, Citizenship, Immigration & International Trade (Ontario)

Registration Details

Fee per Delegate

\$595 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.



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



LSUC (ON): 6h 30m CPD (5h 30m Substantive; 1h Professionalism)

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



osgoodepd.ca

Osgoode Professional Development



416.597.9724

1 Dundas Street West, Suite 2600



@OsgoodePD

Toronto, ON Canada M5G 1Z3



14th Annual Conference on Crown Liability

Register today at:

osgoodepd.ca/crownliability