THE 10TH ANNUAL NATIONAL FORUM
ADMINISTRATIVE LAW AND PRACTICE

A faculty of over 25 experts will lead discussion on the most timely and far-reaching issues, including:

• Evaluating review and accountability mechanisms after the Ontario Gas Plants affair
• Statutory appointment powers in light of the Nadon reference
• The implications of the current debates around Fair Elections legislation
• Current status of the “deferential approach” to administrative decisions
• “Legal questions of central importance” and the correctness standard of review
• Will adjudicative and advocacy roles be transformed by the advent of online tribunals?
• Mission Institution v. Khela (SCC); its impact on the application of administrative law principles to criminal matters
• Indigenous governance and the interpretation of modern-day treaties
• The Law Society and Groia – any change for the regulation of professionalism and civility?

Keynote Address
The Hon. Justice David Stratas
Federal Court of Appeal

“HIGH-QUALITY PRESENTERS WITH EXPERTISE ACROSS ACADEMIC, GOVERNMENT AND PRIVATE LAW SPHERES”
Adam Zanna, Counsel, Office of the Conflict of Interest and Ethics Commissioner

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Chairs
Sean Gaudet
Senior Counsel, Public Law Section, Justice Canada
Lorne Sossin
Dean, Osgoode Hall Law School
Brendan Van Niejenhuis
Stockwoods LLP Barristers

Dates and Times
October 23 - 24, 2014
9:00 a.m. - 4:30 p.m. EDT/EST
9:00 a.m. - 4:45 p.m. EDT/EST

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

Course Webcast Available
The field of administrative law is complex and diverse, constantly evolving in multiple directions. It’s difficult to stay on top of the many important changes. But as an administrative lawyer or tribunal counsel, or a lawyer advising the Crown on public law, you know you can’t give the best advice unless your knowledge is fully current.

Osgoode’s annual *National Forum on Administrative Law and Practice* has become a reliable touchstone for many who work with public law. You will get expert advice and guidance from leading practitioners, adjudicators, and judicial and academic figures. No matter how public and administrative law impacts your practice or your duties as a decision-maker, you won’t want to miss this opportunity to hear from the most distinguished gathering of experts in the field.

Topics will include:

- **Maritime Broadcasting** (Federal C.A.) – how far-reaching are its implications for judicial review?
- The impact of the SCC’s recent decision in *McLean v. B.C. Securities Commission*
- How taking dispute resolution online is likely to affect administrative law doctrines, including disclosure and duties to provide notice
- The test for “reasonableness” and procedural fairness in *habeas corpus* applications
- Governments’ accountability to the public – the role of mechanisms including FIPPA, the Privacy Commissioner, and the Standing Committee on Justice
- Reconsidering the exercise of discretion in appointments: what boundaries must governments respect?

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AGENDA

DAY ONE: THURSDAY, OCTOBER 23, 2014

8:30-9:00
Registration and Continental Breakfast

9:00-9:10
Chairs’ Welcome and Introduction

9:10-10:00
The Year in Review: Recent Key Developments in Administrative Law
Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP
This presentation will highlight the key developments and judicial trends in the Supreme Court of Canada and appellate courts across the spectrum of administrative law. A great refresher on those cases you read or heard about but didn’t have time to digest fully, plus an orientation to the ensuing sessions, which will explore many of the issues in depth.

10:00-10:15
Refreshment Break

10:15-11:10
Deference and Procedural Justice
Christopher D. Bredt, Borden Ladner Gervais LLP
Freya Kristjanson, Cavalluzzo Shilton McIntyre Cornish LLP
Standard of review orthodoxy has traditionally dictated that reviewing courts decide questions of procedural fairness by applying a “correctness” standard with no deference owed. This approach may be changing as courts take a more nuanced approach to procedural fairness. This panel will examine and discuss recent developments in the law of judicial review where courts have applied a deferential approach to administrative decisions regarding procedures followed in particular cases – notably in the Federal Court of Appeal’s decision in Maritime Broadcasting. Is this development a sea-change in the law of judicial review, or merely a natural progression from the SCC’s Dunsmuir decision?

11:10-12:15
“Legal Questions of Central Importance”
Moderator
Brendan van Niejenhuis, Stockwoods LLP Barristers

Robert A. Centa, Paliare Roland Rosenberg Rothstein LLP
Frank Cesario, Hicks Morley Hamilton Stewart Storie LLP
Alexandra S. Clark, Director, Enforcement Litigation Investment Industry Regulatory Organization of Canada (IIROC)

With the courts adopting an ever-narrower view of the “true jurisdictional question”, this often-overlooked category of questions to which the correctness standard of review applies may attract greater attention. This panel will discuss the place that remains for the correctness standard in view of the presumption of reasonableness, the “home statute” rule, and the debate over assimilating procedural fairness into the substantive review framework. Recent decisions of importance will be highlighted, including the impact of the SCC’s recent decision in McLean v. B.C. Securities Commission.

12:15-1:15
Luncheon

1:15-2:15
Digital Administrative Law
Linda P. Lamoureux, Executive Chair, Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO)
Cheryl Vickers, Chair, Property Assessment Appeal Board Surface Rights Board (formerly Acting Chair, Civil Resolution Tribunal of B.C.)

Canada’s first online administrative tribunal (BC’s Civil Resolution Tribunal) is set to open its virtual doors before year’s end, and tribunals across the country are looking for ways to integrate online dispute resolution and digital resources to enhance services, efficiency and effectiveness. The transformative potential of dispute resolution for administrative justice is significant, but so are the risks and concerns. Questions to be addressed include:
• Do adjudicative and advocacy roles change in digital contexts?
• Can privacy be assured in online environments?
• Will administrative justice become more accessible or less so as dispute resolution migrates online?
• How will doctrines of administrative law be adapted to this new setting (duties to provide notice, disclosure, a hearing and reasons, and duties of independence and impartiality)?
• What will “innovation” look like five or ten years from now?

Are you on top of the most significant developments in administrative law?
AGENDA (Cont’d)

2:15-2:30
Refreshment Break

2:30-3:30
Administrative Law and Criminal Justice
Sean Gaudet, Senior Counsel, Public Law Section Justice Canada
Brian J. Gover, Stockwoods LLP Barristers
Sean Hanley, President, Association of Law Officers of the Crown

The focus of this session will be on the most significant recent developments addressing the application of administrative law principles to the criminal justice context. In its recent decision in Mission Institution v. Khela, the SCC affirmed the right of superior courts to determine the reasonableness of inmate classification decisions as well as the right to review such decisions for procedural fairness by way of applications for habeas corpus — in addition to seeking judicial review of the decision in Federal Court. What impact will this have on the law of habeas corpus and on administrative law generally? The panel will also address:

- Recent developments in the law of judicial review in the context of criminal conviction review decisions
- The degree of deference owed to prison officials — should the Court be micromanaging the prison system?
- The Crown's royal prerogative of mercy — what standard of review should apply?

3:30-4:30
Indigenous Approaches to Governance
Jeffery G. Hewitt, Counsel, Chippewas of Rama First Nations
Deborah McGregor, Associate Professor & Interim Director Aboriginal Studies/Centre for Aboriginal Initiatives University of Toronto

The legal landscape discloses an increasing number of areas involving Aboriginal peoples, such as resource extraction, pipeline development and environmental concerns. The SCC, in addition, is beginning to interpret so-called modern day treaties in Quebec (Attorney General) v. Moses and Beckman v. Little Salmon/Carmacks First Nation. This session will contemplate how current law is shaping up and examine Indigenous approaches to administrative law.

- What is indigenous governance and what is the role of indigenous knowledge systems?
- How may indigenous approaches be considered in self government agreements?
- Do indigenous principles to dispute resolution have a role in administrative law and practice?
- Are the principles of natural justice natural?

4:30
Day One Concludes

DAY TWO: FRIDAY, OCTOBER 24, 2014

8:30-9:00
Registration and Continental Breakfast

9:00-10:15
Review and Accountability Mechanisms at Play In the Ontario Gas Plants Affair
Janet A. Leiper, Barrister & Solicitor
Murray D. Segal, Murray D. Segal Professional Corporation

Using the Gas Plant story as a backdrop the panel will speak to the various accountability mechanisms at play, considering the sometimes opposing values of objectivity and partisanship, and the roles of FIPPA, the Privacy Commissioner, the Auditor General, the Integrity Commissioner, the police, the Committee, the Legislature and the Speaker of the House.

- Has the Standing Committee on Justice worked effectively here? Is the Committee truly an accountability mechanism?
- What are examples of Standing Committees operating to best effect?
- How have the various review processes worked together?
- What has the federal experience been with committees in recent years?
- What are the implications of the “ascendancy of the public” in watching the watchers, and higher public expectations regarding accountability mechanisms?

10:15-10:30
Refreshment Break

10:30-12:00
Appointments and Statutes
Rocco Galati, Rocco Galati Law Firm P.C.
Grant Huscroft, Professor, Faculty of Law, Western University

The controversial Nadon reference addressed the under-scrutinized setting of statutory interpretation in exercising government’s appointment powers. As the SCC has confirmed, even the most broadly worded statutory appointment power includes boundaries which governments must respect. This principle was reiterated in Nadon where the Court read the Supreme Court Act as precluding the appointment of a sitting Federal Court Justice to fill one of the three “Quebec” seats on the Court. This renewed attention to the issues of statutory appointment powers raises important questions, including:

- Should governments be required to provide reasons for specific appointments?
- Should courts take narrower or broader approaches to statutory interpretation contexts involving appointments?
- Do disputes like Nadon distract us from bigger questions about the exercise of discretion in appointments and from concern over partisan patronage, representative courts/tribunals, accountability and transparency?

REGISTER ONLINE TODAY AT WWW.OSGOODEPD.CA
12:00-12:45
Luncheon

12:45-1:30
Keynote Address: Administrative Law – Today and Over the Next Decade
The Hon. Justice David Stratas, Federal Court of Appeal

• Where are we now in substantive and procedural review, and in the civil procedure of administrative law? Where are we going?
• Are administrative tribunals and reviewing courts currently equipped to handle administrative law? What about in the future?
• What issues of administrative law practice and procedure are going to rise to the forefront over the next decade and how might we go about solving them?

Note: A question and answer session will follow.

1:30-2:45
Independence in the Breach
Jonathan Batty, Director, Election Finances and General Counsel Elections Ontario
Michael Pal, Assistant Professor, Faculty of Law University of Ottawa
Lorne Sossin, Dean, Osgoode Hall Law School

A number of recent controversies have brought renewed attention and scrutiny to the uneasy role of Parliamentary agencies and offices in remaining above the partisan fray. The contentious debates around Fair Elections legislation in the spring of 2014 underscore both the importance of, and the limits on, such bodies’ independence. A remarkable dispute between the Parliamentary Budget Officer and the government which appointed him was dismissed in Federal Court on justiciability grounds. And concerns over hidden political agendas lead to proposed legislation aimed at compelling Parliamentary officers and their staff to disclose political activities prior to their appointments.

• Does the independence of Parliamentary agencies and offices require greater judicial vigilance or greater political leadership?
• Are independence and accountability in the actions of such bodies mutually reinforcing or competing goals?
• What does independence mean at a time of heightened partisan anxiety?

2:45-3:45
Class Actions and Administrative Remedies
Jasminka Kalajdzic, Associate Professor, Faculty of Law University of Windsor
Adrian C. Lang, Associate General Counsel, Legal Corporate & Compliance Group, BMO Financial Group

In Fischer v. IG Investment Management, the SCC recently confirmed that an OSC restitution order achieved through a settlement with staff, and intended to compensate class members, did not mean that a subsequent class action was not a “preferable procedure” for moving forward with claims for alleged further losses. This expert panel will discuss the policy and practical implications of Fischer and what it means for litigation in the context of regulated industries. The panel will also consider the broad relationship between legislative efforts to protect the public interest through the divergent means of public regulatory bodies, and individual-driven class proceedings.

3:45-4:45
The Regulation of Civility After Groia
Suhail A.Q. Akhtar, Ministry of the Attorney General (Ontario)
Jonathan A. Shime, Cooper, Sandler, Shime & Bergman LLP
Brendan van Niejenhuis, Stockwoods LLP Barristers

While advocates have a duty to represent clients’ interests fearlessly, to advance every argument, and ask every question, however distasteful, all this must be done by fair and honourable means. This panel will examine the practice and regulation of civility and professionalism after the Law Society’s decision in the Joseph Groia case. Learn from the insights and perspective of experienced counsel on how to advocate effectively while respecting the bounds of civility. Topics will include:

• The decision's impact on misconduct and penalties – has anything changed?
• Is effective formal regulation of civility possible?
• Finding the line and how not to cross it
• Practical responses to incivility
• Do Crown lawyers owe special or different legal or ethical duties of civility?
• Is there any difference between administrative and judicial forums when it comes to professional behavior?
• The relevance of civility to dealing with self-represented litigants.

4:45
Program Ends

WHO SHOULD ATTEND

• Lawyers who appear before boards, agencies or tribunals
• Government counsel
• Tribunal counsel
• Tribunal and Board members
• Adjudicators
• Regulators
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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 5 days prior to the program date. No other refund is available.

Dates & Times

October 23 - 24, 2014
9:00 a.m. - 4:30 p.m. EDT/EST
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Location

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