

13TH ANNUAL NATIONAL FORUM ADMINISTRATIVE LAW & PRACTICE

**Single-Day
Registration Option**
Register for Day 1 or Day 2,
or for both days at a special
package price!

Program Chairs

Lorne Sossin, Dean, Osgoode
Hall Law School of York University

Brendan van Niejenhuis,
Stockwoods LLP

Sean Gaudet, Senior Counsel,
Public Law Section, Justice
Canada

Date and Time

Day 1: October 1, 2018
8:30 a.m. – 4:30 p.m. EST
In Person or Webcast

Day 2: October 2, 2018
8:30 a.m. – 4:30 p.m. EST
In Person or Webcast

Location

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

It's been a year of significant developments in administrative law. Deepen your understanding of current judicial, legislative and regulatory developments in such areas as:

- Tribunal reform: the new Condo Tribunal, OMB reform, the Licence Appeal Tribunal and more
- Artificial intelligence and regulatory law: accountability, asserting jurisdiction, and ensuring compliance
- Developments in disability and human rights, including addiction as a category of disability
- The duty to consult, duty to accommodate and the *Chippewas* case, with special applications to administrative law settings

Register today at:

osgoodepd.ca/adminlaw



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

Program Directors



Lorne Sossin

Dean, Osgoode Hall Law School of
York University



**Brendan van
Niejenhuis**

Stockwoods LLP



Sean Gaudet

Senior Counsel, Public Law Section,
Justice Canada

Program Faculty

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WeirFoulds LLP

Steven M. Barrett

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Joseph K. Cheng

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Tom Curry

Lenczner Slaght Royce Smith Griffin LLP

Ian Darling

Chair, Condominium Authority Tribunal

Aviv Gaon

Instructor, Legal Process, Osgoode Hall
Law School of York University

Avvy Yao-Yao Go

Metro Toronto Chinese and Southeast
Asian Legal Clinic

Kate Glover

Assistant Professor, Faculty of Law
and Faculty of the School of Graduate
and Postgraduate Studies, Western
University

Sean W. Hanley

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

Katherine Hensel

Hensel Barristers

Matthew Horner

Counsel, Ontario Human Rights
Commission

The Hon. Justice Freya Kristjanson

Superior Court of Justice (Ontario)

Andrew K. Lokan

Paliare Roland Rosenberg Rothstein LLP

P. David McCutcheon

Dentons Canada LLP

Nicholas McHaffie

Stikeman Elliott LLP

Kim A. Mullin

WeirFoulds LLP

Jimoh A. Ovbiagele

Co-founder/Chief Technology Officer
Ross Intelligence

Linda R. Rothstein

Paliare Roland Rosenberg Rothstein LLP

Tess Sheldon

ARCH Disability Law Centre

Voy T. Stelmaszynski

Ontario Labour Relations Board
(& Past President, Society of Ontario
Adjudicators and Regulators (SOAR))

Gary Yee

Chair, Toronto Licensing Tribunal

**For the most up-to-date faculty
information, please visit:**

osgoodepd.ca/adminlaw

13TH ANNUAL NATIONAL FORUM

Administrative Law & Practice

Are you on top of the most significant recent developments and key cases in administrative law?

- Significant tribunal reform is ongoing in multiple areas
- Social and even technological change is impacting administrative regulation in areas as disparate as the duty to consult, the liability of tribunals and regulators, and the rise of artificial intelligence
- Fundamental doctrines such as fairness and the standard of review continue to evolve and to pose challenges for public law practitioners

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 in any public law capacity, you know you can't give the best advice or provide the most effective representation unless your knowledge is fully current and deeply informed.

OsgoodePD's Annual *National Forum On Administrative Law and Practice* has become a reliable touchstone for those who work in public law. No matter who administrative law impacts your practice or your duties as a decisionmaker, you won't want to miss this opportunity to equip yourself with the latest information and invaluable insights.

Who Should Attend?

- Lawyers who appear before boards, agencies or tribunals
- Government counsel
- Tribunal counsel
- Tribunal and Board members
- Adjudicators
- Regulators

Register today at:

osgoodepd.ca/adminlaw

Agenda

**Day One: Monday,
October 1, 2018**

8:30 a.m.

Registration and Continental Breakfast

9:00 a.m.

Chairs' Welcome and Introductory Remarks

9:10 a.m.

Overview of Key Developments In Administrative Law 2018: What's New, What's Important?

Andrew K. Lokan, Paliare Roland Rosenberg Rothstein LLP

Always an eagerly-anticipated segment of this program—a great refresher on those cases and other developments you read or heard about but didn't have time to digest fully, and a useful orientation to the ensuing sessions.

10:00 a.m.

Refreshment Break

10:05 a.m.

Liability of Administrative Tribunals and Regulators: Exploring the Curious Case of *Ernst* [2017]

Raj Anand, WeirFoulds LLP

Steven M. Barrett, Goldblatt Partners LLP

This session will explore emerging issues around tribunals' and regulator's liability and how fully statutory immunity clauses can insulate such bodies from liability. The point of departure will be the Supreme Court of Canada's examination of *Charter* damages in *Ernst v. Alberta Energy Regulator* [2017].

11:10 a.m.

Developments in Disability & Human Rights

Tess Sheldon, ARCH Disability Law Centre

Our speakers discuss and evaluate the practical implications of the Supreme Court of Canada's approach to expanding the category of "disability" in public regulatory contexts to include addiction, as set forth in *Stewart v. Elk Valley Coal Corp.* [2017].

12:00 p.m.

Lunch

12:45

The Standard of Review 2008-2017: From *Dunsmuir* to *Edmonton East* (and Beyond)

Nicholas McHaffie, Stikeman Elliott LLP

This segment revisits the perennially-challenging issue of the standard of review, including the evolution of the analytic framework first developed in *Dunsmuir*. In *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.* [2016], the Supreme Court of Canada split on how to apply this framework, and in particular, whether correctness or reasonableness should be applied in cases involving a statutory right of appeal.

1:55 p.m.

Reconciliation and Administrative Justice

Katherine Hensel, Hensel Barristers

In 2017, in two companion cases, *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.* and *Clyde River (Hamlet) v. Petroleum Geo-Services*

Inc., the Supreme Court of Canada revisited the issue of the duty to consult and accommodate in the context of regulatory processes. When considering Reconciliation and section 35(1) of the *Constitution Act*, 1982, can governments delegate these duties to administrative bodies and processes? This session will consider the scope and dynamics of the Court's handling of this issue and the significance of its decisions for all those involved in Reconciliation.

3:00 p.m.

Refreshment Break

3:15 p.m.

Nuts and Bolts of Administrative Justice Ethics, Part I

Avvy Yao-Yao Go, Metro Toronto Chinese and Southeast Asian Legal Clinic

Sean W. Hanley, Counsel, Constitutional Law Branch, Ministry of the Attorney General (Ontario)

The Hon. Justice Freya Kristjanson, Superior Court of Justice (Ontario)

Linda R. Rothstein, Paliare Roland Rosenberg Rothstein LLP

This panel will examine the particular ethical challenges arising in the context of advocacy before administrative bodies – including those decision-making bodies which include a mix of legally and non-legally trained advocates and adjudicators.

4:30 p.m.

Day One ends

Register today at:

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Day Two: Tuesday, October 2, 2018

8:30 a.m.

Registration and Continental Breakfast

9:00 a.m.

Tribunal Reform: New, Emerging, Refurbished, Reimagined?

Ian Darling, Chair, Condominium Authority Tribunal

Kim A. Mullin, WeirFoulds LLP

Gary Yee, Chair, Toronto Licensing Tribunal

- Recent legislation tabled in Ontario will restructure the Ontario Municipal Board, replacing it with a new tribunal having less authority to overturn decisions by local governments.
- A new Ontario Condominium dispute resolution tribunal will open its (virtual) doors as the province's first online tribunal.
- In the accident benefits area, the Financial Services Commission of Ontario's jurisdiction over auto-accident insurance disputes has been transferred to the License Appeal Tribunal, involving a new process intended to implement principles of proportionality.
- The Hon. Justice Michael Tulloch's review of police oversight and dispute resolution bodies has called for significant reform of the adjudicative bodies in the law enforcement context.

This panel will canvass the implications of these various reforms and the impulses driving them, and explore the impact of tribunal reform for administrative lawyers generally.

10:15 a.m.

Refreshment Break

10:30 a.m.

The Duty of Fairness in a Changing World

Kate Glover, Assistant Professor, Faculty of Law and Faculty of the School of Graduate and Postgraduate Studies, Western University

How the duty of fairness is adapting to such developments as:

- Evolving administrative practices such as active adjudication
- Changes arising from new technologies
- Changing understandings of bias and cultural competency as Canada's society grows more diverse.

11:15 a.m.

Reviewing Commercial Arbitration

Tom Curry, Lenczner Slaght Royce Smith Griffin LLP

P. David McCutcheon, Dentons Canada LLP

Is commercial arbitration subject to the same type of deference as administrative decisions generally attract?

What seemed clear in the Supreme Court of Canada's 2014 decision in *Sattva Capital* has been thrown into doubt by a sharply-divided Court recently in *Teal Cedar Products*.

This session will explore how reasonableness review operates in the arbitration context, and the implications of a dissent which declined to address the standard of review altogether.

12:00 p.m.

Lunch

12:45 p.m.

The Open Question of Jurisdictional Questions

Matthew Horner, Counsel, Ontario Human Rights Commission

Brendan van Niejenhuis, Stockwoods LLP

One fundamental premise of administrative law is that administrative bodies can only do what lies within their jurisdiction as granted by statute. Yet confronting the question "what is 'jurisdictional'?" has led to contortions in the law.

The Supreme Court of Canada has questioned the very existence of a "jurisdictional question", only to later revisit that perplexing speculation. That debate has been left seemingly unconnected to practical questions such as the jurisdiction of tribunals to decide *Charter* and *Human Rights Code* questions, or even to engage in the degree of statutory interpretation necessary to decide their own jurisdiction.

This session will try to connect the threads and explore why the "jurisdictional question" throws up so many challenges, and where to look for possible solutions.

1:50 p.m.

Artificial Intelligence & Regulatory Law

Aviv Gaon, Instructor, Legal Process, Osgoode Hall Law School of York University

Jimoh A. Ovbiagele, Co-founder/Chief Technology Officer, Ross Intelligence

What are the foreseeable administrative law implications of advancing technologies in the area of artificial intelligence? These implications have at least three dimensions:

- How is AI being used by regulatory bodies to exercise statutory powers?
- How (and which) regulatory schemes will be disrupted by the rise of AI (for example, how many aspects of the regulation of roads, highways and

driving may need to change with the rise of autonomous-driving cars and trucks?)

- Which bodies will oversee the activities of machine learning processes and the data used and generated by them?

2:55 p.m.

Refreshment Break

3:10 p.m.

Nuts and Bolts of Administrative Justice Ethics, Part II

Robert A. Centa, Paliare Roland Rosenberg Rothstein LLP

Joseph K. Cheng, Counsel, Public Safety & Defence Division, Department of Justice (Canada)

Lorne Sossin, Dean, Osgoode Hall Law School of York University

Voy T. Stelmaszynski, Ontario Labour Relations Board (& Past President, Society of Ontario Adjudicators and Regulators (SOAR))

Our closing session, building on the previous days' discussion of ethical and professional issues, will segue into issues of cultural competency and the challenges presented by the increasing involvement of partially represented, and self-represented parties in dispute resolution processes before administrative boards, tribunals and agencies.

4:30 p.m.

Day Two ends

Register today at:

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What Previous Years' Attendees Said

“Congratulations. Exceeded expectations. Very informative.”

Fulvio Fracassi, Laurentian Pilotage Authority

“Very practical information and cases that are recent and relevant to working in administrative law.”

Christine Langill, Treasury Board of Canada Secretariat

“Overall, superb.”

Daniel Chitiz, Chitiz Pathak LLP

“This program is essential for me to have an overview and keep up to date...excellent.”

Patricia Pledge, Senior Counsel, Justice Canada

“Smart, knowledgeable presenters...relevant topics.”

Andrew Roman, Andrew John Roman Alternative Dispute Resolution

Registration Details

Fee per Delegate

One Day: \$825 plus HST

Both Days: \$1595 plus HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/groupdiscounts 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.

Eligible CPD Hours (both days):

LSUC (ON): 13h 30m CPD (10h 55m Substantive; 2h 35m Professionalism)

Day 1: 6h 45m CPD (5h 30m Substantive; 1h 15m Professionalism)

Day 2 - 6h 45m CPD (5h 25m Substantive; 1h 20m Professionalism)



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