

15TH 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

Brendan van Niejenhuis
Stockwoods LLP

Kate Glover Berger
Assistant Professor,
Osgoode Hall Law School

Sean Gaudet
General Counsel,
National Litigation Sector
(Ontario Regional Office),
Justice Canada

Date and Time

October 6 – 7, 2020

Live Online
(Includes 120-day
post-program video access)

Single-day registration available

ONLINE REPLAY:
November 19 – 20, 2020

The latest on key developments: the impact of COVID-19 on regulation and the administrative process, *Vavilov's* first year and more.

Deepen your understanding of current judicial and regulatory developments in such areas as:

- Emergency decisions and powers: how far?
- Meeting the challenges of online hearings
- The changing context of procedural fairness
- What's different in 'reasonableness review'?
- Equality, diversity and inclusion in tribunal composition and access to technology

Register today at:

osgoodepd.ca/adminlaw

15TH ANNUAL NATIONAL FORUM

Administrative Law & Practice

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

Topics Include

- Ethical and professional considerations in adapting conventional in-person processes to a videoconferenced environment
- Governance meets science: epidemiology, artificial intelligence, machine learning and beyond
- Current constitutional issues, including oversight of police conduct and the impact of *Vavilov* on marginalized communities and detained populations
- Internal tribunal processes: current thinking on independence, discretion, impartiality and bias

These and other topics in the accompanying agenda will receive searching treatment, with emphasis on their practical implications.

Who Should Attend

- Lawyers who appear before agencies, boards or tribunals
- Government counsel
- Tribunal counsel

Register today at:

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Agenda

DAY ONE: October 6, 2020

8:45 a.m.

Login

9:00 a.m.

Chairs' Welcome and Introductory Remarks

9:10 a.m.

The Year's Update on Important Recent Caselaw

Emily Lawrence

Paliare Roland Rosenberg Rothstein LLP

Michael H. Morris

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

Always an eagerly-anticipated segment of the Annual Forum program, this session shines a spotlight on key administrative law developments and trends over the preceding twelve months.

10:00 a.m.

Break

10:15 a.m.

Emergency Decisions and Powers: Their Uses and Limits

Josh Hunter

Deputy Director (A),
Constitutional Law Branch,
Civil Law Division,
Ministry of the Attorney General (Ontario)

Jody Johnson

Director, Legal Services,
Legislative & Planning Services,
Halton Region

Ewa Krajewska

Borden Ladner Gervais LLP

The pandemic has sparked widespread use of “emergency” powers and legislation by each level of government – and inevitable challenges to their scope and exercise. This panel will explore the nature, uses and legal limits or restrictions on these emergency legislative and regulatory authorities.

11:30 a.m.

Procedural Fairness Update: COVID-19 and Other Developments

Judie Im

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

Justin Safayeni

Stockwoods LLP

COVID-19 has presented governments across Canada with a once-in-a-lifetime public health crisis. Their response has included delegating legislative powers to administrative bodies. How will courts ensure that these authorities are exercised in procedurally fair ways? Administrative tribunals accustomed to conducting in-person hearings have had to implement alternative hearing methods to achieve their statutory mandates. How have tribunals fared in ensuring timely access to justice and procedural fairness to participants and stakeholders? What procedural challenges lie ahead?

12:30 p.m.

Lunch Break

1:30 p.m.

Vavilov and Reasonableness Review: The First Year

The Hon. Justice Sally A. Gomery

Superior Court of Justice (Ontario)

The Hon. Justice Lorne Sossin

Superior Court of Justice (Ontario)

The Hon. David W. Stratas

Federal Court of Appeal

This panel will take stock of where judicial review of administrative action stands since *Vavilov*'s landmark reframing of the law, including

- what has changed in the practice of reasonableness review
- the remaining significance of “expertise”
- emerging consequences and problems with the new approach.

2:45 p.m.

Break

3:00 p.m.

Ethics & Professionalism: The New World of Remote Hearings

Joseph Cheng

Counsel, Public Safety and Defence,
Justice Canada

The Hon. Justice David Corbett

Superior Court of Justice (Ontario)

Sana Halwani

Lenczner Slaght Royce Smith Griffin LLP

Courts and tribunals moved quickly to implement online trials and hearings in response to COVID-19, and it appears unlikely that electronic forums will disappear anytime soon. Our panelists bring different perspectives to bear on the ethical considerations and professional challenges that emerge from adapting conventional in-person processes to a video-conferenced environment.

4:00 p.m.

End of Day 1

DAY TWO: October 7, 2020

8:45 a.m.

Login

9:00 a.m.

Science, Technology and Public Law

Paul Daly

University Research Chair in Administrative Law & Governance, Faculty of Law (Common Law Section), University of Ottawa

Dr. David N. Fisman, MD (Western Ontario), MPH (Harvard)

Division of Epidemiology, Dalla Lana School of Public Health, University of Toronto

Dr. Jennifer Raso

Assistant Professor, Faculty of Law,
University of Alberta

While regulatory responses to COVID-19 are the most dramatic and pressing example, the pervasiveness of the internet and social media, artificial intelligence and machine learning have forced increasing confrontations between governance and science into the open. Our panelists bring their expertise in administrative law, epidemiology and public health, technology, data and AI to focus on the complex relationship of the scientific method, technological tools, and regulation.

10:00 a.m.

Break

10:15 a.m.

Current Constitutional Issues In Administrative Law

Alexander Pless

Regional Manager and Senior Counsel,
Quebec Regional Office, Commercial Law Directorate, Justice Canada

Maggie Went

Olthuis Kleer Townshend LLP

- Pipeline protests

- The duty of state actors to consult and accommodate Indigenous communities
- Oversight and discipline of violence by the police
- The future of *Doré* and the protection of *Charter* rights in the administrative sphere
- *Vavilov*'s impact on marginalized communities and detained populations

Counsel will be at the forefront of helping administrative decision-makers, policy-makers, and the courts resolve these delicate constitutional issues. This panel will provide expert insights into how to best understand the intersection of administrative law and the constitution.

11:15 a.m.

Institutional Bias: Thirty Years After *Consolidated Bathurst*

Wissam Aoun

Faculty of Law, University of Windsor

Christopher D. Bredt

Senior Litigation Counsel,
Borden Ladner Gervais LLP

Mannu Chowdhury

Borden Ladner Gervais LLP

Independence in decision-making is an essential aspect of administrative justice, and administrative decision-makers are expected to adjudicate in accordance with their own consciences and opinions. A key feature of administrative independence is the extent of permitted consultation within tribunals about important issues of procedure, law and policy. Thirty years ago the Supreme Court issued its seminal decision in *IWA v. Consolidated Bathurst Packaging Ltd.*, authorizing administrative tribunals to hold full meetings to discuss broad issues of policy without breaching the rules of natural justice. It is now well accepted that Internal tribunal discussions enable members to benefit from the collective experience of all members and ensure uniformity of tribunal decisions. How can internal tribunal processes be facilitated without fettering the discretion of tribunal members?

12:15 p.m.

Lunch Break

1:15 p.m.

Vavilov In Practice

Andrea Gonsalves

Stockwoods LLP

Brandon Kain

McCarthy Tétrault LLP

The administrative law world eagerly awaited the Supreme Court's decision in what was pitched as an overhaul of the standard of review analysis and the foundations of judicial review. There was much buzz about *Vavilov* immediately after its release but the most important questions could not be answered right away:

- How does *Vavilov* change the practice of administrative law?
- How must counsel pivot in sectors subject to appeal rather than judicial review?
- What is the impact on the work of tribunal members and other administrative decision-makers?

After almost a year of living with *Vavilov*, our expert panel will assess its material consequences for administrative lawyers, decision-makers, and individuals affected by government action.

2:15 p.m.

Break

2:30 p.m.

Ethical and Professional Issues, Part II: Equality, Diversity and Inclusion (EDI) Issues in Tribunal Composition and Access to Technology

Martha Cook

Martha A. Cook Professional Corporation

The Hon. Harry LaForme

Senior Counsel,
Olthuis Kleer Townshend LLP

Ziyaad Mia

Immigration and Refugee Board of Canada

Muneeza Sheikh

Levitt LLP

The legitimacy of the justice system entails ensuring that the composition of tribunals reflects the diverse nature of Canada's population. In *Baker v. Canada*, the Supreme Court of Canada emphasized the importance of participation and justification as core values of the administrative justice system. How are the perspectives of historically excluded groups taken into account in administrative decision-making? With tribunals conducting hearings remotely without in-person attendance, is unequal access to technology creating barriers to access to justice?

3:45 p.m.

Chairs' Wrap-Up/Final Questions From the Floor

4:00 p.m.

End of Program



Register today at:

osgoodepd.ca/adminlaw

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

Program Directors



Brendan van Niejenhuis

Stockwoods LLP



Kate Glover Berger

Assistant Professor,
Osgoode Hall Law School



Sean Gaudet

General Counsel, National Litigation
Sector (Ontario Regional Office),
Justice Canada

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

osgoodepd.ca/adminlaw

Program Faculty

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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: \$695 plus HST

Both Days: \$995 plus HST

Newly Licensed (2017 – Present):

One Day: \$347.50 plus HST

Both Days: \$695 plus HST

Fees include attendance and program materials. 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 – LSO (ON)

Both days: 11h 50m CPD (9h 35m Substantive; 1h Professionalism; 1h 15m EDI)

Day 1 (Oct. 6) only: 6h 5m CPD (5h 5m Substantive; 1h Professionalism)

Day 2 (Oct. 7) only: 5h 45m CPD (4h 30m Substantive; 1h 15m EDI)

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