

The Canadian Institute's 9TH ANNUAL

"Excellent speakers – well organized and thorough."

– Patricia Hum, Legal Counsel
Patented Medicines Pricing Review Board

ADVANCED ADMINISTRATIVE LAW & PRACTICE

Essential Professional Development for Counsel and Tribunals

What last year's delegates had to say:

“Good presentations. The majority of the subject matter directly affects my environment or at least provides us something to think about. Great print materials.”

– Dennis Woolsey, Director
Alberta Municipal Government Board

Timely and interesting, broadly relevant to practitioners across the country as opposed to a focus on Ontario. The materials will no doubt be valuable for later reference.

– Charita Ohashi, Crown Counsel
Ministry of Justice, Saskatchewan

*Very informative, practical information.
Good line-up of speakers.*

– Matthew Oommen, Counsel
Indian and Northern Affairs Canada

Here are just some of the must-attend sessions in this year's conference:

- The view from the Bench, featuring **The Hon. Simon Noël**
- Making sense of divergent views on privacy in administrative law
- Implications of the top cases of the year, including *Khosa*
- What to do when a constitutional issue arises before a tribunal
- Accommodation in the tribunal context: doing it right
- The direct-access model at the HRTO: how is it working?
- When are reasons sufficient?
- Preserving tribunal independence

DON'T MISS THE VALUABLE WORKSHOPS!

See inside for details.



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Co-Chairs:

Lynda Tanaka, FCI Arb. C. Arb. ICD. D
Chair, License Appeal Tribunal, Ontario

M. Philip Tunley
Partner, Stockwoods LLP, Toronto

Speakers:

Chris Bredt
Partner
Borden Ladner Gervais LLP, Toronto

Robert A. Centa
Partner
Paliare Roland Rosenberg Rothstein LLP

Ann Chaplin
General Counsel, Justice Canada
Constitutional and Administrative
Law Section

Graham Clarke
Vice Chairperson
Canada Industrial Relations Board

Peter Doody
Partner, Borden Ladner Gervais LLP

Patrick James
Partner, Pinto Wray James LLP, Toronto

Kris Klein
Law Office of Kris Klein

Freya J. Kristjanson
Partner, Cavalluzzo, Hayes, Shilton,
McIntyre & Cornish LLP, Toronto

Ian Mackenzie
Vice-Chairperson
Public Service Labour Relations Board

Barbara McIsaac, Q.C.
Partner, Borden Ladner Gervais LLP

The Hon. Simon Noël
Justice, Federal Court of Canada

Owen Rees
Stockwoods LLP, Toronto

Paul Schabas
Partner, Blake Cassels & Graydon LLP, Toronto

Jennifer Stoddart
Privacy Commissioner of Canada

Paul Manning
Partner, Willms & Shier Environmental
Lawyers LLP, Toronto

David Wright
Acting Chair, Human Rights Tribunal of Ontario

The administrative justice system in Canada is straining under many pressures. To name just a few, there is the need to accomplish much with ever-decreasing resources; the challenges of a serving a diverse multicultural society; rapidly changing case law; the obligation to deal with an expanding array of issues, including privacy and constitutional questions; political pressures that threaten tribunal independence; and reviewing courts that have high expectations of process and reasons.

The Canadian Institute's 9th Annual Conference on **Advanced Administrative Law** and Practice has consistently offered top-quality guidance on the issues that matter to counsel as well as to tribunal chairs, vice-chairs and members.

Speakers this year will include **The Hon. Justice Simon Noël** of the Federal Court of Canada, Chris Bredt, Michael Gottheil, Freya Kristjanson, Barbara McIsaac, Q.C., and many other leading members of the administrative law bar.

Back by popular demand are two workshops that sold out last year: **The Fundamentals of Administrative Law** and **The Rules of Evidence in a Nutshell**. Early booking is recommended for these popular sessions.

Based on the past success of this conference, **spaces will fill up quickly**. Reserve your space today by calling **The Canadian Institute** toll-free at 1-877-927-7936, faxing your registration to 1-877-927-1563, or registering online at www.CanadianInstitute.com/AdvancedAdmin.

We look forward to seeing you at the conference!

"Some very helpful research and information included in the papers."

– Rob Burnett, Legal Advisor, Veterans Review & Appeal Board

WHO WILL BE THERE

- Chairs, vice-chairs and members of administrative tribunals
- Tribunal/board counsel
- Government and commission lawyers
- Municipal and university decision makers and their advisors
- Ombudspeople
- Arbitrators
- Lawyers in private practice

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This program has been accredited by the **Law Society of Upper Canada** towards the professional development requirement for certification in **civil litigation**, for the hours listed below.

Conference	11.0 hours
Workshop A	2.5 hours
Workshop B	3.5 hours

The same number of hours may be applied toward your continuing legal education requirements in **British Columbia**.

The **Barreau du Québec** automatically recognizes the same number of hours for this training activity, the latter having been accredited by another Law Society subject to MCLE.

Register at 1-877-927-7936 or in Toronto 416-927-7936 or www.CanadianInstitute.com/AdvancedAdmin

DAY ONE: WEDNESDAY, OCTOBER 28, 2009

- 8:00 Registration Opens; Coffee Served
- 9:00 **Announcements & Opening Remarks from the Chair**
-
- M. Philip Tunley**
Partner
Stockwoods LLP, Toronto
- 9:10 **Defining the Scope of Tribunals' Privacy Obligations**
-
- Moderator:**
- Kris Klein**
Law Office of Kris Klein
- Panelists:**
- Barbara McIsaac, Q.C.**
Partner
Borden Ladner Gervais LLP
- Paul Schabas**
Partner
Blake Cassels & Graydon LLP, Toronto
- Jennifer Stoddart**
Privacy Commissioner of Canada
- An update on "Mr. X" and other recent cases
 - Where are tribunals drawing the line between the public interest and individual privacy interests?
 - What position are the privacy commissioners taking in the various jurisdictions?
 - What if anything can tribunals do when parties post tribunal filings on the internet?
 - Is there a different duty, if any, owed to third parties and witnesses?
 - When if at all should tribunals redact competitive information?
 - Best practices within the tribunal
 - Guidelines from the Supreme Court of Canada
 - Governing privacy/confidentiality issues in disclosure among parties
 - Implications of privacy on crafting reasons
 - Access to information
 - should information in the tribunal file be available to the public?
 - should some personal information be redacted, and if so what?
 - what about tribunal notes?
- 10:45 Networking Refreshment Break
- 11:00 **Interpreting *Dunsmuir* and *Khosa*: Keeping Current on Standard of Review**
-
- Ann Chaplin**
General Counsel, Justice Canada
Constitutional and Administrative Law Section

- How are the lower courts applying *Dunsmuir* and *Khosa*?
- The status of legislated standards of review and privative clauses
- What is reasonable?
- Are questions of law appropriately assessed on the reasonableness standard?
- Winning strategies for arguing standard of review under the new test
 - working under the *Federal Court Act* after *Khosa*

11:45 **Handling Constitutional Issues in an Administrative Setting**

Chris Bredt
Partner
Borden Ladner Gervais LLP, Toronto

- Understanding the ground rules
- Does the tribunal have jurisdiction? – an analytical approach
- Developing the record
- Evidentiary issues
- What is the standard of review?
- Common errors and their consequences
- The fallout from major cases of the last few years
- Lessons from cases where tribunals handled constitutional questions poorly

12:30 Luncheon for Delegates & Speakers

1:45 **Cross-Canada Case Law Update for 2009**

Peter Doody
Partner
Borden Ladner Gervais LLP

- How are tribunals responding to the Supreme Court of Canada's ruling on the single civil standard of proof?
- Implications of *Cyr*
- Procedural fairness
- Is there scope for judicial review with respect to public tendering?
 - reconciling conflicting lines of cases
- Is there still room for judicial review in commercial situations after *Fleetway*?
- Emerging issues:
 - will someone challenge today's trend to large administrative monetary penalties on constitutional grounds?
- Solicitor-client privilege: an update on cases following the *Blood Tribe* decision

2:45 Networking Refreshment Break

3:00 **What You Need to Know about Statutory Interpretation in the Tribunal Context**

M. Philip Tunley
Partner
Stockwoods LLP, Toronto

Statutory interpretation lies at the heart of administrative justice. But the rules have changed a lot since you were in law school. In this session, get tips on applying the current approach in the tribunal context. The speaker will also look at recent cases, including one on the issue of whether the rules of statutory interpretation apply to rules the tribunal itself has made.

3:45 **Accommodation in the Administrative Process: Doing it Right**

Ian Mackenzie

Vice-Chairperson
Public Service Labour Relations Board

- Implications of the “niqab” criminal case for administrative tribunals
- Accommodating other religious beliefs
 - oaths or affirmations?
- Sensitizing the tribunal to the needs of parties or witnesses with mental health challenges
 - capacity
 - accommodation
 - keeping control of the hearing process
- Literacy audits and tribunal documents
- Simultaneous interpretation: rules and pitfalls
- Cross-cultural sensitivity in the hearing process
- Explaining the tribunal process to new Canadians

4:30 **Co-Chair’s Remarks**

4:45 **Conference Adjourns**

- Mediation and other forms of ADR
- Conducting the hearing
 - do you need evidence about every issue in the case?
 - timeliness
- Finding efficiencies in drafting written reasons

11:30 **Preserving Tribunal Independence**

Freya J. Kristjanson

Partner, Cavalluzzo, Hayes, Shilton, McIntyre & Cornish LLP, Toronto

Paul Manning

Partner
Willms & Shiers Environmental Lawyers LLP, Toronto

- An update on the year’s developments in tribunal independence and impartiality
- Case study: the changing mandate of the Ontario Energy Board
 - political oversight of OEB decision making
 - the role of economic expertise in economic regulation
 - the broader implications for other tribunals
- Dealing with issues arising from having part-time members
- Best practices for preserving the independence, transparency and legitimacy of your tribunal
 - responding to interference from the executive branch

12:30 **Luncheon for Delegates and Speakers**

1:45 **Working under the Direct-Access Model: Recent Experience at the Human Rights Tribunal of Ontario**

David Wright

Acting Chair
Human Rights Tribunal of Ontario

Patrick James

Partner
Pinto Wray James LLP, Toronto

- What challenges arose during the transition, and how were they managed?
- What would the Tribunal have done differently in retrospect?
- Is the process faster?
- What are the case volumes like?
- How is it working for complainants, respondents and their counsel?

2:45 **Networking Refreshment Break**

3:00 **When are Reasons Sufficient?**

Owen Rees

Stockwoods LLP, Toronto

- An update on important recent case law
- What do the cases mean in practice?
- How much is too much?
- When are written reasons not required?
- Balancing the legal requirement for adequate reasons with inadequate tribunal resources

3:45 **Co-Chair’s Remarks**

4:00 **Conference Concludes**

DAY TWO: THURSDAY, OCTOBER 29, 2009

8:30 **Coffee Served**

9:00 **Announcements and Opening Remarks from the Co-Chair**

Lynda Tanaka, FCI Arb., C.Arb., ICD. D
Chair

Licence Appeal Tribunal, Ontario

9:05 **The View from the Bench**

The Hon. Simon Noël

Justice
Federal Court of Canada

10:00 **Networking Refreshment Break**

10:15 **Doing More with Less: Gaining Efficiencies in Tribunal Operations**

Graham Clarke

Vice Chairperson
Canada Industrial Relations Board

- The initial application: requiring the heavy lifting at the start of a case
 - responses and replies
- Screening cases: when can you dispose of a matter without an oral hearing?
 - case study: the CIRB’s *prima facie* process and the *Blanchet* case
- Using pre-hearing conferences and case-management techniques
 - full documentary production, will-say statements, deciding preliminary issues
 - requests to admit facts and/or agreed statements of fact: what are the limits?

“ [I liked the] depth of knowledge of information presented. Very well done – my mind is racing with ideas to consider upon my return to IRAC.

– Philip Rafuse, Appeals Administrator, Island Regulatory and Appeals Commission ”

BACK BY POPULAR DEMAND

Register early! Last year both these workshops sold out!

PRE-CONFERENCE WORKSHOP

TUESDAY, OCTOBER 27, 2009 | 2:00–5:00 P.M.

A The Fundamentals of Administrative Law

Robert A. Centa

Partner

Paliare Roland Rosenberg Rothstein LLP, Toronto

This conference assumes that delegates know the basic concepts and terminology of administrative law, whether from a course at law school or attending our popular two-day Fundamentals course. If you need a refresher, or if the law has changed since you studied the basics, we recommend this valuable condensed workshop.

- The policy underlying the system of administrative justice
- The source of tribunal jurisdiction
- Natural justice / the principles of fundamental justice
- Constitutional and *Charter* issues
- Applicable procedural statutes
- Guideline, policy and rule-making authority
- Independence and bias: key legal principles
- What is a privative clause, and what is its practical implication?
- Burden of proof, standard of proof
- Judicial review
 - sources of authority
 - difference from appeals
 - remedies
 - what does “standard of review” mean?
- Leading cases in administrative law

ROBERT A. CENTA, a gold medalist at U of T law school, has been recognized in the Best Lawyers in Canada (2006 to 2009) and Lexpert (2005) as a public law litigator. In 2008 he was named one of Canada’s leading lawyers under age 40. He acted as assistant Commission counsel for the Goudge Inquiry into Pediatric Forensic Pathology in Ontario, counsel for the City of Toronto at the Toronto Computer Leasing Inquiry, and is Assistant Discipline Counsel for the University of Toronto.

POST-CONFERENCE WORKSHOP

FRIDAY, OCTOBER 30, 2009 | 9:00 A.M.–1:00 P.M.

B The Rules of Evidence in a Nutshell

Owen Rees

Stockwoods LLP, Toronto

*A tribunal’s rules may *say* that it doesn’t need to follow all the rules of evidence, but that only applies to the extent that the fairness of the hearing is not jeopardized. Using practical examples, this condensed workshop gives you an introduction to key aspects of the rules of evidence and how they can arise in hearings.*

- The difference between facts and evidence
- Understanding basic concepts
 - relevance
 - materiality
 - weight
 - credibility
- Evidence rules in statute and at common law
- What is meant by “proving” evidence?
 - proving business records
- Admissions
- Competency of witnesses
- “Judicial” notice – how far does it go in an expert tribunal setting?
- Dealing with opinion evidence
- Hearsay evidence: when is it in, what is it worth?
 - what it is
 - weighing hearsay evidence
 - common exceptions to the rule
- Fairness and the rule in *Browne v. Dunn*
- Imperfect memories
 - past recollection refreshed
 - past recollection recorded
- Weighing evidence
- Types of privilege and how they affect the admissibility of evidence
- Public interest immunity and national security

OWEN REES, a former law clerk to the Supreme Court of Canada, has taught administrative law and other subjects at the University of Oxford, Osgoode Hall School of Law and Queen’s University. He practices administrative, civil and commercial litigation, with a particular focus on public law.

“Excellent distillation of content. Very glad I attended.”

– Douglas Wilson, Legal Counsel,
Market Surveillance Administrator, Alberta, 2008 participant

“Very well-organised material, covered all relevant topics, very well presented.”

– J. Pouliot, Legal Counsel, Canadian Forces Grievance Board

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ADVANCED ADMINISTRATIVE LAW & PRACTICE

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For group discounts please call 1-877-927-7936

FEE PER DELEGATE	Register & Pay by September 30, 2009	Register & Pay after September 30, 2009
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<input type="checkbox"/> Conference + Workshop <input type="checkbox"/> A or <input type="checkbox"/> B	\$2390 + 5% GST = \$2509.50	\$2590 + 5% GST = \$2719.50
<input type="checkbox"/> Conference + Both Workshops	\$2885 + 5% GST = \$3029.25	\$3085 + 5% GST = \$3239.25
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Top Reasons to Attend

- ✓ Get up to speed on key case law developments from across Canada
- ✓ Benefit from the views of **The Hon. Justice Simon Noël**
- ✓ Learn from leading tribunal chairs and counsel
- ✓ Get practical advice on tribunal efficiency
- ✓ Participate in informative workshops

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ADMINISTRATIVE DETAILS

VENUE: Minto Suite Hotel
ADDRESS: 185 Lyon St. North, Ottawa, ON
TEL.: 613-232-2200

Hotel Reservations

A limited number of rooms have been set aside until September 25, 2009 at a special rate for conference registrants at the Minto Suite Hotel. Rates start at \$154.00 per night. For reservations, please call 1-800-267-3377 and mention group #376877.

Program Materials

Conference participants will receive a comprehensive set of conference materials prepared by the speakers, as an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

Payment Policy

Payment must be received in full by the conference date to ensure admittance. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

Cancellation and Refund Policy

You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the conference date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other conference by **The Canadian Institute**. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. **The Canadian Institute** reserves the right to cancel any conference it deems necessary and will, in such event, make a full refund of any registration fee, but will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by **The Canadian Institute** for changes in program date, content, speakers or venue.

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