

19TH ANNUAL CONFERENCE

ADVANCED ADMINISTRATIVE LAW & PRACTICE

*Essential Professional Development for Counsel and Decision Makers***October 29–30, 2019 | Ottawa Marriott Hotel**

Keynote Address from retired Justice of the Supreme Court of Canada



The Honourable Marshall Rothstein C.C., Q.C.
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Osler

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Brandon Kain
Partner
McCarthy Tetrault



Guy Regimbald
Partner
Gowling WLG



Paul Daly
University Research Chair in Admin Law Government
University of Ottawa



Owen Rees
Senior General Counsel
Department of Justice Canada



John Roberts
Chief Privacy Officer and Archivist of Ontario
Ministry of Government and Consumer Services



David Goodis
Assistant Commissioner
Office of the Information and Privacy Commissioner of Ontario

New this year:

- » Hear from **Counsel directly involved in the trilogy cases** discuss which topics the Justices seem most interested in and if a decision has been made — what it will mean for the world of Administrative Law
- » **Paul Daly** joins us to discuss the challenges and benefits on the **incorporation of AI** into admin law
- » OMB to LPAT: **Evaluating Bill 108** and rolling back much of Bill 139 — what does this mean for ongoing appeals, and appeals that are forthcoming
- » Deciphering the **new Crown Liability and Proceedings Act (CLPA)**, it's important features and significant changes to the practice of Crown liability

Administrative law as a discipline is notoriously complex. Whether you are a tribunal member, counsel, or private practitioner, ensuring you maintain a robust base of legal and cultural knowledge is essential.

The Canadian Institute is proud to present our **19th Annual Advanced Administrative Law & Practice** conference. Join us in Ottawa for a 2-day forum designed to give you the takeaways you need to negotiate Canada's ever-changing administrative law landscape.

Hear seasoned legal experts on new issues in the admin world:

- Case law review on **Canada's administrative law trilogy**: What to expect
- **Artificial intelligence** and its incorporation to administrative law
- **OMB to LPAT**: Understanding the proposed modifications and what it means for ongoing and forthcoming appeals
- Tribunal records and **access to privacy**
- **Social media** in the admin world

Don't miss this opportunity to ensure that you and your team stay abreast of Canada's most pressing administrative law developments and their consequences for your daily practice.

The only event where you can get all the CPD credits you need for the year.

Reserve your space today by calling 1-877-927-7936 or register online at www.CanadianInstitute.com/AdministrativeLaw.

Looking forward to seeing you this October!

Brandon Kain
Partner
McCarthy Tetrault

Guy Regimbald
Partner
Gowling WLG

A MUST-ATTEND EVENT FOR:

- Chairs and Vice-Chairs of Administrative Tribunals
- Tribunal Members, Counsel, and Paralegals
- Government, Agency, and Commission Lawyers
- Ombudspeople
- Arbitrators and Mediators
- Municipal and University Decision-Makers and their Advisors
- Private Practitioners working in Administrative Contexts

DISTINGUISHED SPEAKER FACULTY

Roberto Aburto
Partner
Gowling WLG

Benjamin Alarie
CEO
Blue J Legal
Professor & Osler Chair in Business Law
University of Toronto

Catherine Beagan Flood
Partner
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Audrey Bector
Partner
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Michael Bryant
Executive Director
Civil Liberties Association

Karen Drake
Associate Professor
Osgoode Hall Law School

David Goodis
Assistant Commissioner
Office of the Information and Privacy Commissioner of Ontario

Michael Gottheil
Chief of the Commission and Tribunals
Alberta Human Rights Commission

Charles Harnick
Board Chair
Legal Aid Ontario

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Jackman & Associates

Brandon Kain
Partner
McCarthy Tetrault

Brent Kettles
Counsel,
Crown Law Office – Civil
Ministry of the Attorney General

Monique Lafontaine (Invited)
Commissioner, Ontario
CRTC

Isfahan Merali
Senior Counsel
The Capacity and Consent Board

Michael Morris (Invited)
Senior General Counsel
Department of Justice

Joanna Nairn
Counsel
McCarthy Tetrault

Hadayt Nazami
Partner
Nazami & Associates

Owen Rees
Senior General Counsel
Department of Justice Canada

Guy Regimbald
Partner
Gowling WLG

John Roberts
Chief Privacy Officer and Archivist of Ontario
Ministry of Government and Consumer Services

The Honourable Marshall Rothstein C.C., Q.C.
Partner
Osler

Leslie Walden
Counsel, Professional Responsibility Service
Department of Justice Canada, Government of Canada

Brendan Van Niejenhuis
Partner
Stockwoods

Rebecca Young
Partner
Damien Frost & Associates LLP

Join the Conversation



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The Canadian Legal Network

DAY ONE

Tuesday, October 29

8:30

Opening Remarks from the Co-Chairs



Brandon Kain
Partner
McCarthy Tetrault



Guy Regimbald
Partner
Gowling WLG

8:45

Opening Keynote Address



**The Honourable
Marshall Rothstein C.C., Q.C.**
Partner
Osler

9:15

Case Law Review on Canada's Administrative Law Trilogy: What to Expect?

Michael Morris (*invited*)
Senior General Counsel
Department of Justice



Guy Regimbald
Partner
Gowling WLG

Barbara Jackman
Partner
Jackman & Associates

Hadayt Nazami
Partner
Nazami & Associates



Joanna Nairn
Counsel
McCarthy Tetrault

What can we expect in these appeals? There is great excitement about the Trilogy — and the line of 27 interveners is proof enough of that — but whatever the decision — will it be definitive and what will it mean for the world of Administrative Law? This panel of counsel, who are directly involved in the Trilogy cases will discuss which topics the Justices seem most interested in based on their questions at the argument.

- Hear latest updates on Trilogy cases
- Evaluating the potential results and determining the future impact they may have to administrative law

10:30 | Networking Refreshment Break

11:00

Tribunal Records & Access to Privacy: Deciphering the implications of the Toronto Star decision



David Goodis
Assistant Commissioner
**Office of the Information and
Privacy Commissioner of Ontario**



Catherine Beagan Flood
Partner
Blakes

In *Toronto Star*, the Ontario Superior Court ruled that the FOI personal privacy exemption unreasonably blocks access to adjudicative records of tribunals, contrary to the "open court" principle and the *Charter* right to freedom of expression. In essence, the court found that the lack of access to tribunal records substantially impedes meaningful discussion on matters of public interest.

This panel will discuss the implications of the *Toronto Star* decision, including what it means for transparency of tribunals and the privacy of individuals involved in tribunal hearings.

11:45 **NEW LEGISLATION**

Crown Liability and Proceedings Act

Brent Kettles
Counsel, Crown Law Office – Civil
Ministry of the Attorney General

On July 1, 2019, the new *Crown Liability and Proceedings Act* (CLPA) was proclaimed into force. The CLPA repeals and replaces the *Proceedings Against the Crown Act* and governs almost all aspects of provincial government liability. Important features of the new Act include significant changes to the government's immunity for policy-based decisions, a new leave requirement for actions alleging misfeasance or bad faith, and new procedural requirements for litigating against the Crown. The new legislation makes significant changes to the practice of Crown liability.

- Up-to-date review on Crown liability
- Overview and navigating the new legislation, including transition provisions
- What resources you may need

12:30 | Networking Luncheon

1:30

EDI
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Hours

Culturally Competent Adjudication: To What Extent Does "Diversity on the Bench" Translate into Substantive Change to Outcomes

Michael Gottheil
Chief of the Commission and Tribunals
Alberta Human Rights Commission

Karen Drake
Associate Professor
Osgoode Hall Law School

Ensuring that administrative bodies are meaningfully inclusive and accommodating for lawyers, paralegals, and parties to the tribunal process is a necessity. Join our panelists for a discussion on how boards and tribunals can address the practical realities of hearing accommodation, cultural competence, and safeguarding against real and perceived bias.

- Determining how diversity on the bench actually enhances confidence in the administration of justice for marginalized and disadvantaged communities
- "Legal Alienation" and its possible connection to the rise in populism
- Incorporating indigenous legal principles into Canadian law

3:00 | Networking Refreshment Break

3:30 **NEW LEGISLATION**

The Reincarnation of the Ontario Municipal Board as the Local Planning Appeal Tribunal — What Does This Mean for Ongoing and Forthcoming Appeals?



Roberto Aburto
Partner
Gowling WLG

In 2017, Bill 139 purported to abolish the Ontario Municipal Board. In the Board's broad jurisdiction, appellate rights associated with some of the most significant Planning Act appeals were curbed (official plans, zoning by-laws and some subdivision appeals). A higher level of deference was given to municipal decisions. The Local Planning Appeal Tribunal was born. Two years later, before a full transition to the new regime was complete, Bill 108 passed rolling back much of Bill 139. This presentation will address what this means for ongoing appeals, and for appeals that are forthcoming.

- Evaluating the modifications and navigating the challenges that have arisen
- Understanding Bill 108 changes and what this may mean
- What might the future hold for LPAT?



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4:15

Legal Aid Ontario Funding Changes and its Impacts

David Field
CEO
Legal Aid Ontario



Michael Bryant
Executive Director
Civil Liberties Association

The provincial government announced deep cuts to legal aid in order to streamline the delivery of legal aid to promote long-term sustainability. Lawyers across the province are concerned. The first cut represents 30 per cent of the budget. By 2012-22 the legal aid budget will be cut by \$164 million. What will this reduction have on the justice system?

- Evaluating Provincial vs. Federal funding cuts
- What does the future of Legal Aid Ontario look like
- What impacts you may see in your day to day

5:00 | Closing Remarks – Conference Adjourns

DAY TWO

Wednesday, October 30

8:30

Opening Remarks from the Co-Chairs

8:45

In the World of Uncertainty – How Will We Always Remain Ethical?



Brendan Van Nijenhuis
Partner
Stockwoods

Leslie Walden
Counsel, Professional
Responsibility Service
Department of Justice Canada,
Government of Canada

Join our panel of seasoned legal experts for an interactive session designed to illicit honest responses regarding the ethical issues confronted by tribunal members, counsel, and parties. Learn from our experts on how new developments will affect your department or practice.

10:15 | Networking Refreshment Break

10:45

Contractual Disputes and Judicial Review



Brandon Kain
Partner
McCarthy Tetrault



Owen Rees
Senior General Counsel
Department of Justice Canada



Audrey Bector
Partner
IMK

Contractual disputes with government entities sometimes straddle the border between private and administrative law. However, it can be difficult to determine whether government action taken pursuant to a contract is of a sufficiently “public” character to permit judicial review. This session will examine recent Supreme Court of Canada cases that consider the boundaries of judicial review in contractual disputes.

- When is a contractual dispute subject to judicial review
- Benefits of seeking judicial review vs. bringing a private claim for damages
- Use of public law standards for the control of contractual discretion
- (Potential cases for discussion include: *Shell Canada Products Ltd. v. Vancouver (City)* [1994] 1 S.C.R. 231; *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190; *Canada (A.G.) v. Mavi*, [2011] 2 S.C.R. 504; *Braganza v BP Shipping Ltd.*, [2015] UKSC 17; *Ferme Vi-Ber inc. v. Financière agricole du Québec*, [2016] 1 S.C.R. 1032; *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, [2018] 1 S.C.R. 750; *J.W. v. Canada (A.G.)*, 2019 SCC 20)

11:45

Artificial Intelligence and its Incorporation to Administrative Law – How Will the Idea of Reasonableness Be Monitored



Paul Daly
University Research Chair in
Admin Law Government
University of Ottawa

- Navigating the challenges and benefits on the incorporation of AI into admin law
- How it can impact decisions?
- How will we keep the idea of reasonableness and it be monitored?

12:45 | Networking Luncheon

2:00

Social Media in the Admin World – Good or Bad Idea?



Rebecca Young
Partner
Damien Frost & Associates LLP



Brendan Van Nijenhuis
Partner
Stockwoods

With technological advances and an increased use of social and digital media, individuals have more opportunities than ever to express themselves and their views in the public sphere. Professional regulators thus continue to grapple with the impact of social media on their regulatory functions. This panel will showcase the different perspectives on social media in the admin world.

- With technological changes happening, is there a place for social media within the justice system

2:45

Algorithmic Diligence: The Risks and Benefits of Artificial Intelligence in Judicial Decision Making



Benjamin Alarie
CEO
Blue J Legal
Professor & Osler Chair in
Business Law
University of Toronto

The incorporation of AI in judicial decision-making can create more efficient and consistent processes and out-comes. However, where algorithms are used in a manner that will affect human life, it is imperative that there be a manner in which their decisions are able to be scrutinized, understood and explained. This process requires thoughtful debate about AI technology, law and ethics, to ensure an informed approach to incorporating and managing the use of such a powerful technology in law.

- Evaluating the procurement process in AI and how the algorithm creator can influence the decisions
- What measures are put in place to ensure absolute due diligence?
- How are algorithms making decisions today and the changes that will be foreseen in the next decade within administrative law

3:30 | Closing Remarks – Conference Concludes

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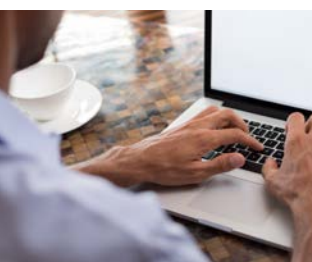
This 2-day conference program can be applied towards 9 of the 9 substantive hours and 3 of the 3 professional hours of annual Continuing Professional Development (CPD) as required by the **Law Society of Ontario**. This program contains 1.5 Equality, Diversity, and Inclusion hours.

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

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BEST REASONS TO ATTEND THIS YEAR

- 1** Gain a meaningful look into the **essential case law updates** from the last year — deconstruct what the courts and tribunals across the country have been deciding
- 2** Forward-thinking presentations on **legal ethics, Artificial Intelligence, cultural accommodation**, and increasing public access and understanding of administrative proceedings
- 3** **New interactive communication-based EDI session** designed to help you self assess your own ways of communication and how to adapt them to the legal context
- 4** Uncover significant changes to the **Crown Liability Proceedings Act (CPLA)** and navigating the new legislation