The Canadian Institute

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21st Annual Conference on

Advanced Administrative Law & Practice

October 27–28, 2021 (EDT) • **Virtual Conference**

Conference Co-Chairs

Lori Sterling
Senior Counsel, **Bennett Jones**
Former Associate Deputy Minister, Justice Canada

Martine Valois, Ad.E.
Associate Professor, Faculty of Law
University of Montreal

Michael H. Morris
Senior General Counsel
Justice Canada

New for 2021

Ethical Advocacy, Professionalism and Decorum: Dos and Don'ts in a Virtual Courtroom

The Hon. Mary T. Moreau
Chief Justice
Alberta Court of Queen's Bench

The Hon. Karen M. Horner
Justice
Alberta Court of the Queen's Bench

Highlights for 2021

HYPOTHETICAL SCENARIOS: Explore the Most **Complex Charter Challenges** and How to Resolve Them

OPEN DISCUSSION: **Becoming a Digital Organization** and the Future of Administrative Law in a Virtual Workplace

LIVE AUDIENCE POLLING: Inside the Top 5 **Challenges Vulnerable People Experience** When Interacting with the Justice System and Finding Solutions

PLUS: **1:1 Meet a Mentor Networking Session**
A unique face-to-face virtual learning experience that will allow you to receive professional guidance or offer it as a mentor.

INTERACTIVE WORKSHOP: How to **Write Reasons After Vavilov: Defensible Decisions**, Access to Justice and Plain Language | October 29, 2021

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LEGAL GLOBAL SERIES

Administrative bodies are facing increasing scrutiny over the "reasonableness" of decisions.

The Supreme Court's decision in *Vavilov* imposes a burden on administrative bodies to ensure decisions are well-reasoned, fair, equitable and consistent. Does your administrative team have the legal training to face a more burdensome correctness standard and a fierce judicial review?

The Canadian Institute's **21st Annual Conference on Advanced Administrative Law and Practice** addresses the most essential developments affecting administrative law professionals. Achieve public confidence through fair and reasonable decision making. This year's event is structured around three essential themes:

FOCUS ON CHARTER CHALLENGES

- Top 5 Most Complex Charter Challenges and How to Resolve Them
- Examining Charter Rights amid a Pandemic: What is the Government's Scope of Emergency Powers to Restrict and Restrain Freedoms?

FOCUS ON VIRTUAL COURTS

- Ethical Advocacy, Professionalism and Decorum: Dos and Don'ts in a Virtual Courtroom
- Becoming a Digital Organization and the Future of Administrative Law Work in a Virtual Workplace

FOCUS ON EQUALITY, DIVERSITY AND INCLUSION

- How to Successful Grow a Diversity Program: Recruiting and Retaining Candidates in Administrative Law and Creating a System of Inclusion
- Mentoring Best Practices: Dos and Don'ts for Lawyers and Paralegals

Gain critical insights from and connect with an outstanding line-up of speakers including federal and provincial decision-makers, Justices, academic experts, and law firms.

Legal Accreditation

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This 2-day conference program can be applied towards 6 of the 9 substantive hours, 3 of the 3 professionalism hours, as well as 1.5 of the 3 EDI hours, of annual Continuing Professional Development (CPD) as required by the **Law Society of Ontario**. Members will also receive an additional 3 substantive hours for the post-conference workshop.

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

The **Barreau do Québec** recognizes this training activity, the latter having been accredited by another Law Society subject to the MCLE.

For Alberta lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the **Law Society of Alberta**.

The **Law Society of Saskatchewan** recognizes another province's CPD credits so long as the hours are submitted to the Director of Admissions & Education for approval.

P Professionalism Credit S Substantive Credit EDI EDI Credit

Distinguished Faculty

Conference Co-Chairs:

Lori Sterling
Senior Counsel, **Bennett Jones**
Former Associate Deputy Minister, Justice Canada

Martine Valois, Ad.E.
Associate Professor, Faculty of Law
University of Montreal

Michael H. Morris
Senior General Counsel
Justice Canada

Administrative Bodies:

Michelle Alton
Tribunal General Counsel
Workplace Safety & Insurance Appeals Tribunal (Ontario)

Karen E. Andrews
Staff Lawyer
Advocacy Center for Tenants Ontario

Paul Aterman
Chairperson
Social Security Tribunal

Luc Bélanger
Chair, **Council of Federal Tribunal Chairs (CFTC)**
Chairperson, **Canada Agricultural Review Tribunal**

Edith Bramwell
Chairperson
Federal Public Sector Labour Relations and Employment Board

Antoine Collins
Member (Adjudicator), Refugee Protection Division
Immigration and Refugee Board of Canada
President, **Ottawa Chapter, Canadian Black Lawyers Association**

Heather Gibbs
Assistant Deputy Chairperson, Immigration Division
Immigration and Refugee Board of Canada

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

Jennifer Khurana
Acting Chairperson
Canadian Human Rights Tribunal

Shannon Salter
Chair
Civil Resolution Tribunal

Richard D. Sharpe
Director, Equity, Anti-racism, Diversity and Inclusion
Justice Canada

Carolyn Slon
Senior Legal Counsel, Office of the Secretary
Ontario Securities Commission

Brennagh Smith
Acting Practice Lead, Prosecutions
City of Toronto, Legal Services

Sharlene Telles-Langdon
Senior General Counsel, Prairie Regional Office (Winnipeg)
Justice Canada

Nathalie Théberge
Vice-Chair and CEO
Copyright Board of Canada
Vice-Chair
Council of Federal Tribunal Chairs (CFTC)

Marisa Victor
Vice-Chair, **Landlord and Tenant Board, Fire Safety Commission**
Member, **Animal Care Review Board and Licence Appeal Tribunal**

Current and Retired Judges:

The Hon. Karen M. Horner
Justice
Court of Queen's Bench of Alberta

Harry S. LaForme
Senior Counsel, **Olthuis Kleer Townshend LLP**
Justice, Ontario Court of Appeal (ret.)

The Hon. Mary T. Moreau
Chief Justice
Court of Queen's Bench of Alberta

Distinguished Speakers:

Rahool P. Agarwal
Partner
Lax O'Sullivan Lisus Gottlieb

Colleen Bauman
Partner
Goldblatt Partners LLP

Andrew Brouwer
Senior Counsel, Refugee Law
Office of Legal Aid Ontario

Paul Daly
Research Chair in Administrative Law & Governance
University of Ottawa

Barbara de Dios
Head of Mentorship, **Global Lawyers of Canada**
Corporate Counsel
Canadian Dental Services Corporation

Nadia Effendi
Partner
Borden Ladner Gervais

Angus Grant
Assistant Deputy Chairperson – Refugee Appeal Division
Immigration & Refugee Board of Canada

Maneesha Gupta
Mentorship Chair and Board of Directors
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Legal Counsel
TD Bank

Christian Leblanc
Partner
Fasken Martineau DuMoulin LLP

François Levert
Regional Vice-Chairperson – Atlantic Region
Parole Board of Canada

Hadayt Nazami
Partner
Nazami & Associates

Justin H. Nasseri
Founding Partner, **Ross Nasseri LLP**
Chair, Civil Litigation Executive Committee
Ontario Bar Association

Christopher Rootham
Partner
Nelligan Law

Kelly J. Serbu Q.C.
Counsel
Serbu Law Firm Limited

Maureen Silcoff
Past President
Canadian Association of Refugee Lawyers
Instructor, Immigration and Refugee Law
Lincoln Alexander School of Law

Daniel Stern
Director, Regulatory Law and Policy
TELUS

10:00

Opening Remarks from the Co-Chairs

Lori Sterling, *Senior Counsel,* **Bennett Jones**
Former Associate Deputy Minister, Justice Canada

Martine Valois, Ad.E., *Associate Professor, Faculty of Law,* **University of Montreal**

Michael H. Morris, *Senior General Counsel,* **Justice Canada**

FOCUS ON CHARTER CHALLENGES

10:15 KEYNOTE ADDRESS

Overcoming Barriers and Encouraging Opportunities for Diversity in Administrative Law

Harry S. LaForme, *Senior Counsel,* **Olthuis Kleer Townshend LLP**
Justice, Ontario Court of Appeal (ret.)

10:45 HYPOTHETICAL SCENARIOS S

Top 5 Most Complex Charter Challenges and How to Resolve Them

Paul Daly, *Research Chair in Administrative Law & Governance,* **University of Ottawa**

Jennifer Klinck, *Partner,* **Juristes Power Law**

Christian Leblanc, *Partner,* **Fasken Martineau DuMoulin LLP**

Explore case studies and hypothetical scenarios to discover what practical applications could find continued use beyond pandemic restrictions.

- Maintaining the integrity of evidence
- Equality for people with disabilities
- Right to an in-person hearing and right to a hearing in a reasonable time, for those unable to attend
- Developments in juris prudence

11:45 Break

12:15 S

Examining Charter Rights Amid a Pandemic: What is the Government's Scope of Emergency Powers to Restrict and Restrain Freedoms?

Nadia Effendi, *Partner,* **Borden Ladner Gervais LLP**

Rahool P. Agarwal, *Partner,* **Lax O'Sullivan Lisus Gottlieb**

Lori Sterling, *Senior Counsel,* **Bennett Jones**
Former Associate Deputy Minister, Justice Canada

Sharlene Telles-Langdon, *Senior General Counsel, Prairie Regional Office (Winnipeg),* **Justice Canada**

- Examining the government's authority to issue restrictions to a person's "life, liberty or property" and what is a protected liberty?
- Restricting travel across provincial boarders with a look at *Taylor v. Newfoundland* and Labrador, 2020
- Challenging the federal quarantine hotel policy with a look at:
  - » *Canadian Constitution Foundation v Attorney General of Canada, 2021 ONSC*
  - » *Spencer v. Canada (Attorney General)*
- Challenging in-person attendance for children attending school, with a look at:
  - » *Karounis c. Procureur général du Québec*, 2020 QCCS
- Government authority to limit spread of virus in penitentiaries, including self-isolation, with a look at:
  - » *Cyr c. Pilon,* 2020 QCCS 1645, autor. ref. 2020 QCCA
- Challenging curfew restrictions with a look at:
  - » *Desrochers c. Procureur général du Québec,* 2021 QCCS 311, par. 61–66, autor. ref. 2021 QCCA
  - » *Lévesque c. Procureur général du Québec,* 2021 QCCS
- Restricting freedom of religion and freedom of assembly rights, with a look at *Conseil des juifs hassidiques du Québec c. Procureur général du Québec*
- *Challenges to workplace restrictions as a result of the pandemic*
  - » *Sharma v City of Toronto and duty to accommodate*
  - » *Ontario Infectious Diseases Emergency Leave*
  - » *Ontario Mandatory Immunization Policy in Long Term Care Home*

1:15

Meet-and-Greet Open Discussion

Speakers and delegates are invited to join an open discussion room. Turn on your camera and audio. This session will not be recorded.

1:30 Break

FOCUS ON VIRTUAL COURTS

2:00 P

Ethical Advocacy, Professionalism and Decorum: Dos and Don'ts in a Virtual Courtroom

The Hon. Mary T. Moreau, *Chief Justice,* **Court of Queen's Bench of Alberta**

The Hon. Karen M. Horner, *Justice,* **Court of Queen's Bench of Alberta**

- Practicing with civility and decorum in the virtual courtroom or in a judicial settlement conference
- Treating the court, tribunal, opposing counsel, parties and others with courtesy and respect
- Encouraging respect for legal institutions or authorities
- Complying with parameters for acting as a witness in a virtual courtroom
- Complying with parameters for communicating with witnesses giving evidence

3:00 OPEN DISCUSSION

The Future of Administrative Tribunals Work in a Post-COVID-19 Virtual Workplace

François Levert, *Regional Vice-Chairperson – Atlantic Region,* **Parole Board of Canada**

Nathalie Théberge, *Vice-Chair and CEO,* **Copyright Board of Canada,** *Vice-Chair,* **Council of Federal Tribunal Chairs (CFTC)**

During this session, we will explore the results of a survey on the impact of the COVID-19 pandemic on federal administrative tribunals conducted by the Council of Federal Tribunal Chairs (CFTC). We will also see how the Parole Board of Canada was successful in addressing some of the challenges created by the pandemic, notably in regard to dealing with populations with particular needs. Attendees are invited to turn on their camera and audio as this session will not be recorded.

- Addressing challenges when adapting to virtual hearing environments
- Accommodate the needs and characteristics of certain populations
- Overcoming hurdles encountered in facilitating the participation of other stakeholders, for example victims and assistants, to have them engage meaningfully in a virtual parole review process, will be discussed

3:45 Break

4:15 S

Administrative Monetary Penalties (AMPs): How to Effectively Apply Investigative and Enforcement Strategies

Luc Bélanger, *Chair,* **Council of Federal Tribunal Chairs (CFTC),** *Chairperson,* **Canada Agricultural Review Tribunal**

Daniel Stern, *Director, Regulatory Law and Policy,* **TELUS**

- A look at Bill C-10 *An Act to amend the Broadcasting Act,* which allows the CRTC to impose administrative monetary penalties (AMPs) for violations of the *Broadcasting Act* and the *Accessible Canada Act*
- Developing AMP regimes with administrative law principals
- Delineating compliance, inspection and enforcement powers
- Ensuring procedural fairness, including ensuring the parties ability to respond and ensuring an impartial decision-maker

5:15 S

Inside the Top 5 Case Law Developments Post-Vavilov: A Practical Review of Procedural Fairness and Reasonableness

Hadayt Nazami, *Partner,* **Nazami & Associates**

Colleen Bauman, *Partner,* **Goldblatt Partners LLP**

- Examining the Supreme Court of Canada's landmark decision in *Canada (Minster of Citizenship and Immigration) v. Vavilov, (2019)*
- Examining the statutory appeal rights and the standard of correctness with a look at:
  - » *Bell Canada v. Canada (Attorney General) 2019 SCC*
  - » *Canada Post Corp. v. Canadian Union of Postal Workers, 2019 SCC*
  - » *National Football League, et al. v. Attorney General of Canada*
- Establishing clarity when reviewing an administrative decision under the responsibleness standard and rebutting the presumption of reasonableness
- What can trigger the court to quash a decision? Can the court quash as law?

6:15

Closing Remarks from the Co-Chairs

Media Partner: The Hill Times

Thursday, October 28 (EDT)

10:00

Opening Remarks from the Co-Chairs

FOCUS ON EQUALITY, DIVERSITY AND INCLUSION

10:15 THINK TANK EDI

How to Successfully Grow a Diversity Program: Recruiting and Retaining Candidates in Administrative Law and Creating a System of Inclusion

Edith Bramwell, *Chairperson,* **Federal Public Sector Labour Relations and Employment Board**

Richard D. Sharpe, *Director, Equity, Anti-racism, Diversity and Inclusion,* **Justice Canada**

- Value of diversity and inclusion
- Understanding power and privilege, unconscious bias or cultural homophily
- Impact of daily verbal, behavioural and environmental indignities
- Special responsibilities of lawyers and paralegals to respect the human rights laws in force in Ontario
- How to prevent and address discrimination and harassment
- Best practices for workplace diversity and inclusion

11:15 CASE STUDIES AND SCENARIOS EDI

Mentoring Best Practices: Dos and Don'ts for Lawyers and Paralegals

Barbara de Dios, *Head of Mentorship,* **Global Lawyers of Canada,** *Corporate Counsel,* **Canadian Dental Services Corporation**

Maneesha Gupta, *Mentorship Chair and Board of Directors,* **Federation of Asian Canadian Lawyers,** *Legal Counsel,* **TD Bank**

A look at how mentorships are addressing the challenge of under-represented and marginalized communities in the legal profession and how mentorship programs are fostering diverse and inclusive culture.

11:45

1:1 Meet a Mentor Networking Session

A unique face-to-face virtual learning experience that will allow you to receive professional guidance or offer it as a mentor. Come camera ready for an informal 1-on-1 conversation about honing skills and building your career. This is a great opportunity to foster growth within the industry and make a new connection. Mentors and Mentees will be randomly matched during a 15-minute discuss. Participants are encouraged to turn on their camera and audio for a face-to-face discussion, and click connect to share contact details.

12:00 Break

12:30 P

Advising on Overlapping Administrative Regulatory, Civil and Criminal Processes

Justin H. Nasseri, *Founding Partner,* **Ross Nasseri LLP,** *Chair, Civil Litigation Executive Committee,* **Ontario Bar Association**

Brennagh Smith, *Acting Practice Lead, Prosecutions,* **City of Toronto, Legal Services**

- Use of dispositions and findings of fact—what use can be made of a decision from one proceeding in another? (e.g. the use that can be made of criminal acquittals and convictions, no contest pleas, findings of professional misconduct, and civil judgments)
- Use of evidence and investigation materials—what, if any use can be made of evidence and findings from related cases? (e.g. the use of material from disciplinary proceedings in courts, the use of evidence from criminal or civil proceedings, the use of discovery and other transcript evidence, and use of information collected by other enforcement authorities)
- Strategic and ethical issues for overlapping or related proceedings
  - » Advising clients on fighting a multi-front battle;
  - » Strategic issues around procedure and timing (e.g. can one type of case be stayed or adjourned pending another and how)
- Ethical issues around advising clients on their options and whether to choose one or more routes (criminal complaint, regulatory complaint, civil action)
  - » Impact of collateral attack jurisprudence and the doctrine of exhaustion

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1:30 **PANEL**

How to Address the Most Complete Solicitor-Client Privilege and Confidentiality Challenges

Christopher Rootham, *Partner,* **Nelligan Law**

Carolyn Slon, *Senior Legal Counsel, Office of the Secretary,* **Ontario Securities Commission**

Ensuring openness and transparency in administrative proceedings and taking into account privacy concerns and confidentiality issues can be a delicate balance. This session will explore topics including:

- The "Open Court" principle and administrative tribunals
- The applicable statutory framework
- Protecting personal information—additional concerns in a digital age
- Confidentiality orders under the Tribunal Adjudicative Records Act, S.O. 2019, c. 7, Sched. 60—recent case law and best practices for parties making confidentiality requests and tribunal panels making confidentiality orders
- Dealing with privilege issues before an administrative tribunal (solicitor-client privilege, litigation privilege and settlement privilege)

2:30 Break

3:00 **HYPOTHETICAL SCENARIOS**

Client Services Duties Toward Self-Represented Litigants

Jennifer Khurana, *Acting Chairperson,* **Canadian Human Rights Tribunal**

Shannon Salter, *Chair,* **Civil Resolution Tribunal**

Marisa Victor, *Vice-Chair,* **Landlord and Tenant Board, Fire Safety Commission,** *Member,* **Animal Care Review Board and Licence Appeal Tribunal**

With self-represented individuals appearing before tribunals and courts in important numbers, it is important that they be able to fairly navigate these institutions. This session will address practical ways of assisting such parties throughout the administrative process, and particularly in hearings through a series of hypothetical scenarios. Making A2J meaningful for SRLs—strategies for Tribunals and client services:

- Exploring how plain language is critical for ensuring that self-represented litigants have meaningful access to processes
- Analyzing how logistics such as access to technology does not always equate to A2J
- Building core competencies in adjudicators to work with SRLs
- Discussing active adjudication through the lifecycle of a file
- Examining what front-line staff can teach us about the needs of self-represented litigants
- Consulting your users – why data is important to inform changes to improve the service you provide to SRLs

3:45 **LIVE AUDIENCE POLLING**

Inside the Top 5 Challenges Vulnerable People Experience When Interacting with the Justice System and Finding Solutions

Michelle Alton, *Tribunal General Counsel,* **Workplace Safety & Insurance Appeals Tribunal (Ontario)**

Karen E. Andrews, *Staff Lawyer,* **Advocacy Center for Tenants Ontario**

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

Kelly J. Serbu Q.C., *Counsel,* **Serbu Law Firm Limited**

Participate in real-time anonymous polling.

- Defining the different circumstances that can make a person vulnerable, either prior to their interaction with the justice system, or because of it
- Establishing a fine balance for providing information and meaningful access and participation while maintaining fairness
- Identifying and addressing human rights issues and procedural fairness challenges

4:30 Break

4:45

Emerging Developments in Immigration and Refugee Case Law and the Broader Implications in an Administrative Law Context

Andrew Brouwer, *Senior Counsel, Refugee Law,* **Office of Legal Aid Ontario**

Maureen Silcoff, *Past President,* **Canadian Association of Refugee Lawyers**
Instructor, Immigration and Refugee Law, **Lincoln Alexander School of Law**

Heather Gibbs, *Assistant Deputy Chairperson, Immigration Division,* **Immigration and Refugee Board of Canada**

Antoine Collins, *Member (Adjudicator), Refugee Protection Division,* **Immigration and Refugee Board of Canada**
President, **Ottawa Chapter, Canadian Black Lawyers Association**

Federal Court of Appeal issued a decision in *Canada (Citizenship and Immigration) v. Canadian Council for Refugees, 2021 FCA 72* reaffirming that the application of the Safe Third Country Agreement at Canadian and U.S. land ports of entry remains in effect.

- Redefining jurisdiction
- Challenging state action
- What is open to review

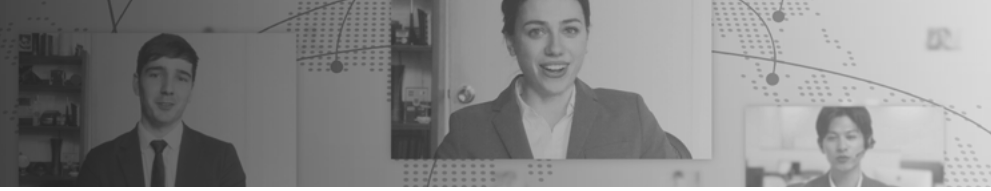
5:45

Closing Comments from the Co-Chairs

WORKSHOP

Friday, October 29 (EDT) (S)

10:00 am–1:30 pm



How to Write Reasons After Vavilov: Defensible Decisions, Access to Justice and Plain Language

Paul Aterman, *Chairperson,* **Social Security Tribunal**

Angus Grant, *Assistant Deputy Chairperson – Refugee Appeal Division,* **Immigration & Refugee Board of Canada**

Join this interactive small-group experience. The first 90 minutes of this session will be instructive, followed by a 30-minute refreshment break. The last hour of this session will include interactive exercises to develop real-world decision-writing skills. Delegates will be invited to share their audio and video.

- Meaningful ways administrative tribunals can justify decision making
- Ensuring fairness, quality and consistency in decision making
- Articulating your interpretation and fully explaining your decision and writing effective decisions
- Finding efficiency in writing decisions amid high-traffic tribunals
- Establishing your board's expertise
- Exploring the standard of "correctness"
- Honing your redaction skills

C5 GROUP'S VIRTUAL EVENTS

Join Us Virtually this October!

As the current global situation continues to unfold, we understand that it may not be possible to attend our events in person.

At the same time, we also understand that collaboration is more vital than ever and for that, you can still rely on CI to bring the industry together but in a different way. We are transforming quickly to ensure you can now connect virtually and continue to gain unparalleled access to market leading intelligence and to the facilitation of a global exchange of expertise.

Our new virtual events continue to be guided by our unifying philosophy: we believe that growth and success occurs when the power of people and the power of information come together. We may not be able to gather in person, but nothing stops connection and innovation.

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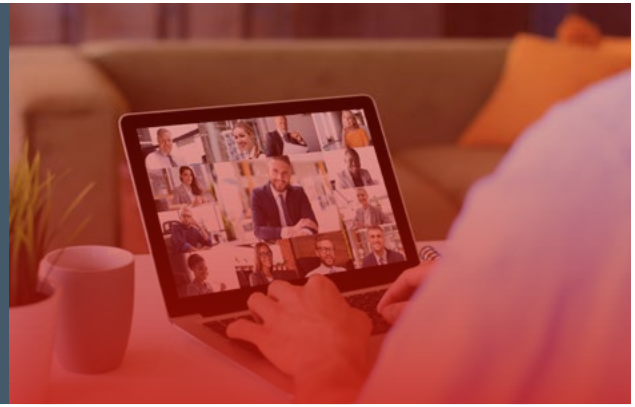
A MUST-ATTEND EVENT FOR:

- 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



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