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ADVANCED JUDICIAL SEMINAR ON ADMINISTRATIVE LAW **DUNSMUIR ON LIFE SUPPORT: WILL THERE EVER BE LIGHT AT THE END OF THE TUNNEL?**

PARTICIPATION OF 22 JUDGES COVERED UNDER SS 41(1) OF THE JUDGES' ACT - RESOLUTION # 67 OF THE CJC

THURSDAY, MAY 26, 2016

University of Ottawa
Ottawa (ON)

Judicial review represents a significant part of the case load for Canada's superior court judges. The issues are challenging and the law equally so. *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 held great promise for rationalizing the Canadian approach to the review of administrative tribunals. But has it fulfilled that promise? Since *Dunsmuir*, the Supreme Court of Canada has heard approximately 50 appeals considering the parameters of judicial review. Some of those decisions simply involve the application of accepted principles and affirm the Court's error-correcting role. Other cases can be viewed as either contracting or expanding the ambit of *Dunsmuir*. What seems evident is that there are still too many unresolved issues. All of which is challenging, as well as time-consuming, for both bar and bench. This seminar is intended to provide an up-date of the recent Supreme Court of Canada jurisprudence as well as providing a road-map for reviewing judges navigating the modern parameters of judicial and appellate review of administrative decisions.



Pre-seminar reading: *Identifying the Review Standard for Administrative Decisions "Deference in a Nutshell"* By The Hon. Joseph T. Robertson, Q.C. Jurist-in-Residence, Faculty of Law, University of New Brunswick. This paper will be provided to registrants upon registration in order to prepare for the seminar.

As part of the takeaways from this seminar, registrants will receive an electronic data base of all of the Supreme Court of Canada decisions since *Dunsmuir* complete with hyperlinks and a brief summary of each decision.

CO-CHAIRS

The Hon. Joseph Robertson, QC, co-author of *Judicial Deference to Administrative Tribunals in Canada: Its History and Future*, (Markham: LexisNexis, 2014), formerly of the Federal Court of Appeal and the New Brunswick Court of Appeal

The Hon. Georgina Jackson of the Court of Appeal for Saskatchewan and President of CIAJ

ADVANCED JUDICIAL SEMINAR ON ADMINISTRATIVE LAW - PROGRAM SUBJECT TO CHANGE

8:30 - 8:45 AM **REGISTRATION**

8:45 - 9:00 AM **INTRODUCTIONS**

**The Hon. Joseph Robertson and
The Hon. Georgina Jackson**

9:00 - 9:45 AM **SNAPSHOT OF THE SUPREME COURT OF CANADA JURISPRUDENCE FROM 2014 TO 2016**

*Having regard for the 2014 to 2016 jurisprudence, how does the Supreme Court of Canada go about assessing the reasonableness of a tribunal's decision? Is the correctness standard being applied under the banner of reasonableness? See for example: *Kanthisamy v. Canada (Citizenship and Immigration)* 2015 SCC 61.*

Speaker **The Hon. John Evans**, co-author of *Judicial Review of Administrative Action* (Carswell-looseleaf)

9:45 - 10:00 AM **BREAK**

10:00 - 10:45 AM **REASONABLENESS OR CORRECTNESS PART ONE**

Chair **The Hon. Chief Justice Paul Crampton**, Federal Court

1. What factors determine when a tribunal's decision should be reviewed on a reasonableness basis? Of what effect is a right of appeal to the superior court on a question of law? Is it different if the right of appeal on a question of law is directly to the Court of Appeal? What are the implications of *Tervita Corp. v. Canada (Commissioner of Competition)* [2015] 1 S.C.R. 161? When precisely is the tribunal dealing with a question that could also arise as a matter of original jurisdiction before a section 96 court? **The Hon. Katherine Swinton**, Superior Court of Ontario

2. Can a tribunal decision be subject to more than one review standard (the so-called segmentation issue)? See *Canadian Broadcasting Corp. v. SODRAC 2003 Inc.* 2015 SCC 57 at paras. 42, 190 and 194. **L'hon. Stéphane Sansfaçon**, Cour Supérieure du Québec

10:45 - 11:00 AM **BREAK**

11:00 AM - 12:00 PM **REASONABLENESS OR CORRECTNESS PART TWO**

1. What is the standard of review to be applied to issues of procedural fairness? **L'hon. Simon Ruel**, Cour Supérieure du Québec

2. Sufficiency of tribunal reasons: when do a tribunal's reasons engage issues of procedural fairness? See: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)* 2011 SCC 62. **The Hon. Grant Huscroft**, Ontario Court of Appeal

3. What is left of jurisdictional error and why are we asking this question? **The Hon. Peter M.S. Bryson**, Nova Scotia Court of Appeal

12:00 - 1:00 PM **LUNCH IN A ROUNDTABLE SETTING WITH THE HON. MICHAEL MOLDAVER OF THE SUPREME COURT OF CANADA**

1:15 - 2:00 PM **THE CONTENT OF REASONABLENESS: THE ROLE OF STATUTORY INTERPRETATION**

To what extent do the principles of statutory interpretation apply to the determination of whether a tribunal's decision is reasonable? What effect does a finding of statutory ambiguity have on the reasonableness of the decision being reviewed? See: *Allen v. Newfoundland and Labrador (Workplace Health, Safety and Compensation Division)* 2014 NLCA 42

Chair and Commentator **The Hon. Joe Robertson**

Speaker **Ruth Sullivan** author of *Sullivan on Construction of Statutes* 6th ed.

2:00 - 2:15 PM **BREAK**

2:15 - 3:00 PM **SPECIFIC ISSUES IN ASSESSING THE PARAMETERS OF DEFERENCE**

1. Is the extension of the deference doctrine to statutory delegates warranted under the *Dunsmuir* principles? See *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, *Canadian National Railway Co. v Canada (Attorney General)*, 2014 SCC 40 and *Kanthisamy*. What does all this mean? How do we make this work? **The Hon. Harvey M. Groberman**, Court of Appeal of British Columbia

2. Has the second step of the standard of review analysis outlined in *Dunsmuir* been effectively abandoned in favour of a presumption of expertise and of the application of the deferential standard of review reasonableness? **The Hon. Harriet Sachs**, Superior Court of Ontario

3:00 - 3:15 PM **BREAK**

3:15 - 4:30 PM **HONESTLY! HOW DO MOST JUDGES APPROACH JUDICIAL REVIEW CASES? HOW DO JUDGES APPROACH THE ASSESSMENT FOR REASONABLENESS?**

Chair **The Hon. Chief Justice David Jenkins**, Prince Edward Island Court of Appeal

Speakers **The Hon. Mary J.L. Gleason**, Federal Court of Appeal

The Hon. June Ross, Court of Queen's Bench, Alberta

4:30 PM **FINAL REMARKS AND THANK YOU**

NOTE - On May 27, 2016, immediately following this seminar, CIAJ is offering its Roundtable on Administrative Law for judges, administrative tribunal chairs and members, plus lawyers and academics interested in judicial review. Judges registering for CIAJ's Advanced Seminar on Administrative Law are encouraged to register for this roundtable as well. A separate registration fee will be charged for it. It is not covered under s. 41(1) of the Judges Act. <http://www.ciaj-ica.j.ca/en/events/calendar/view/122>

REGISTRATION FORM

ADVANCED JUDICIAL SEMINAR ON ADMINISTRATIVE LAW
DUNSMUIR ON LIFE SUPPORT: WILL THERE EVER BE LIGHT AT THE END OF THE TUNNEL?

Thursday, May 26, 2016, University of Ottawa, Ottawa (ON)

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