

## Dealing Effectively with Judicial Review: Seminar in Administrative Law

January 17-20, 2017

Quebec City, Quebec

Chaired by: Justice Anne Mactavish, Federal Court, Ottawa, ON



### Introduction:

This program, offered jointly by the Canadian Institute for the Administration of Justice and the National Judicial Institute, is designed to familiarize trial judges with principles and practices relating to applications for judicial review. The program will develop a framework for dealing with such applications that will allow individual judges to deal with judicial reviews both systematically and effectively.

The program will include plenary sessions as well as small group workshops. It will also include demonstrations based on a fact situation through which judges will become comfortable in dealing with applications for judicial review and assist them in developing best practices for handling these matters.

# Dealing Effectively with Judicial Review: Seminar in Administrative Law

## TUESDAY, JANUARY 17

12:00 – 1:30 PM      **REGISTRATION & LUNCH**

1:30 – 2:15 PM      **OVERVIEW**

- What is Judicial Review?
- How does it differ from an appeal? Relationship to statutory appeals
- When is judicial review available? (public/private divide, what is a “decision”, etc)
- How does judicial review work? (procedural requirements)

*Speaker:*

**Professor Martine Valois**, Faculty of Law, University of Montreal, Montreal, QC

2:15 – 2:30 PM      **REVIEW OF THE FACT SITUATION**

*Speaker:*

**Justice Anne Mactavish**, Federal Court, Ottawa, ON

2:30 – 2:45 PM      **HEALTH BREAK**

2:45 – 4:30 PM      **PRELIMINARY ISSUES**

- The Record - What is it and when can you supplement it
- Who are the parties?
- Standing;
- Interventions;
- The Role of the Tribunal;
- Prematurity;
- Mootness.

*Moderator:*

**Justice Anne Mactavish**, Federal Court, Ottawa, ON

*Panelists:*

**Justice Freya Kristjanson**, Superior Court of Justice (Ontario), Toronto, ON

**Justice Yves de Montigny**, Federal Court of Appeal, Ottawa, ON

6:00 – 8:00 PM      **WELCOMING COCKTAIL**

## WEDNESDAY, JANUARY 18

7:45 – 9:00 AM      **BREAKFAST**

9:00 – 10:30 AM      **STANDARD OF REVIEW**

- The role of the reviewing court on applications for judicial review.
- The concepts of deference and standard of review.
- What are the different standards of review and what do they mean?
- How to identify the appropriate standard of review
- When and how you should resort to the record in deciding if a decision is reasonable.
- What is a true question of jurisdiction?
- What is a question of central importance to the legal system?

*Speaker:*

**Justice David Stratas**, Federal Court of Appeal, Ottawa, ON

10:30 – 10:45 AM      **HEALTH BREAK**

10:45 AM – 12:30 PM      **STANDARD OF REVIEW - CONT'D**

*Speaker:*

**Justice David Stratas**, Federal Court of Appeal, Ottawa, ON

12:30 – 1:30 PM      **LUNCH**

1:30 – 2:45 PM      **DEMONSTRATION WHY DECISION IS/IS NOT REASONABLE**

*Counsel:*

**Mr. Marc-André Fabien**, Fasken Martineau, Montreal, QC  
**Mr. Sylvain Lussier**, Osler, Hoskin & Harcourt LLP, Montreal, QC

Small group discussion: applying the reasonableness standard

2:45 – 3:00 PM      **HEALTH BREAK**

3:00 – 3:30 PM      **WRAP-UP**

Wrap-up with experienced judges to discuss how they would approach the issue and Q&As.

*Speakers:*

**Justice Yves de Montigny**, Federal Court of Appeal, Ottawa, ON

**Justice Anne Molloy**, Superior Court of Justice (Ontario), Toronto, ON

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## THURSDAY, JANUARY 19

7:45 – 9:00 AM **BREAKFAST**

9:00 – 10:30 AM **PROCEDURAL FAIRNESS**

- What is procedural fairness?
- General principles
- How to identify the scope of the duty of fairness in a given case

*Speakers:*

**Justice Anne Molloy**, Superior Court of Justice (Ontario), Toronto, ON

**Justice Claudine Roy**, Superior Court of Quebec, Montreal, QC

10:30 – 10:45 AM **HEALTH BREAK**

10:45 AM – 12:30 PM **DISCUSSION OF FAIRNESS ISSUES – CONT'D**

Application of the general principles to specific procedural fairness issues such as reasons, evidentiary rulings, notice, right to counsel, adjournments, disclosure and delay.

*Speakers:*

**Justice Anne Molloy**, Superior Court of Justice (Ontario), Toronto, ON

**Justice Claudine Roy**, Superior Court of Quebec, Montreal, QC

12:30 – 1:30 PM **LUNCH**

1:30 – 2:15 PM **INDEPENDENCE AND IMPARTIALITY**

*Speaker:*

**Justice James C. MacPherson**, Court of Appeal for Ontario, Toronto, ON

2:15 – 2:45 PM **DEMONSTRATION: WHY PROCESS WAS/WAS NOT FAIR**

*Counsel:*

**Mr. Marc-André Fabien**, Fasken Martineau, Montreal, QC

**Mr. Sylvain Lussier**, Osler, Hoskin & Harcourt LLP, Montreal, QC

2:45 – 3:30 PM **DISCUSSION OF FAIRNESS ISSUES – CONT'D**

Small group exercise – discussing fairness question

3:30 – 3:45 PM **HEALTH BREAK**

3:45 – 4:30 PM **WRAP-UP**

Discussion of the problem and the emerging debate on the standard of review in procedural fairness cases

*Speakers:*

**Justice Anne Molloy**, Superior Court of Justice (Ontario), Toronto, ON

**Justice Claudine Roy**, Superior Court of Quebec, Montreal, QC

6:30 PM **COCKTAIL**

7:00 PM **BANQUET**

*Guest Speaker:*

**Justice Marshall Rothstein**, Supreme Court of Canada (Retired)

## FRIDAY, JANUARY 20

7:45 – 9:00 AM **BREAKFAST**

9:00 – 10:30 AM **REMEDIES**

The discretionary nature of judicial review, the remedies available to reviewing courts and interim relief.

*Speakers:*

**Professor Gerald Heckman**, Faculty of Law, University of Manitoba, Winnipeg, MB

**Justice Anne Mactavish**, Federal Court, Ottawa, ON

**Justice Marie-France Bich**, Quebec Court of Appeal, Montréal, QC

10:30 – 10:45 AM **HEALTH BREAK**

10:45 AM – 12:30 PM **WRAP - UP**

Where are we going in Administrative Law?

*Moderator:*

**Justice David Stratas**, Federal Court of Appeal, Ottawa, ON

*Speakers:*

**Justice Freya Kristjanson**, Superior Court of Justice (Ontario), Toronto, ON

**Justice Yves de Montigny**, Federal Court of Appeal, Ottawa, ON

12:30 – 1:30 PM **LUNCH & DEPARTURE**

For further information, please contact  
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