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## NATIONAL ROUNDTABLE ON ADMINISTRATIVE LAW

For the Judiciary • Tribunal community •  
Practitioners • Academics • Students

### “THESE ARE THE PRINCIPLES, IF YOU DON'T LIKE THEM, WE'VE GOT OTHERS”

Saturday, May 27, 2017, 8:15 am to 4:00 pm | Sheraton Wall Centre, Vancouver

#### CO-CHAIRS

- Mr. Michael Gottheil, Executive Chair of the Social Justice Tribunals of Ontario
- Mr. Athanasios Hadjis, Senior Legal Counsel, Administrative Tribunals Support Service of Canada
- The Hon. James O'Reilly, Federal Court and Second Vice-President of CIAJ

#### KEYNOTE SPEAKER

- The Hon. Thomas Cromwell, Chair, Action Committee on Access to Civil and Family Justice

In this year's National Roundtable on Administrative Law, we examine four important areas of administrative law, and try to make sense where things are, or ought to be going. As always, the forum will be lively and interactive, the focus practical, purposeful and aspirational.

#### TOPICS

- Has *Dunsmuir* really made a difference?
- The procedural fairness and right to be heard
- The record on judicial review
- The effect of *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 on the standard of review analysis

#### OVERVIEW



It seems the only constant in administrative law is that the principles keep changing. Is this a function of the law responding to evolving societal realities? Does it demonstrate that we have a healthy common law system, constantly fine-tuning the administrative apparatus of the state?

Or is it a sign that administrative judges, lawyers and academics are really smart, but don't really have enough to do?

Perhaps the most confounding question is how are we supposed to provide clear, predictable and coherent principles so the public can navigate what we proudly proclaim as the people's law?

# AGENDA | 2017 National Roundtable on Administrative Law

**Facilitators:** Justice Elizabeth A. Bennett, Justice Nicole J. Garson, Justice David C. Harris, Justice John E.D. Savage (B.C. Court of Appeal) • Justice Robert J. Sewell, Justice John J. Steeves (B.C. Supreme Court) • Justice Georgina Jackson, (Court of Appeal for Saskatchewan) • Justice James O'Reilly (Federal Court)

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## 8:15 – 8:45 am Registration and Continental Breakfast

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## 8:45 – 9:00 am Welcome Remarks and Introduction

*Co-Chairs:*

- Mr. Michael Gottheil, Executive Chair of the Social Justice Tribunals of Ontario
- Mr. Athanasios Hadjis, Senior Legal Counsel, Administrative Tribunals Support Service of Canada
- The Hon. James O'Reilly, Federal Court and Second Vice-President of CIAJ

## 9:00 – 10:30 am Has *Dunsmuir* Really Made a Difference?

*Dunsmuir* caused us to rethink standards of review, but has it had a real impact on how judges rule on judicial reviews? Has it even altered how the Supreme Court itself decides administrative law cases? And, if administrative law principles and our concept of fairness have evolved since *Dunsmuir*, is *Dunsmuir* really the cause, or are there other factors at play?

### The Procedural Fairness and Right to Be Heard

When it comes to procedural fairness, there is no standard. The decision-maker just needs to be fair. But what is fair will vary depending on the context. Got that? Everybody clear? In this session, we explore the themes and rationales in the law of fairness and the right to be heard. The hypothesis is that if a tribunal is thoughtful, clear and sensible, the courts will grant a lot of latitude in how the work gets done. But if you get sloppy—watch out!

*Chair:*

- The Hon. James O'Reilly, Federal Court and Second Vice-President of CIAJ

*Speakers:*

- Mr. Robert Danay, Senior Counsel, Department of Justice Canada
- Mr. Simon Turmel, Commissioner, Régie de l'énergie du Québec

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## 10:30 – 10:45 am Break

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## 10:45 am – 12:15 pm “Plus ça change”...: The Record on Judicial Review

The jurisprudence on what constitutes the record on a judicial review seems to buck the trend. While the grounds for a judicial review have changed over time, the evidence permissible to support a claim has not. In their recent article *Evidentiary Rules in a Post-Dunsmuir World*, Lauren Wihak and Benjamin Oliphant argue for a more coherent and modern approach to the record, one that aligns with the current tests for review.

*Chair:*

- The Hon. Neena Sharma, Supreme Court of British Columbia

*Speakers:*

- Ms. Lauren J. Wihak, Associate, Gall Legge Grant & Munroe LLP
- Mr. Benjamin J. Oliphant, Associate, Gall Legge Grant & Munroe LLP

*Comments:*

- Ms. Catherine Ebbs, Chairperson of the Public Service Labour Relations and Employment Board, Ottawa
- Mr. Bob Nakagawa, Registrar, College of Pharmacists of British Columbia

# AGENDA | 2017 National Roundtable on Administrative Law

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**12:15 – 1:00 pm**

**Lunch**

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**1:00 – 2:45 pm**

**Expert? Says Who?**

The 4-judge dissent in the recent Supreme Court of Canada decision, *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.* 2016 SCC 47, has cast doubt on the bases for presuming (and urged renewed attention to the bases for rebutting) the expertise of tribunals on questions of law arising under the home statute. In essence the Court has asked: just because you have been delegated statutory decision-making authority, does that make you an expert?

Is this a justified rebuke to post-Dunsmuir formalism, or is the dissent seeking to micromanage agencies that are “on the ground” and created to be policy experts? Should courts be paying more attention to legislative indicia of relative expertise—whether by parsing the terms of statutory appeals or otherwise? Should they be demanding more evidence of expertise? Are courts once again confronting the reality that not all statutory decision makers are created (and funded) equally? Relatedly: how should courts approach their role on review where (as in Capilano) expertise has not been demonstrated in the form of reasons for decision (i.e., when reviewing “implicit” decisions)? In this session, we work through problems and share perspectives on what continues to be a contentious area of administrative law.

*Chair:* • The Hon. Harvey Groberman, Court of Appeal for British Columbia

*Speaker:* • Professor Sheila Wildeman, Schulich School of Law, Dalhousie

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**2:45 – 3:00 pm**

**Break**

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**3:00 – 4:15 pm**

**Making Law Relevant, Justice Real**

The Honourable Thomas Cromwell’s commitment to the rule of law and making justice accessible has spanned over 40 years. Now, as he has retired from the Supreme Court, he reflects on lessons learned, and the path forward, with a reflection entitled “What I think I’ve learned about administrative law.”

*Speaker:* • The Hon. Thomas Cromwell, Chair, Action Committee on Access to Civil and Family Justice

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**4:15 – 4:30 pm**

**Wrap-Up and Closing Remarks**

*Speakers:* • Mr. Michael Gottheil, Executive Chair of the Social Justice Tribunals of Ontario  
• Mr. Athanasios Hadjis, Senior Legal Counsel, Administrative Tribunals Support Service of Canada  
• The Hon. Georgina Jackson, Court of Appeal for Saskatchewan and President of CIAJ  
• The Hon. James O’Reilly, Federal Court and Second Vice-President of CIAJ

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**4:30 – 5:30 pm**

**Cocktail** (cash bar)

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# REGISTRATION FORM

## 2017 NATIONAL ROUNDTABLE ON ADMINISTRATIVE LAW Saturday, May 27, 2017, Sheraton Wall Centre, Vancouver, BC

Please use the secure online form:

<https://ciaj-icaj.ca/en/events/2017-national-roundtable-administrative-law> or complete this form

Surname: .....

First Name: .....

Title: .....

Organization: .....

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Telephone: ..... Fax: .....

I am fluent in:  English  French  English and French

Do you have any dietary restrictions?  Yes  No

Which? .....

I wish to subscribe to CIAJ's electronic newsletter

### REGISTRATION FEE

*(Breakfasts, coffee breaks, luncheon and material included)*

CIAJ members **\$395**  non members **\$495**

Students **\$75** (enrolled full-time at Canadian universities)

### PAYMENT BY:

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### ABOUT CIAJ

The Canadian Institute for the Administration of Justice (CIAJ) promotes excellence and leadership in the administration of justice through knowledge, learning and the exchange of ideas. The CIAJ offers education and research programs and provides a forum for everyone interested in the administration of justice.

### ARE YOU A MEMBER? JOIN US!

#### Membership Categories and Fees

**Individual** **\$150**

Individual members active in their profession are entitled to access all the documentation available on CIAJ's website (conference and seminar papers, and video-recordings). This membership fee is recoverable by federally-appointed judges under S. 27(1) of the Judges Act. Provincial and territorial judges, other judicial officers and board and tribunal members may be entitled to reimbursement through judicial or other professional allowances.

**Retired Person** **\$75**

Members retired from their profession have the same benefits as individual members.

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**Yes, I wish to join CIAJ** (See category checked above)

Payment included with registration fee

I would like information about Institutional Membership

### Donation

To support our mission, you may also choose to become a CIAJ contributor. You will be issued a tax receipt for a charitable donation (Registration number: 10686 1529 RR 0001).

Amount of donation: \$ .....

**ACCOMMODATION:** Participants are required to make their own hotel reservations. A block of rooms has been reserved at the [Sheraton Vancouver](#) (1088, Burrard Street, 1-888-627-7058 ): \$239 for a standard room (taxes not included). Participants are required to make their own hotel reservations before April 27, 2017 to take advantage of this preferred rate.

**CANCELLATION FEE:** Only registrations cancelled by email at least 7 days prior to the event are reimbursed, except for 10% of the amount which is withheld to cover administrative fees. At any time, a participant may be replaced by another person without charge.

### TO REGISTER:

Please complete and return this form with your payment:

#### By mail:

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You are also invited to visit our website at [www.ciaj-icaj.ca](http://www.ciaj-icaj.ca)