

NATIONAL ROUNDTABLE ON ADMINISTRATIVE LAW

Pushing the Bounds of Administrative Law
to Get Closer to Justice

CIAJ

Canadian Institute
for the Administration
of Justice

Listening. Learning. Leading.

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

Saturday, June 2, 2018 • Delta Hotel Ottawa (Frontenac/Joliet Room, 3rd Floor)

Overview

Innovating. Collaborating. Crafting specialized processes and remedies. Embracing new visions of what justice means. These are all things that tribunals do, generally with encouragement and applause from their user communities, legal academics and their government masters. Yet there are tension points, situations where tribunals experience judicial smackdowns, or confront the reality that they do not have the power or jurisdiction to give effect to their apparent brilliance. From one perspective, this may be seen as tribunals pushing the boundaries to get closer to substantive justice, not being content with the same old. For others, tribunals are taking this expert thing too far, cutting corners, playing fast and loose with fundamental rights and making assumptions about what constitutes justice.

Topics

- Dispute Resolution, Access to Justice, Public Interest
- The Tribunal as Enforcer
- Indigenous Rights
- Independence of the Administrative Tribunals

Co-Chairs

Mr. Michael Gottheil

Executive Chair

*Social Justice Tribunals
of Ontario*

Mr. Athanasios Hadjis

Senior Legal Counsel

*Administrative Tribunals
Support Service of Canada*

The Hon. James O'Reilly

Federal Court

First Vice-President of CIAJ



Special Invitation!

Prof. Paul Daly

Senior Lecturer in Public Law
University of Cambridge

Join the Advanced Judicial
Seminar on Administrative Law
for our special guest's presentation
on June 1, at 4:15 pm. Please
confirm attendance using
the registration form.

Participation at this
program is accredited in
provinces where CLE
requirements for lawyers
are mandatory.

AGENDA | SATURDAY, JUNE 2, 2018 / FRONTENAC/JOLIET ROOM, 3rd FLOOR

8:15 – 8:45 AM REGISTRATION AND CONTINENTAL BREAKFAST

8:45 – 9:00 AM WELCOME REMARKS AND INTRODUCTION

Co-chairs

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

9:00 – 10:30 AM THE REAL DEAL? PART 1: ADR, ACCESS TO JUSTICE AND THE PUBLIC INTEREST

The implementation of alternative dispute resolution (ADR) mechanisms in the public sector raises important issues. While the benefits of ADR are numerous and should not be underestimated, some of its characteristics may make ADR appear at odds with important public interests. For example, the requirement that justice be rendered in public may not be compatible with the private nature of mediation and the confidentiality of agreements, which is usually a necessary condition for out of court settlements.

Also, while judges and administrative decision-makers hold public office and are bound to some form of accountability through their decisions, mediators and (perhaps more so private arbitrators) may adhere to private interests or motives that have little to do with the general welfare of society. Court and tribunal jurisprudence allows for the development of legal concepts, whereas mediation and negotiation is made on the basis of considerations that are sometimes wholly unrelated to applicable legal standards. Lastly, recourse to ADR methods does not guarantee that fair solutions will be obtained, unless fairness is reduced to the free market concept of a bargain reached through the pursuit of self-interest.

Against this perspective is the reality that courts and tribunals could not manage their case-loads without the use of ADR, and the fact that there is huge public up-take for mediation, and high user-satisfaction rates when cases are resolved through settlements. And what about emerging principles of restorative and transformative justice? Are these faux-justice processes, or real justice through a different lens?

*Chair
Speakers*

- The Hon. Harvey Groberman, Court of Appeal for British Columbia
- Professor Michelle Flaherty, University of Ottawa
- Ms. Leslie Reaume, Vice-Chair, Human Rights Tribunal of Ontario (SJTO)
- Mr. John G. Jaworski, Board member, Federal Public Sector Labour Relations and Employment Board

10:30 – 10:45 AM BREAK / FRONTENAC/JOLIET FOYER

10:45 – NOON THE REAL DEAL? PART 2: A FEW UNSETTLED CASES

In this session, we explore a scenario through small groups and facilitated discussion. Issues will include:

- When should tribunals require approval of settlements?
- What criteria and considerations should apply when parties seek a consent order, or enforcement of a settlement by the tribunal?
- Intervenors or Interlopers? What to do when the parties reach an agreement, but the intervenors won't sign on?

- Protect Yourself! Guarding against allegations of bias and duress acting as a mediator.
- When does persuasion become undue pressure?

Chair

Facilitators

- Professor Lorne Sossin, Osgoode Hall Law School - York University
- Ms. Linda P. Lamoureux, Executive Chair, Safety, Licensing Appeals and Standards Tribunals Ontario
- The Hon. Georgina R. Jackson, Court of Appeal for Saskatchewan, Past President, CIAJ
- Mr. Michael Gottheil, Executive Chair, Social Justice Tribunals of Ontario
- Mr. Athanasios Hadjis, Senior Legal Counsel, Administrative Tribunals Support Service of Canada
- The Hon. James O'Reilly, Federal Court, First Vice-President of CIAJ

NOON – 1:00 PM LUNCH / FRONTENAC/JOLIET FOYER

1:00 – 2:15 PM THE TRIBUNAL AS ENFORCER: WE CAN TRY WITH A LITTLE HELP FROM OUR FRIENDS

One of the most praised aspects of administrative dispute resolution is the broad remedial jurisdiction afforded to tribunals. From human rights tribunals to securities commissions, tribunals can fashion remedies that are tailored, address issues of deterrence, future compliance and compensation.

Whereas the courts are wary of ordering remedies for specific performance, tribunals regularly do so, and will even “remain seized” to ensure compliance. But can tribunals really do that? Tribunals do not have the power to find a party in contempt. A party, not the tribunal is generally responsible for the ultimate enforcement of an order, and many parties do not have the knowledge or resources to achieve. And even where an order is brought to the courts for enforcement, the courts generally want clear and unambiguous terms, failing which they will not enforce. What are potential strategies and answers to these problems? Should tribunals craft orders with enforcement in mind, should courts be more willing to take an active role in having crafted remedies enforced?

Chair

Speakers

- The Hon. Yves de Montigny, Federal Court of Appeal
- Mr. Peter Engelmann, Partner, Goldblatt Partners
- Mr. Philippe Dufresne, Law Clerk and Parliamentary Counsel, House of Commons
- Administrative Judge Dominique Benoît, Tribunal administratif du travail

2:15 – 3:30 PM INDIGENOUS RIGHTS/PUBLIC INTEREST

In July 2017, the Supreme Court of Canada rendered two important decisions in *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41 and in *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40. According to the Supreme Court of Canada, when an independent regulatory agency “is tasked with a decision that could impact Aboriginal or treaty rights”, the agency’s decision “would itself be Crown conduct that implicates the Crown’s duty to consult.” In order to fully understand these decisions, it is necessary to briefly recall the notions of “aboriginal rights” and the “duty to consult”. Subsequently, we will analyze the facts in these two cases. Finally, we will present the main applicable principles stated by the Supreme Court of Canada.

Chair

Speakers

- The Hon. John Norris, Federal Court
- Mr. Simon Turmel, Commissioner, Régie de l'énergie du Québec
- Professor Janna Promislow, Faculty of Law, Thompson Rivers University
- Mr. Scott Robertson, President, Indigenous Bar Association

3:30 – 3:45 PM

BREAK / FRONTENAC/JOLIET FOYER

3:45 – 4:45 PM

INDEPENDENCE OF THE ADMINISTRATIVE TRIBUNALS

How do we ensure a justice system that is high quality but preserve the ethical independence?

Speaker

- Professor Lorne Sossin, Osgoode Hall Law School - York University
"Speaking Outside Decisions: The Limits of Adjudicator Free Speech"

4:45 – 5:00 PM

WRAP-UP AND CLOSING REMARKS

Co-chairs

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

5:00 – 6:00 PM

COCKTAIL (CASH BAR) / LIFT RESTO LOUNGE (2nd Floor – Mezzanine)

Contact us

Please contact us for more information about our organization, the benefits of membership and how you can assist us with our mission.

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REGISTRATION FORM

NATIONAL ROUNDTABLE ON ADMINISTRATIVE LAW Saturday, June 2, 2018, Ottawa, ON

Please complete the online form: <https://ciaj-icaj.ca/en/training-programs/national-roundtable-admin-law-2018>
Or: complete the form below and return it with your payment.

Registration Fee *(Breakfast, coffee breaks, luncheon and conference material included)*

☐ **CIAJ Member** (\$395) ☐ **Non Member** (\$545) **Young Lawyer***: ☐ Member (\$275) ☐ Non Member (\$380) ☐ **Student*** (\$75)
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Preferred language ☐ English ☐ French Fully bilingual ☐ Yes ☐ No

I will attend the cocktail (5:00-6:00 PM) ☐ Yes ☐ No / Guest ☐ Yes ☐ No

Dietary Restrictions ☐ No ☐ Yes Which _____

Special Invitation: I will attend Prof. Paul Daly's presentation on June 1, at 4 p.m. (same location) ☐ Yes ☐ No

Payment ☐ Cheque ☐ Visa ☐ Mastercard ☐ Amex

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Accommodation: Participants are required to make their own hotel reservations.

Cancellation Fee *(At any time, a participant may be replaced by another person without charge)*

30 days or more before the event: Administration fees of \$40 / 7 days or more before the event: 50% of registration fees /
Less than 7 days before the event: No refund

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