

Judges Only! **ADVANCED JUDICIAL SEMINAR IN ADMINISTRATIVE LAW**

CIAJ

Canadian Institute
for the Administration
of Justice

Listening. Learning. Leading.

Friday, June 1, 2018 • Ottawa

Overview

“Once more unto the breach, dear friends, once more”

— Shakespeare, *Henry V*, Act III, Scene 1

Administrative law seems always to be in a state of flux and evolution. Judges rarely feel they can step into the stream of jurisprudence twice. At a minimum, judges need annual updates on the state of the law, and an opportunity to reflect on and critique recent developments. This seminar will start off with a refresher on recent cases from the Supreme Court of Canada. The remainder of the day will explore some of the deeper questions that come out of the jurisprudence. These questions include: Are there different ways of thinking about standards of review and how they are to be applied? As a practical matter, how do judges actually apply administrative law principles in their day-to-day work? If reviewing judges are now supposed to look for supporting material in the record, is there a limit on how far they can go? Does Baker still represent the state of the art on fairness and the duty to give reasons? The questions to be addressed at this seminar represent some of the most pressing issues in administrative law today.

Co-Chairs

The Hon. James O'Reilly

Federal Court

First Vice-President, CIAJ

The Hon. Georgina R. Jackson

Court of Appeal for

Saskatchewan

Past President, CIAJ

The Hon. Harvey Groberman

Court of Appeal for

British Columbia



Special Guest

Prof. Paul Daly

Senior Lecturer in Public Law
University of Cambridge

Participation of
22 judges covered
under s. 41(1) of the
Judges Act – Resolution
67 of the CJC

ADVANCED JUDICIAL SEMINAR IN ADMINISTRATIVE LAW

AGENDA | FRIDAY, JUNE 1, 2018

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

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

Co-Chairs

- The Hon. James O'Reilly, Federal Court and First Vice-President, CIAJ
- The Hon. Georgina R. Jackson, Court of Appeal for Saskatchewan, Past President, CIAJ
- The Hon. Harvey Groberman, Court of Appeal for British Columbia

9:00 – 10:00 AM **2017-2019 UPDATE ON SIGNIFICANT SUPREME COURT AND APPELLATE CASE LAW IN ADMINISTRATIVE LAW: WHAT IS SIGNIFICANT IN NEW DECISIONS FOR TRIAL AND APPELLATE JUDGES?**

*Chair
Speaker*

- The Hon. Harvey Groberman, Court of Appeal for British Columbia
- The Hon. Mary J.L. Gleason, Federal Court of Appeal

10:00 – 10:15 AM **BREAK**

10:15 – 11:45 **HOW DO JUDGES APPROACH THE ASSESSMENT FOR REASONABLENESS?**

Dunsmuir was meant to simplify standards of review in administrative law. Did it achieve its goal? Did it really change the way judges considered and decided administrative law cases? The ensuing case law has added additional layers to the *Dunsmuir* analysis. Have these cases made it any easier to determine what the standards of review mean, or how to apply them? Two judges from two jurisdictions explore these questions.

*Chair
Speakers*

- The Hon Simon Ruel, Quebec Court of Appeal
- The Hon. Yves-Marie Morissette, Québec Court of Appeal
- The Hon. James O'Reilly, Federal Court, First Vice-President of CIAJ

11:45 – 1:00 PM **LUNCH**

1:00– 2:00 PM **HOW FAR CAN YOU GO IN THE RECORD TO FIND EVIDENCE – DIGGING FOR DEEPER MEANING IN THE RECORD**

*Chair
Speakers*

- The Hon. Christopher W. Martin, Court of Queen's Bench, Manitoba
- The Hon. Donald J. Rennie, Federal Court of Appeal
- The Hon. Harvey Groberman, Court of Appeal for British Columbia

2:00 – 3:00 PM **IN PRAISE OF APPELLATE REVIEW OR NOT: DETERMINING THE PROPER ROLE FOR APPELLATE COURTS**

*Speaker &
Commentator*

- The Hon. Georgina R. Jackson, Court of Appeal for Saskatchewan, Past President, CIAJ

Speakers

- The Hon. Frans F. Slatter, Court of Appeal of Alberta
(*Standard of Review: Principle or Cult*)
- The Hon. Joel E. Fichaud, Court of Appeal of Nova Scotia
(*Reasonableness is a Very Big Place*)

3:00 – 3:15 PM BREAK

3:15 – 4:15 PM IS THERE A BETTER WAY TO DO JUDICIAL REVIEW?

Rethinking deference; appeals and judicial review; ultra vires – a forgotten concept? making judicial review more simple, accessible, and stable.

Chair

Speakers

- The Hon. J.C. Marc Richard, Court of Appeal of New Brunswick
- The Hon. David Stratas, Federal Court of Appeal
- The Hon. John Evans, Goldblatt Partners' public law counsel

4:15 – 5:00 PM THE *DUNSMUIR* DECADE: 10 POINTS OF REFLECTION

Special Guest

- Prof. Paul Daly, University Senior Lecturer in Public Law, University of Cambridge; Queens' College Derek Bowett Fellow in Law; Founder, Administrative Law Matters (blog) and co-founder, Navigate.Legal

Professor Daly will share insights gleaned from his close review of the *Dunsmuir* jurisprudence over the past decade. He will consider such topics as (i) the effect of *Dunsmuir* on the relationship between courts and tribunals; (ii) *Dunsmuir*'s place within the Constitution; (iii) the link between reasonableness, reasons and the record; (iv) the present understanding of fairness--from the Courts' and the tribunals' perspectives; (v) why has *Baker* withstood the test of time; (vi) lessons to be learned from *Baker* that could assist in a reconstructed standard of review analysis; (vii) the role and place for correctness review; (viii) the duty to consult; (ix) how does *Dunsmuir* compare to the United Kingdom's approach; and (x) the future.

5:00 – 5:15 PM WRAP-UP AND CLOSING REMARKS

Co-Chairs

- The Hon. James O'Reilly, Federal Court and First Vice-President, CIAJ
- The Hon. Georgina R. Jackson, Court of Appeal for Saskatchewan, Past President, CIAJ
- The Hon. Harvey Groberman, Court of Appeal for British Columbia

5:15 – 6:00 PM COCKTAIL: CASH BAR

NATIONAL ROUNDTABLE IN ADMINISTRATIVE LAW

On June 2, 2018, immediately following this seminar, CIAJ is offering its Roundtable in Administrative Law with 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 seminar as well. A separate registration fee will be charged for it. It is not covered under s. 41(1) of the Judges Act.

Registration form: <https://ciaj-icaj.ca/en/training-programs/national-roundtable-admin-law-2018/>

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CIAJ's programs provide an opportunity for federal, provincial and territorial court judges not only to interact with judges of courts from all across the country, but also with professors, lawyers, representatives from governments and community organizations. The roundtables, seminars and conferences allow participants to learn and discuss the challenges facing the justice system and to contribute actively in finding solutions.

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2018 Annual Conference

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REGISTRATION FORM

ADVANCED JUDICIAL SEMINAR IN ADMINISTRATIVE LAW—JUDGES ONLY!

Friday, June 1, 2018, Ottawa (Breakfast, coffee breaks, luncheon and seminar material included)

Please complete the online form: <https://www.imakeanonlinedonation.org/ciaj-icaj/P285/>

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Personal information

Surname _____ First name _____

Title _____ Court / Organization _____

Address _____

Postal code _____ Tel (Bus) _____

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Preferred language ☐ English ☐ French Fully bilingual ☐ Yes ☐ No

I will attend the cocktail (5:15-6:00 PM) ☐ Yes ☐ No / Guest ☐ Yes ☐ No

Dietary Restrictions ☐ No ☐ Yes Which _____

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