

NATIONAL ROUNDTABLE ON ADMINISTRATIVE LAW

CIAJ

Canadian Institute
for the Administration
of Justice

Listening. Learning. Leading.

Masters in Our House: Adjudicative Sovereignty v. Judicial Oversight

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

Saturday, May 25, 2019 • Hotel Omni Mont-Royal, Montreal

Overview

David Ogilvy one of the founders of modern advertising once said, "Hire people better than you, and let them get on with it." So goes the wisdom in administrative law, where governments and the judiciary acknowledge the need for expert and specialized tribunals to deliver accessible and responsive justice for the public. Yet there are limits, which provide comfort for parties who feel tribunals go too far, and for lawyers and academics who specialize in the law of standard of review. What principles should form the basis of those limits, and what legal mechanisms should be used to enforce them? Should the approach be the same across all domains of administrative decision-making, or are there defensible reasons for applying different standards, and different oversight regimes in different contexts?

Topics

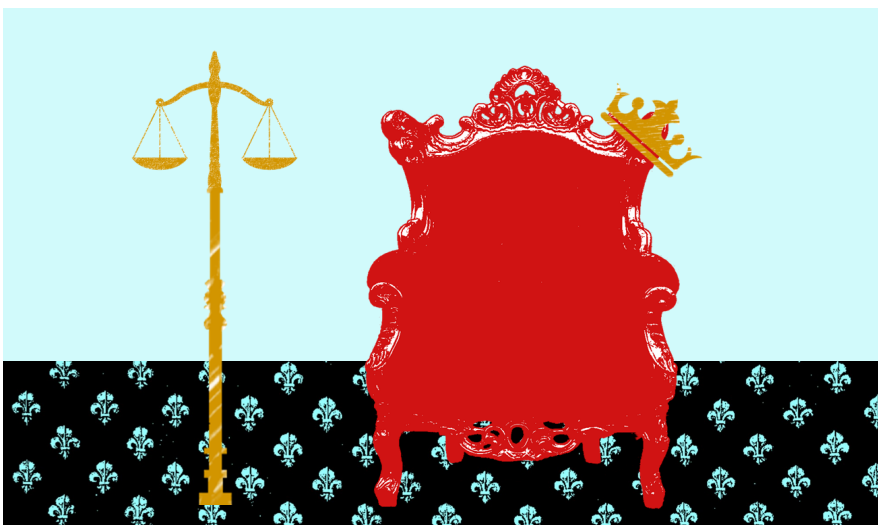
- Judicial Review and Judicial Oversight
- The Relationship between Independence and Deference
- How We Address Conduct of Adjudicators
- First Nations: Celebrating Success in Self-Governance

Co-Chairs

Mr. Michael Gottheil
Chief of the Commission and
Tribunals, Alberta Human Rights
Commission

Mr. Athanasios Hadjis
Senior Legal Counsel
Administrative Tribunals
Support Service of Canada

The Honourable Justice
James O'Reilly
Federal Court
First Vice-President of CIAJ



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

AGENDA | SATURDAY, MAY 25, 2019 / ÉTÉ ROOM (2nd Floor)

8:00 – 8:30 AM **REGISTRATION AND CONTINENTAL BREAKFAST**

8:30 – 8:45 AM **OPENING, LAND ACKNOWLEDGEMENT AND WELCOME**

- Co-chairs*
- Mr. Tiohatehkwen Patton, Kahnawake
 - Mr. Michael Gottheil, Chief of the Commission and Tribunals, Alberta Human Rights Commission
 - Mr. Athanasios Hadjis, Senior Legal Counsel, Administrative Tribunals Support Service of Canada
 - The Honourable Justice James O'Reilly, Federal Court; First Vice-President, CIAJ

8:45 – 10:15 AM **"DANCING WITH MYSELF": A CRITICAL ANALYSIS OF THE CANADIAN JUDICIAL COUNCIL**

In the last decade, the Canadian Judicial Council's complaints and discipline process has come under increasing public scrutiny. Both the substance of the complaints coming before it and the processes it has adopted have been subject to vigorous commentary and critique. Amidst these controversies, the CJC has asserted that it is immune from judicial review. So far, two federal court judges have rejected this. What is the basis for the CJC's arguably counter-intuitive position? Has the CJC over-reached in its claim to be constitutionally equivalent to a superior court (its "constitutional declaration of independence")? What do its arguments tell us about the very different protections for independence of the judiciary versus administrative tribunals? We suggest that a set of process concerns arising at the CJC may be symptomatic of its independence and immunity claims, e.g.: underdevelopment of mechanisms to recognize the rights of complainants; uncertainty in establishing the character of the regime along the inquisitorial-adversarial spectrum; and the relative lack of public participation in its decision-making processes. What, if anything, does all this tell us about the CJC's commitment to "a culture of justification?"

- Chair*
Speakers
- The Honourable Justice James O'Reilly, Federal Court; First Vice-President, CIAJ
 - Professor Richard Devlin, Schulich School of Law, Dalhousie University
 - Professor Sheila Wildeman, Schulich School of Law, Dalhousie University

10:15 – 10:30 AM **BREAK / ÉTÉ ROOM FOYER**

10:30 – NOON **KEEPING ADJUDICATORS HONEST, ETHICAL AND ACCOUNTABLE**

Addressing an adjudicator's poor, deficient or wrong decisions is generally straightforward – just seek judicial review. But what can be done when an adjudicator acts dishonestly, is unethical, performs poorly or just plain "goes rogue"? How can that be addressed, and by whom? Can it be done without compromising their independence? Our esteemed panel will explore these issues.

- Chair*
Speakers
- The Honourable Justice Yves-Marie Morissette, Quebec Court of Appeal
 - Mr. Patrick de Niverville, President, Discipline Committee, Organisme d'autoréglementation du courtage immobilier du Québec (OACIQ)
 - Mr. Morton Minc, President, Conseil de la justice administrative, Quebec
 - Mr. Norman Sabourin, Executive Director and Senior Counsel, Canadian Judicial Council

NOON – 1:00 PM LUNCH / AUTOMNE ROOM

1:00 – 2:30 PM INDEPENDENCE AND ACCOUNTABILITY

This panel will explore questions relating to principles of independence and accountability in the context of Indigenous governance. Should administrative law principles apply differently in contexts of Indigenous Governance than other settings? Are there principles and/or practices relating to Indigenous law which shape how independence and accountability apply to Indigenous governance? If tensions arise between the jurisdiction of Indigenous governance and the jurisdiction of Canadian courts, how should these tensions be resolved within the context of Reconciliation?

*Chair
Speakers*

- The Honourable Justice Lorne Sossin, Superior Court of Justice of Ontario
- The Honourable Justice Sébastien Grammond, Federal Court
- Mr. Aaron Mills, Assistant Professor, Faculty of Law, McGill University

2:30 – 2:45 PM BREAK / ÉTÉ FOYER

2:45 – 4:00 PM CELEBRATING SUCCESS IN INDIGENOUS SELF-GOVERNANCE AND GOVERNANCE

Notwithstanding the challenges, there are important successes to mark and explore in the area of Indigenous self-government and governance. This Panel will feature speakers who will share their experiences, successes, challenges, and lessons learned for future efforts in expanding Indigenous government and self-government in Canada and building relationship between the Indigenous and non-Indigenous communities.

*Chair
Speakers*

- Ms. Lauren J. Wihak, Associate, McDougall Gauley LLP
- Ms. Karen Drake, Associate Professor & Director, Indigenous Outreach, Osgoode Hall Law School, York University
- The Honourable Justice Shannon Hall, Akwesasne Mohawk Court
- Ms. Cheryl Jacobs, Akwesasne Mohawk Court Administrator
- Ms. Marisha Roman, Workplace Investigator & Trainer, Rubin Thomlinson LLP

4:00 – 4:30 PM CONCLUSION

Speakers

- Professor Martine Valois, Faculty of Law, Université de Montréal
- Mr. Simon Turmel, Commissioner, Régie de l'énergie du Québec

4:30 – 4:45 PM CLOSING REMARKS

Co-chairs

- Mr. Michael Gottheil, Chief of the Commission and Tribunals, Alberta Human Rights Commission
- Mr. Athanasios Hadjis, Senior Legal Counsel, Administrative Tribunals Support Service of Canada
- The Honourable Justice James O'Reilly, Federal Court; First Vice-President, CIAJ

5:00 – 7:00 PM COCKTAIL (CASH BAR) / ÉTÉ ROOM FOYER

OVERVIEW OF UPCOMING PROGRAMS

REGISTER ONLINE: <https://ciaj-icaj.ca/en/activities/upcoming-programs/>

MAY 2019

Decision Writing Seminar — Joint program with CCAT

Participation in this program is accredited in provinces where CLE requirements for lawyers are mandatory
May 29-30 • Montreal, QC

JUNE 2019

Judgment Writing Seminar

Participation in this program is approved under Section 41 (1) of the Judges Act
June 25-28 • Montreal, QC

OCTOBER 2019

Annual Conference: "The Impact of Artificial Intelligence and Social Media on Legal Institutions"

Accredited where CLE requirements for lawyers are mandatory / Approved under Section 41 (1) of the Judges Act
October 18 • Quebec City, QC

Seminar for New Federally Appointed Judges

Participation in this program is approved under Section 41 (1) of the Judges Act — Joint program with NJI
October 26 - November 1st • Victoria, BC

NOVEMBRE 2019

Dialogues on Judging: Challenges and Rewards of a Long-Serving Career

Participation in this program is approved under Section 41 (1) of the Judges Act — Joint program with NJI
November 13-15 • Toronto, ON

OCTOBER 2020

Annual Conference: "Indigenous Peoples and the Law"

Accredited where CLE requirements for lawyers are mandatory / Approved under Section 41 (1) of the Judges Act
October 21-23 • Vancouver, BC

Contact us

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

Canadian Institute for the Administration of Justice

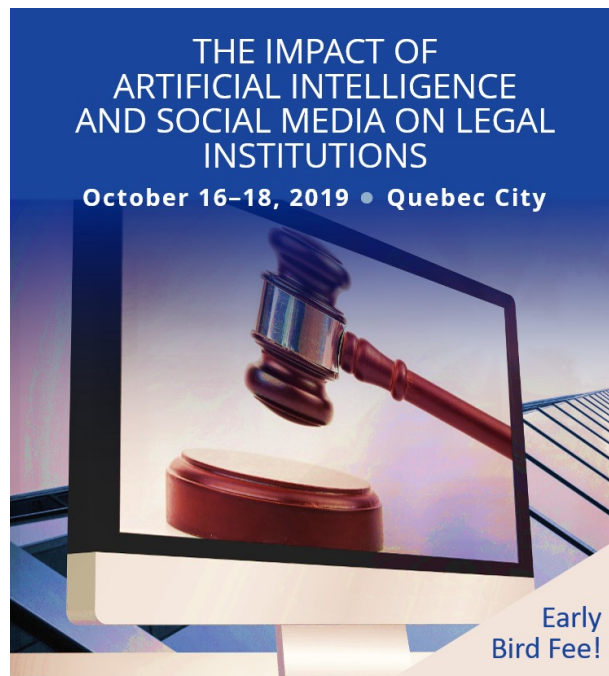
5950, chemin de la Côte-des-Neiges, bureau 450
Montréal, Québec, Canada
H3S 1Z6

Tel: 514 -731-2855 □ Fax: 514 -731-3247

Email: ciaj@ciaj-icaj.ca



www.ciaj-icaj.ca



REGISTRATION FORM

NATIONAL ROUNDTABLE ON ADMINISTRATIVE LAW Saturday, May 25, 2019, Omni Mont-Royal Hotel, Montreal

Please complete the online form: <https://ciaj-icaj.ca/en/upcoming-programs/national-roundtable-admin-law-2019/>
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)
☐ *I wish to subscribe to CIAJ's electronic newsletter*

Become a Member

Through participation of its members, CIAJ fosters excellence and leadership in the administration of justice and helps preserve a strong and independent judiciary. Individual members active in their profession receive a preferred rate on all training programs in addition to other benefits.

☐ **Individual** (\$150) ☐ **Young Lawyer*** 5 years or less (\$100) ☐ **Retired Person** (\$75) ☐ **Student*** Full-time (\$10)

Improve the justice system *(You will be issued a tax receipt for your charitable donation (Reg. # 10686 1529 RR 000))*

☐ I wish to make a donation to an amount of: \$ _____

Personal information

Surname _____ First name _____

Title _____ Name of organization _____

Address _____

Postal code _____ Tel (Bus) _____

Email _____ Assistant's email _____

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 _____

Payment ☐ Cheque ☐ Visa ☐ Mastercard ☐ Amex

Card number _____ Expiry date _____ Security code _____

Name on the card _____ Signature _____

Accommodation: Participants are responsible for making their own individual reservations. Please call the Hotel Omni Mont-Royal reservations centre at 1-514-284-1110, or book online: <https://www.omnihotels.com/sitecore/content/Home/hotels/montreal-mont-royal/meetings/GLP/2019/01/14/19/22/ciaj-round-table>.

Special Rate: \$224 + Tax (Deluxe King Rooms – Single / Double). **Book by April 24, 2019** in order to qualify for the group rate. Reservations received after that date will only be confirmed on a space and rate availability basis.

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

Canadian Institute for the Administration of Justice

5950 Chemin de la Côte-des-Neiges, Office 450

Montreal, Quebec, Canada H3S 1Z6

Tel: 514-731-2855 • Fax: 514-731-3247 • ciaj@ciaj-icaj.ca • www.ciaj-icaj.ca

