

The Canadian Institute's

# FUNDAMENTALS OF ADMINISTRATIVE LAW & PRACTICE

*An In-Depth, Practical Guide for Lawyers, Arbitrators and Tribunal Members*

Reviews from The Canadian Institute's Past Administrative Law Conferences:

*"Every topic was important to my line of work"*

– James Knopp, Inspector, Royal Canadian Mounted Police (Adjudications) (2008)

*"A good admin law refresher/crash-course"*

– Nathalie Nye, Legal Counsel  
Department of Justice (2008)

*"The range of topics was varied and useful"*

– Carol Gagné, Legal Counsel  
National Energy Board (2010)

**This comprehensive and practical two-day course will help you catch up on the essential legal issues in administrative law, including:**

- Sources of procedural fairness and the right to be heard
- Dealing with clustering, governance and accountability issues
- Legal status of tribunal rules, policies and guidelines
- Obtaining, presenting and receiving evidence in administrative proceedings
- Making tribunal decisions and writing effective reasons

*And much more!*

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Legal accreditation is available in most provinces  
... See inside for details

## COURSE LEADERS:

**Freya J. Kristjanson**  
Partner  
Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

**Jeff G. Cowan**  
Partner  
WeirFoulds LLP

**IF YOU ARE NEW TO ADMINISTRATIVE LAW, OR NEED A COMPREHENSIVE REFRESHER – THIS IS THE COURSE FOR YOU!**



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# Master the Key Legal Issues in Administrative Law!

Administrative law is one of the most challenging and complex areas of law to master. For instance, the “duty of fairness” can comprise one set of procedural safeguards in one situation and a completely different set in another. The rules of evidence for administrative hearings are completely different from those that govern trials in a court. And that’s just the beginning!

This comprehensive course, taught by leading experts, will provide you with **in-depth, nuts-and-bolts coverage** of the fundamentals of administrative law and practice in Canada, including:

- Overview of the rules of **natural justice** and **procedural fairness**
- Exploring the availability of *Charter* remedies at the tribunal level
- Dealing effectively with **evidentiary issues** in administrative proceedings
- Understanding **clustering, governance and accountability**
- Making tribunal decisions and **writing effective reasons**
- Practical tips on **improving practice** before administrative tribunals

You will have ample opportunity to **ask questions and compare notes** with your peers. You will also benefit by receiving **extensive written materials** that will prove to be an invaluable resource long after the conference is over.

Places always go quickly, so register today by calling 1-877-927-7936, or by faxing your registration to 1-877-927-1563, or online at [www.CanadianInstitute.com/AdminLaw](http://www.CanadianInstitute.com/AdminLaw).

We look forward to seeing you at the program in April!

## WHO SHOULD ATTEND

- Members of administrative tribunals (both lawyers and non-lawyers)
- Tribunal counsel
- Government lawyers
- Tribunal and government staff (including non-lawyers)
- Arbitrators
- Mediators
- Lawyers in private practice

## DISTINGUISHED FACULTY

### Course Leaders

**Freya J. Kristjanson**  
Partner, Cavalluzzo Hayes Shilton  
McIntyre & Cornish LLP

**Jeff G. Cowan**  
Partner, WeirFoulds LLP

### Speakers:

**Johanna Braden**  
Partner, Stockwoods LLP

**Leslie M. McIntosh**  
General Counsel, Ministry of the Attorney  
General, Ontario

**Carolyn Slon**  
Legal Counsel, Ontario Securities Commission

**Christopher D. Bredt**  
Partner, Borden Ladner Gervais LLP

**Stephen J. Moreau**  
Cavalluzzo Hayes Shilton McIntyre  
& Cornish LLP

**Lynda Tanaka**  
Chair, Licence Appeal Tribunal (Ontario)

**M. Jill Dougherty**  
Counsel, WeirFoulds LLP

**Margot Priest**  
President, Governance and Legislative  
Reform Group Ottawa

**Josée Turcotte**  
Deputy Secretary and Independent  
Adjudicative Counsel  
Ontario Securities Commission

**David Goodis**  
Senior Counsel, Information & Privacy  
Commissioner of Ontario

**Paul Schabas**  
Partner, Blake, Cassels & Graydon LLP

**Gus Van Harten**  
Associate Professor, Osgoode Hall  
Law School

**Valerie Jepson**  
Counsel, Office of Integrity Commissioner  
Ontario Public Service

**Jennifer A. Smout**  
Solicitor, The Corporation of the City  
of London

**Lorne Waldman**  
Principal, Lorne Waldman & Associates

**Andrew K. Lokan**  
Partner, Paliare Roland Rosenberg  
Rothstein LLP

**Paul B. Sommerville**  
Board Member, Ontario Energy Board

**Andrew Wray**  
Managing Partner, Pinto Wray James LLP

# Fundamentals of Administrative Law & Practice

Day 1—Tuesday, April 12, 2011

8:00 Registration Opens and Coffee Served ☞

8:45 **Introduction and Overview**

**Freya J. Kristjanson**

Partner

Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

**Jeff G. Cowan**

Partner

WeirFoulds LLP

9:00 **Procedural Fairness: The Right to be Heard**

**Freya J. Kristjanson**

Partner

Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

Sources of Procedural Fairness

- The common law duty of fairness
- Statutory procedural requirements
- Constitutional rights

The Right to Be Heard

- Notice and discovery
  - Disclosure of evidence
  - Expansion of the scope of the hearing
- The right to state one's case
  - The type of hearing: written or oral
  - The right to counsel
  - Time to present one's case
  - The right to cross-examine witnesses
  - Remedies for a breach of the right to be heard

9:45 **The Spectrum of Administrative Decision Making**

**Leslie M. McIntosh**

General Counsel

Ministry of Attorney General, Ontario

- Overview of the rules of natural justice and procedural fairness
- What decisions are governed by these rules?
- What decisions are “purely ministerial” decisions?
- Adjudicative decisions
- Key cases on whether a decision meets the criteria for application of these rules

10:15 **Networking Refreshment Break**

10:30 **Rules, Policies, Guidelines**

**Josée Turcotte**

Deputy Secretary and Independent Adjudicative Counsel

Ontario Securities Commission

**Carolyn Slon**

Legal Counsel

Ontario Securities Commission

- Role of the tribunal in promulgating procedural rules
- What kinds of policies and guidelines can a tribunal make?
- Best practices in drafting policies and guidelines
- Legal status of tribunal rules, policies and guidelines
- Most difficult and problematic areas of administrative law
- Special issues regarding self-represented litigants

11:15 **The Charter and Administrative Proceedings**

**Lorne Waldman**

Principal

Lorne Waldman & Associates

- The SCC decision in *Conway*: what does it mean for tribunals and section 24(1) *Charter* remedies?
- How to deal with *Charter* arguments before a tribunal
- Availability of *Charter* remedies at the tribunal level
- Reviewing the constitutional validity of the enabling statute: who can do what?
- Can a tribunal review other legislative provisions in light of the *Charter*?
- What should be put on the record in contemplation of judicial review proceedings based on a *Charter* argument?
- Standard of review of *Charter* and constitutional decisions – implications for administrative tribunals

12:00 **Networking Luncheon**

for Delegates and Speakers



1:15 **Obtaining, Presenting and Receiving Evidence in Administrative Proceedings**

**Andrew K. Lokan**

Partner

Paliare Roland Rosenberg Rothstein LLP

- Obtaining evidence on behalf of a party other than the tribunal: tips and traps
- When can a tribunal compel witnesses to appear or produce documents?
- A tribunal's right to gather evidence at its own insistence
- How far do disclosure requirements go in administrative proceedings? How far can claims of confidentiality be sustained?
- Third party privacy and confidentiality claims
- The centrality of relevance
- Arguing admissibility issues before a tribunal: winning strategies
- Effective use of expert evidence before tribunals
- Application of the “best evidence rule” to administrative proceedings
- Other key issues raised by recent decisions

## Sponsorship & Exhibition Opportunities

Maximize your organization's visibility in front of key decision-makers in your target market. For more information, contact Director Business Development **Daniel Gellman** at 416-927-0718 ext. 7389, toll-free 1-877-927-0718 ext. 7389 or by email at [d.gellman@CanadianInstitute.com](mailto:d.gellman@CanadianInstitute.com)

Register at 1-877-927-7936 or in Toronto 416-927-7936 or [www.CanadianInstitute.com/AdminLaw](http://www.CanadianInstitute.com/AdminLaw)

## 2:00 Regulatory Negligence: Update

**Stephen J. Moreau**

Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

- Recent case law
- The limits of statutory immunity clauses
- Policy-making risks
- Investigations and regulatory negligence
- Best practices
- Strategies for reducing exposure

## 2:45 Networking Refreshment Break

## 3:00 Improving Practice before Administrative Tribunals

**Paul B. Sommerville**

Board Member

Ontario Energy Board

**Jennifer A. Smout**

Solicitor

The Corporation of the City of London

**Margot Priest**

President

Governance and Legislative Reform Group Ottawa

*Providing perspectives on keys to success before administrative tribunals, and pitfalls to avoid.*

### Topics covered will include:

- Running fair and effective hearings
- Dealing with adjournments
- Time limits and other hearing control techniques
- Dealing with different kinds of expert evidence
- Technology and tribunals – the good, the bad and the ugly
- Self-represented litigants – tips for success
- What tribunal members really want from counsel at a hearing
- Writing reasons: tips from tribunal members
- Addressing ethical issues arising in administrative law practice

## 4:30 Course Adjourns

# Day 2 – Wednesday, April 13, 2011

## 8:15 Coffee Served ☕

## 8:45 Course Resumes – Opening Remarks

## 9:00 Bias and Lack of Independence

**Jeff G. Cowan**

Partner

WeirFoulds LLP

- The legal tests for bias and lack of independence
- Common law grounds for alleging bias

- Recent decisions on what constitutes a reasonable apprehension of bias
- Under what circumstances should a possible issue of bias be raised by counsel or by the adjudicator?
- How much detail should be part of the disclosure?
- Who decides the issue of bias?
- When should there be a voluntary withdrawal by the adjudicator?

## 9:45 Privacy and Access to Information

**David Goodis**

Senior Counsel

Information & Privacy Commissioner of Ontario

**Paul Schabas**

Partner

Blake, Cassels & Graydon LLP

- Disclosure, privacy and access: striking the balance
- Recent case law on the application of access and privacy legislation to tribunals
- Third party privacy/access issues
- Tribunal technology and privacy risks
- Access to pleadings and exhibits
- Top tips for lawyers and tribunals

## 10:45 Networking Refreshment Break

## 11:00 Clustering, Accountability and Governance

**Lynda Tanaka**

Chair

Licence Appeal Tribunal

**Gus Van Harten**

Associate Professor

Osgoode Hall Law School

**Valerie Jepson**

Counsel

Office of Integrity Commissioner - Ontario Public Service

- Accountability and oversight agencies – role of integrity commissioners, conflict of interest commissioners, and lobbyist registrars in federal and provincial systems
- New statutory accountability and governance requirements - Ontario's *Adjudicative Tribunals Accountability, Governance and Appointments Act* and Alberta's *Public Agencies Governance Act*
- Tribunal integration, independence and accountability – clustering vs. amalgamation of mandates
- Relationship with ministers: MOU's, accountability and independence
- Emerging best practices

## 12:15 Networking Luncheon for Delegates and Speakers



## 1:15 Making Tribunal Decisions and Writing Effective Reasons

**Johanna Braden**

Partner

Stockwoods LLP

- Consultations among decision-makers
- The role of tribunal counsel during deliberations
- Consultations with others
- Burden of proof at a hearing
- Standard of proof
- Evaluating credibility
- Key elements of an administrative law decision
- Duty to give reasons
- What formats for decisions work well and why?
- How much detail should be given in various types of decisions?
- How extensively should the facts be reviewed?
- Do the decision and reasons need to address every argument raised during the proceedings?
- Are boilerplate statements appropriate?
- Reviewing a decision to consider grounds for appeal, reconsideration or review: a checklist
- Are there “appeal-proof” ways to write decisions?

## 2:15 Penalties

**M. Jill Dougherty**

Counsel

WeirFoulds LLP

- Penalty guidelines
- Interim suspensions/discipline
- General deterrence vs. specific deterrence
- The “public interest” and penalties
- Mitigation: restitution and remorse?
- Alternatives

## 3:00 Networking Refreshment Break

## 3:15 Key Administrative Law Issues

**Christopher D. Bredt**

Partner

Borden Ladner Gervais LLP

**Jeff G. Cowan**

Partner

WeirFoulds LLP

**Andrew Wray**

Managing Partner

Pinto Wray James LLP

- Demystifying the standard of review – the legacy of *Dunsmuir/Khosa*
- Differences between judicial review and appeals
- Standing of tribunals on judicial review/appeal

- Exhaustion of alternative remedies and prematurity
- Reasons and judicial review
- Remedies available on judicial review
- Tribunal reconsideration and review

## 4:15 Course Concludes Closing Remarks

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This program can be applied towards 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the **Law Society of Upper Canada**. Please note that these CPD hours are not accredited for the New Member Requirement.



This program has been approved by the **Law Society of Saskatchewan** for 11 credit hours for Continuing Professional Development (CPD).

The same number of hours may be applied toward your continuing legal education requirements in **British Columbia**.

The same number of hours may be applied toward your continuing legal education requirements in **New Brunswick**.

The **Barreau du Quebec** automatically recognizes the same number of hours for this training activity, the latter having been accredited by another Law Society subject to MCLE.

Attendance at this program by members of the **Law Society of Alberta** may be submitted to the Law Society for Continuing Professional Development credits.

## The Canadian Institute's Green Initiatives:

What are we doing to reduce the environmental impact of hosting programs across Canada?

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- ✓ We print all brochures with The Canadian Institute's Environmentally Tri-Certified (FSC, PEFC, SFI) Print Partner
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## Top Reasons to Attend

- ✓ Expand your knowledge of the rules of natural justice and procedural fairness
- ✓ Improve your practice before administrative tribunals
- ✓ Gain a better understanding of clustering, governance and accountability
- ✓ Best practices for drafting policies, guidelines and reasons

## REGISTRATION FORM

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VENUE: The Sutton Place Hotel  
ADDRESS: 955 Bay Street, Toronto, Ontario  
TEL.: 416-924-9221

### Hotel Reservations

For information on hotel room availability and reservations, please contact The Sutton Place Hotel at 1-866-378-8866. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

### Registration Fee

The fee includes the program, all program materials, continental breakfasts, lunches and refreshments.

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Program participants will receive a comprehensive set of program materials prepared by the speakers. If you have paid and are unable to attend, these will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the program.

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Payment must be received in full by the program date to ensure admittance. All discounts will be applied to the Program Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization. **Groups of 4 will be invoiced individually at 25% off the available rate at the time of registration.** For groups of 5 or more please call 1-877-927-7936 for additional discounts.

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You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the program date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other program by **The Canadian Institute**. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the program date. **The Canadian Institute** reserves the right to cancel any program it deems necessary and will, in such event, make a full refund of any registration fee, but will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by **The Canadian Institute** for changes in program date, content, speakers or venue.

STEP 1

STEP 2

STEP 3