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Alan Keats, B.C. Securities Commission

7th Annual Conference on Crown Liability

This timely one-day update will give you the latest information and valuable insights into important new law and practice developments, including:

- The impact of the SCC's *Fallowka* decision on the scope of public authorities' potential liability
- How the *Telezone* group of cases will affect Federal Court jurisdiction and when judicial review is required
- The availability of damages for violation of *Charter* rights post-*Ward* – and the fourfold test for determining what's "appropriate and just"
- The Crown's recourse to defamation actions as a means of protecting the administration of justice
- The current extent of Crown privilege and the challenges involved in obtaining or resisting disclosure of information in the Crown's possession
- Electronic evidence, e-discovery and the Crown
- What the *Carrier Sekani* decision means for the extent of the government's responsibility to consult aboriginal communities
- The *Kuwaiti Airlines* case, state immunity and suing foreign governments in Canada
- Recent law in relation to liability arising from procurement and tendering
- The current state of costs in Crown litigation (including but not limited to advance costs)

Plus! Optional Pre-Conference Workshop - *The Legal Framework of Crown Litigation: Navigating Through the Procedural Maze*

Chairs

Joseph K. Cheng, Counsel, Department of Justice Canada

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP

Malliha Wilson, Assistant Deputy Attorney General, Legal Services Division
Ministry of the Attorney General (Ontario)



DATE & TIME

Friday, February 18, 2011

9:00 a.m. - 4:45 p.m. EDT/EST

OPTIONAL WORKSHOP

Thursday, February 17, 2011

2:00 p.m. - 5:00 p.m.

LOCATION

Osgoode Professional
Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

Conference
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7th Annual Conference on Crown Liability

What past attendees said:

"I always enjoy the mix of plaintiff/defence counsel... it makes for lively discussion and good representation of different perspectives"

"An excellent continuing education day for government solicitors generally. Relevant to [a] broad range of counsel work"

"Excellent overall update"

"The materials are excellent and will be useful"

The Crown continues to find itself a steady target of litigation, while new law in such areas as constitutional damages potentially increases its vulnerability. Both plaintiffs' and Crown counsel need to meet the challenges posed by this shifting legal landscape – challenges that encompass the nature and scope of liability, the procedures and best practices involved in suing or defending the Federal or provincial governments, and the far-reaching consequences for government planners, private parties and the public interest.

As a government lawyer, private practitioner or in-house litigation counsel, you need the insights and tools which an expert faculty will place before you in this seventh annual program from *Osgoode Professional Development*. Featuring stellar expertise from senior Federal and provincial government lawyers, the private bar and academia, this program will guide you through the latest developments – and help you over the gravest pitfalls – in civil litigation involving public authorities. It has established a reputation as an outstanding guide to the relevant substantive law, procedural rules and winning strategies and tactics for suing or defending the government. Don't miss this opportunity to hear the experts and to pose your most pressing questions to them!

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chairs

Joseph K. Cheng, Counsel, Department of Justice Canada

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP

Malliha Wilson, Assistant Deputy Attorney General, Legal Services Division
Ministry of the Attorney General (Ontario)

Faculty

Andrew Brodtkin, Goodmans LLP

Robert E. Charney, Constitutional Law Branch
Ministry of the Attorney General (Ontario)

Nathalie Des Rosiers, General Counsel
Canadian Civil Liberties Association

R. Douglas Elliott, Roy Elliott O'Connor LLP

Mahmud Jamal, Oslers LLP

Prof. Lewis N. Klar, Q.C., Faculty of Law
University of Alberta

Sarah T. Kraicer, Crown Law Office – Civil
Ministry of the Attorney General (Ontario)

Kevin McGuinness, LLB, LLM, SJD
Barrister & Solicitor and Chairman
Purchasing Consultants International

Nicholas McHaffie, Stikeman Elliott LLP (Ottawa)

Leslie M. McIntosh, General Counsel
Crown Law Office – Civil, Ministry of the
Attorney General (Ontario)

Megan B. McPhee, Kim Orr Barristers P.C.

Michael H. Morris, General Counsel, Public Law
Department of Justice Canada

Shaun O'Brien, Cavalluzzo Hayes Shilton
McIntyre & Cornish LLP

Julian Porter, Q.C.

Malcolm N. Ruby, Gowling Lafleur
Henderson LLP

Brendan Van Niejenhuis, Stockwoods LLP
Barristers

Dale Yurka, General Counsel, Department of
Justice Canada

8:30 Registration and Continental Breakfast

9:00 Welcome and Introduction from the Chairs

9:10 Government Liability in Negligence: How Is It Evolving, and Is *Fallowka v. Pinkerton* a Game-Changer?

Lewis N. Klar, Q.C., Faculty of Law, University of Alberta

Professor Klar's annual appearances at this program are always eagerly anticipated. This time he reassesses the state of the law of regulatory negligence in light of an important new decision from the Supreme Court of Canada. Before *Fallowka* it was difficult to get judgment against public authorities for negligence in the absence of a "proximate relationship" between the plaintiff and the government. To what extent has this changed? What are the practical implications for the government's duty to execute its statutory responsibilities?

10:00 The *Telezone* Group of Cases and the Limits of Federal Court Jurisdiction: The Final Chapter?

Nicholas McHaffie, Stikeman Elliott LLP (Ottawa)

Joseph K. Cheng, Counsel, Department of Justice Canada

Andrew Brodtkin, Goodmans LLP

Michael H. Morris, General Counsel, Public Law Department of Justice Canada (Moderator)

With the Supreme Court of Canada poised to rule on the pivotal *Telezone* series of cases, counsel may expect greater certainty on the correct scope of Federal Court jurisdiction and the ability to bring civil actions arising from Crown decisions or actions. This panel will update you and explore the implications of the rulings in the context of the evolving law. The panel will also explore how the rulings will affect future proceedings and the scope of any still-unanswered questions.

11:15 Refreshment Break

11:30 Update on the Availability of *Charter* Damages and the Implications for Class Actions Against the Crown

R. Douglas Elliott, Roy Elliott O'Connor

Robert E. Charney, Constitutional Law Branch, Ministry of the Attorney General (Ontario)

- *City of Vancouver v. Ward* [2010 SCC 27] and after
- The "appropriate and just" standard: are there effective limits on the Courts' discretion to award damages?
- How the Crown can show that other remedies would suffice
- When might damages "thwart effective governance"?
- Double recovery problems
- What the decision will likely mean for class actions and Crown accountability generally
- Impact on suits for malicious prosecution, G20-type situations

12:30 Luncheon (with Speakers): Social Media, Defamation, and the Crown: "Officer Bubbles" and Beyond

Mahmud Jamal, Oslers LLP (Moderator)

Julian Porter, Q.C.

Nathalie Des Rosiers, General Counsel
Canadian Civil Liberties Association

A police officer brings suit in defamation after a G20 videotape "goes viral" on the Web and gives rise to an explosion of parody

and satire. But the issues raised are no joke: the Crown's ability to use defamation against citizens, its legitimate interest in upholding the administration of justice, and the transformation of defamation's traditional character as a merely personal action.

1:30 Evidentiary Problems and Solutions in Crown Litigation

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP

Sarah T. Kraicer, Crown Law Office – Civil, Ministry of the Attorney General (Ontario)

It's a truism that cases are won or lost on the evidence. This panel provides a rare opportunity to explore evidentiary issues such as the following in the context of Crown litigation:

- Navigating the disclosure minefield
- Electronic evidence, e-discovery and the Crown
- Security certificates, immigration and national security cases
- The extent of Crown privilege; sections 38-39 of the Federal *Evidence Act*, cabinet secrecy, and the case-by-case approach at the provincial level
- Do's and don'ts for obtaining and granting appropriate disclosure
 - knowing whom to ask and where to look
 - doing it right the first time to prevent embarrassment – and adverse cost awards – later

Note: There will be a 15 minute break during this session.

3:00 Update on the Crown's Duty to Consult Aboriginal Communities: Impact and Implications of *Carrier Sekani*

Malliha Wilson, Assistant Deputy Attorney General, Legal Services Division, Ministry of the Attorney General (Ontario)

Brendan Van Niejenhuis, Stockwoods LLP Barristers

- The impact on the judicial review process as it relates to First Nations
- Scope of the duty to consult (regional planning/project-specific approach/environmental assessments/energy consultation/sustainable practices in relations to species important to Aboriginal communities and their trapping/fishing treaty rights)

3:45 Fast and Focused: Updates in Three Important Areas

Kevin McGuinness, LLB, LLM, SJD, Barrister & Solicitor and Chairman, Purchasing Consultants International

Shaun O'Brien, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

Malcolm N. Ruby, Gowling Lafleur Henderson LLP

- Current developments in costs in the context of Crown litigation (including judicial discretion to award advance costs in exceptional cases)
 - pleading not to have advance costs awarded against you
- State immunity and suing foreign governments: Unpacking the *Kuwaiti Airlines* case (S.C.C.)
- Recent developments in liability in relation to government procurement and tendering

4:45 Program Concludes

Agenda [Cont'd]

Optional Pre-Conference Workshop

The Legal Framework of Crown Litigation: Navigating Through the Procedural Maze

Thursday, February 17, 2011: 2:00 p.m. - 5:00 p.m.

Dale Yurka, General Counsel, Department of Justice Canada

**Leslie M. McIntosh, General Counsel, Crown Law Office - Civil
Ministry of the Attorney General (Ontario)**

Megan B. McPhee, Kim Orr Barristers P.C.

Bringing or defending a legal claim against the government raises unique challenges. A practitioner unfamiliar with this procedural terrain faces an uphill struggle to manoeuvre effectively through it. This perennially highly-rated workshop will give you the procedural information you need concerning government liability – whether you're acting for or against the Crown. Topics include:

- The statutory framework governing proceedings in Federal Court and provincial Superior Court
- Identifying the proper forum
- Limitation periods, identifying the parties, notice requirements
- How is the procedure affected when a claim is made against both the Crown and a private defendant?
- Intervenors and standing – the rules
- Applications for judicial review
- Essential procedural considerations in Federal Court
- Effective disclosure strategies
- The *Freedom of Information and Protection of Information Act* and government disclosure
- The scope of Crown privilege
- The time-frame for discovery
- Costs for and against the Crown

Don't miss this popular workshop! Register early.



Approved in accordance with the requirements of the **LSUC CPD program** for 7 hours, **LSUC EPPM** credit hours (pending); the **Barreau du Québec, BC CPD, Law Society of New Brunswick, Northwest Territories, Nunavut and Manitoba** for 7 credit hours for CPD requirements; the **New York CLE Board** for 8.5 credit hours in the Area of Professional Practice for transitional and non-transitional lawyers. Eligible for CLE/Insurance Premium Credits Program offered by the **Law Society of PEI** and for Alberta CPD credit with the **Law Society of Alberta**. Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

CPD Credits

Registration

Please complete all registrant information.

Register me for: **Crown Liability** **Course plus Workshop** **Course only**

I will attend: **On site** **Via webcast (single viewer)**

(Note: Workshop not available via webcast)

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Fees include attendance, program materials, continental breakfast, lunch (conference only) and break refreshments. Group discounts are available for both on site and webcast participants. Visit www.osgoodepd.ca for details. Please inquire about financial assistance and CPD credits.

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Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Dates & Times

Friday, February 18, 2011

9:00 a.m. - 4:45 p.m. EDT/EST

Optional Workshop: February 17, 2011

2:00 p.m. - 5:00 p.m.

Please arrive a half hour early for sign-in and material pick-up. Dress is business casual.

Location

**Osgoode Professional Development
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