

The Canadian Institute's 8<sup>th</sup> Annual

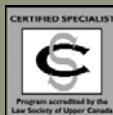
# Advanced Administrative Law & Practice

Essential Professional Development for Counsel and Tribunals

Learn from outstanding  
speakers, including:

*The Hon. John D. Richard*  
Chief Justice  
Federal Court of Appeal

*The Hon. Sandra Simpson*  
Justice, Federal Court of Canada  
Chair, Competition Tribunal



This program has been accredited  
by the Law Society of Upper  
Canada for 12 hours towards the  
professional development  
requirement for certification.

Just some of the highlights from this year's program

- What will the *Dunsmuir* case mean to litigation on the standard of review?
- Tribunal independence: what's left after the CNSC affair?
- Understanding the role of tribunal counsel
- Cross-Canada case law update
- Drafting winning factums for judicial review
- Successful strategies for Federal Court advocacy

*"Efficient, excellent speakers  
who were well prepared"*

*Vanita Pillay*  
Barrister & Solicitor  
Alberta Justice, Civil Law

*"[I liked the] excellent quality/utility of materials...  
Speakers were uniformly very good to excellent"*

*P.M. Saroli*  
Senior Trade Policy Advisor  
Dept. of Finance Canada



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## 2008 has been a very active year in administrative law. Consider just a few examples:

- The Supreme Court of Canada has **overhauled the law on standard of review** in *Dunsmuir*, one of the most important administrative law cases in years.
- Several prominent tribunal chairs and vice-chairs have been **dismissed mid-term**, some in the middle of cases.
- The SCC is due to release an important case on seizure of privileged materials.

The Canadian Institute's 8<sup>th</sup> Annual Conference on Advanced Administrative Law and Practice is your best opportunity to get updates on the latest case law, as well as useful advice on practice skills.

Speakers this year will include The Hon. John D. Richard, Chief Justice of the Federal Court of Appeal, and The Hon. Sandra Simpson, a Justice of the Federal Court and Chair of the Competition Tribunal.

For 2008 we're offering two workshops: The Fundamentals of Administrative Law and The Rules of Evidence in a Nutshell.

Based on the past success of this conference, spaces will fill up quickly. Reserve your space today by calling The Canadian Institute toll-free at 1-877-927-7936, faxing your registration to 1-877-927-1563, or registering online at [www.CanadianInstitute.com](http://www.CanadianInstitute.com).

We look forward to seeing you at the conference!

## Who Will Be There

- Chairs, Vice-Chairs and Members of administrative tribunals
- Tribunal/board counsel
- Lawyers in private practice
- Government and commission lawyers
- Arbitrators and mediators
- Municipal and university officials
- Ombudspople

*"Well run, organized, informed chairs, interesting speakers"*

*Tanys Bjornson*  
Crown Counsel  
Civil Legal Services  
Manitoba Justice

## Distinguished Faculty

### Co-Chairs:

*Raj Anand*  
Partner  
WeirFoulds LLP, Toronto

*Fay Brunning*  
Partner  
Sack, Goldblatt, Mitchell LLP

### Speakers:

*Cynthia Amsterdam*  
Partner, Heenan Blaikie LLP, Calgary

*Chris Bredt*  
Partner, Borden Ladner Gervais LLP, Toronto

*Nancy Brooks*  
Partner, Blake, Cassels & Graydon LLP

*Robert A. Centa*  
Partner  
Paliare Roland Rosenberg Rothstein, LLP,  
Toronto

*Graham Clarke*  
Vice-Chairperson, Canadian Industrial  
Relations Board

*S. Ronald Ellis, Q.C.*  
Administrative Justice Consultant, Toronto

*Scott Fenton*  
Partner, Fenton, Smith, Toronto

*Mark Freiman*  
Partner, McCarthy Tétrault LLP, Toronto

*Brian Goodman*  
Chairperson, Immigration and Refugee  
Board of Canada

*Michael Gottbeil*  
Chair, Human Rights Tribunal of Ontario

*Tony Griffin*  
Senior Legal Counsel  
Ontario Human Rights Commission

*Martha Healey*  
Partner, Ogilvy Renault LLP

*Kris Klein*  
Law Office of Kris Klein

*Freya J. Kristjanson*  
Partner  
Borden Ladner Gervais LLP, Toronto

*Ian MacKenzie*  
Vice-Chairperson  
Public Service Labour Relations Board

*Margot Priest*  
Chief Review Officer  
Environmental Protection Review Board

*Owen Rees*  
Stockwoods LLP, Toronto

*The Hon. John D. Richard*  
Chief Justice, Federal Court of Appeal

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

*The Hon. Sandra Simpson*  
Justice, Federal Court of Canada  
Chair, Competition Tribunal

*David Stratas*  
Partner, Heenan Blaikie LLP, Toronto

*Robert B. Warren*  
Partner, WeirFoulds LLP, Toronto

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Tuesday, October 28, 2008

8:00 Registration Opens and Coffee Served ☑

9:00 **Announcements and Opening Remarks from the Co-Chair**

*Raj Anand*

Partner, WeirFoulds LLP, Toronto

9:10 **Working with the New Law on Standard of Review**

*In March 2008, the Supreme Court of Canada changed the law on standard of review in Dunsmuir, the most important case on the subject in years. In this must-attend session, learn how the decision will change things for practitioners and decision makers.*

Moderator and Speaker:

*David Stratas*

Partner, Heenan Blaikie LLP, Toronto

Panelists:

*Brian Goodman*

Chairperson, Immigration and Refugee Board of Canada

*The Hon. John D. Richard*

Chief Justice, Federal Court of Appeal

- Problems the SCC hoped to address in *Dunsmuir*
- Understanding the new approach: what does the decision mean?
- The effect of the two concurring reasons
- Bullet-proofing tribunal reasons for decision post-*Dunsmuir*
- Arguing judicial reviews and appeals using *Dunsmuir*
  - strategic considerations
  - what will you need to win your case?
  - what's acceptable, and what isn't?
- A six-month review – how is it playing out on the ground?
  - initial interpretations
  - is it actually streamlining JRs?

10:30 Networking Refreshment Break

10:45 **Cross-Canada Roundup: Other Key Decisions of the Past Year**

*Raj Anand*

Partner, WeirFoulds LLP, Toronto

- *Dunsmuir* and *Cyr* at the S.C.C.: how far does the duty of procedural fairness go?
  - are there limits on the scope of a tribunal's power to define its own processes?
  - application of *Cyr* outside Quebec
- The content of procedural fairness
- Sanctions and penalties imposed by administrative agencies
  - how do they affect the requirements for procedural fairness?
  - investigatory safeguards surrounding ticketing by inspectors
  - Charter concerns
- Is the standard of review on questions of jurisdiction always correctness?
- Is the doctrine of reasonable expectations making inroads in Canadian public law?
- How does a reviewing body go about delimiting what is within and outside a tribunal's jurisdiction?
  - recent jurisprudence from Ontario's Divisional Court
- The role of appellate tribunals
  - where a tribunal may elect to hear a matter *de novo*, when should it decide to do so?

*"[Raj Anand has an] excellent understanding of cases presented"*

*Dennis Woolsey*

Alberta Municipal Government Board, 2007 delegate

12:00 Networking Luncheon for Delegates & Speakers

1:15 **Tribunal Independence and Impartiality in Canada – How Real is It?**

*The firing of Canadian Nuclear Safety Commission President Linda Keen by the Harper government early this year is just one of several recent events that have raised questions about the reality of tribunal independence in Canada.*

Moderator:

*Robert B. Warren*

Partner, WeirFoulds LLP, Toronto

Panelists:

*Nancy Brooks*

Partner, Blake, Cassels & Graydon LLP

*S. Ronald Ellis, Q.C.*

Administrative Justice Consultant, Toronto

*Margot Priest*

Chief Review Officer

Environmental Protection Review Board

- An update on key recent events, and their significance
- At-pleasure appointments vs. fixed-term appointments
- Understanding tribunal independence at common law
- Constitutional implications of tribunal independence
- Are chairs in a different position from other tribunal members?
- What is the law, as opposed to the practice, on executive-branch interference with tribunal decision-making?
- What is the best way for tribunal chairs and members to deal with attempts at interference?
- What is the proper role of the executive branch in setting policy for tribunals?
- When is it appropriate for the executive branch – the legislature – to overrule a tribunal decision?
- In all of this, does it matter what kind of tribunal it is?
- Is the federal government's code of conduct pertinent?
- How confident can litigants be that tribunal decisions will in fact be independent and impartial?
- On the issue of tribunal independence and impartiality, how does the Canadian law and practice compare to:
  - Canada's international undertakings?
  - the law and practice in the UK? In the US? In Australia?
- The role of the media and the Bar.

2:30 Networking Refreshment Break

2:45 **Dealing with the Challenge of Self-Represented or Under-Represented Litigants**

*Tony Griffin*

Senior Legal Counsel, Ontario Human Rights Commission

*Ian Mackenzie*

Vice-Chairperson

Public Service Labour Relations Board

- The tribunal perspective
- The perspective of opposing counsel
- Dealing with incompetent or unruly counsel
- Keeping the hearing on track
- Maintaining a neutral stance
- Finding appropriate language levels for written and oral decisions
- What to do when issues of mental illness or capacity arise

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## 4:00 Evidence Gathering in Regulatory Investigations: What are the Limits?

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*Cynthia Amsterdam*

Partner, Heenan Blaikie LLP, Calgary

- An update on the *Blood Tribe* case at the Supreme Court of Canada
  - can regulators require disclosure of solicitor-client privileged material?
  - do they need statutory authority, and if so what are the requirements for wording?
  - what is the scope of litigation privilege when the other party is a regulator?
  - if the regulator is entitled to the material, what procedures should be followed?
  - what use can the regulator make of the material?
  - procedures for search and seizure of privileged material
  - policy arguments on either side of the question
- Search and seizure in the regulatory context
- Best practices for handling evidence
- Strategic responses to *ex parte* orders

4:45 Co-Chair's Remarks

5:00 Conference Adjourns

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Wednesday, October 29, 2008

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8:30 Coffee Served ☞

9:00 Announcements and Opening Remarks from the Co-Chair

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*Fay Brunning*

Partner, Sack, Goldblatt, Mitchell LLP

9:05 Privacy and the Administrative Process: Recent Trends and Developments

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*Kris Klein*

Law Office of Kris Klein

*Paul Schabas*

Partner, Blake Cassels & Graydon LLP, Toronto

- Should tribunals be governed by the principles of open court?
- To what extent should personal information be kept from public view?
  - what stance are the privacy commissioners taking?
- Are we safeguarding corporate and competitive information more than personal information, and if so why?
- Statutory duties of confidentiality
- What duty if any is owed to third-party witnesses?
- Guidelines for disclosure
- How does privacy legislation apply to administrative proceedings and investigations?
  - what exemptions may apply?

10:00 Networking Refreshment Break

10:15 Drafting Winning Factums for Judicial Review

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*Chris Bredt*

Partner, Borden Ladner Gervais LLP, Toronto

- What are the key elements in a factum on judicial review?
- How to address the standard of review
- How to address adverse case law
- Special considerations as a respondent

11:00 Changing the Model of Administrative Justice: What Works and What Doesn't?

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*Graham Clarke*

Vice-Chairperson, Canada Industrial Relations Board

*Michael Gottheil*

Chair, Human Rights Tribunal of Ontario

- How are tribunals using ADR to manage heavy caseloads?
- Activist adjudicators – what are the benefits and pitfalls?
- How is the new human rights setup in Ontario working?
- Ethical considerations when regulatory investigators also conciliate, or mediators arbitrate

12:00 Networking Luncheon for Delegates & Speakers

1:15 Understanding the Role of Tribunal Counsel

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*The Hon. Sandra Simpson*

Justice, Federal Court of Canada

Chair, Competition Tribunal

- How far can counsel go in advising the tribunal?
- When a tribunal has standing at JR, what are the limits on submissions?
  - making your points without being reprimanded from the Bench
- The appropriate role for counsel in drafting and reviewing reasons for decision

2:00 Successful Strategies for Federal Court Advocacy

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*Martha Healey*

Partner, Ogilvy Renault LLP

- Strategic use of the Federal Court Rules
- What's different about Federal Court?
- Requests for certified tribunal records
  - when to request them
  - what should go in them

2:45 Networking Refreshment Break

3:00 Public Inquiries: Conducting Them and Practicing Before Them

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*Mark Freiman*

Partner, McCarthy Tétrault LLP, Toronto

*Freya J. Kristjanson*

Partner, Borden Ladner Gervais LLP, Toronto

- How do the principles of administrative law play out at public inquiries?
- Distinguishing public inquiries from reviews, internal inquiries and departmental investigations
  - when is it appropriate to choose one approach over another?
  - statutory considerations
- Arguing the proper scope of a public inquiry
  - avoiding "mandate creep"
  - where should the commissioner draw the line on collateral evidence?
- Understanding the role of commission counsel
- Representing government actors before public inquiries
- Representing witnesses at public inquiries: the role of counsel
- Representing other parties with standing
- Your first public inquiry: what you need to know
- Judicial review of public inquiries



4:00 **Essential Considerations Where Administrative Proceedings and Criminal Proceedings Arise on the Same Facts**

*Scott Fenton*

Partner, Fenton, Smith, Toronto

- When does an administrative tribunal get access to the Crown or police brief in a concurrent criminal proceeding?
  - what's in the Crown or police brief?
  - if the tribunal gets it, are there limits on the use that may be made of it, by parties and by the tribunal?
- Should administrative proceedings be stayed if there is a concurrent criminal proceeding on the same facts?
- Should an administrative tribunal have access to wiretap evidence collected in a concurrent criminal investigation?
- If the criminal proceeding concludes first, are the findings binding on the tribunal?
- Limits on collateral use of evidence
- Should the criminal investigation have access to evidence arising from an administrative investigation?
  - *Charter* considerations
  - key SCC decisions
- Should regulatory investigators be in touch with the criminal investigators?
  - if so, are there limits to their communication?
- Special considerations where security certificates are involved

4:45 **Co-Chair's Closing Remarks**

5:00 **Conference Concludes**

**A**

**Pre-Conference Workshop**  
Monday, October 27, 2008

2:00 p.m. – 5:00 p.m.

**The Fundamentals of Administrative Law**

*Robert A. Centa*

Partner, Paliare Roland Rosenberg Rothstein, LLP

*This conference assumes that delegates know the basic concepts and terminology of administrative law, whether from a course at law school or attending our popular two-day Fundamentals course. If you need a refresher, or if the law has changed since you studied the basics, we recommend this valuable condensed workshop.*

- The policy underlying the system of administrative justice
- The source of tribunal jurisdiction
- Natural justice / the principles of fundamental justice
- Constitutional and *Charter* issues
- Guideline, policy and rule-making authority
- Independence and bias: key legal principles
- What is a privative clause, and what is its practical implication?
- Burden of proof, standard of proof
- Judicial review
  - sources of authority
  - difference from appeals
  - remedies
  - what does “standard of review” mean?
- Leading cases in administrative law

*Robert A. Centa, a gold medalist at U of T law school, has been recognized in the Best Lawyers in Canada (2006-2007, 2008) and Lexpert (2005) as a public law litigator. He acted as assistant Commission counsel for the Goudge Inquiry into Pediatric Forensic Pathology in Ontario, counsel for the City of Toronto at the Toronto Computer Leasing Inquiry, and is Assistant Discipline Counsel for the University of Toronto.*

**B**

**Post-Conference Workshop**  
Thursday, October 30, 2008

9:00 a.m. -12:00 p.m

**The Rules of Evidence in a Nutshell**

*Owen Rees*

Stockwoods LLP, Toronto

*A tribunal's rules may \*say\* that it doesn't need to follow all the rules of evidence, but that only applies to the extent that the fairness of the hearing is not jeopardized. Using practical examples, this condensed workshop gives you an introduction to key aspects of the rules of evidence and how they can arise in hearings.*

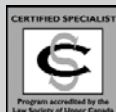
- The difference between facts and evidence
- Understanding basic concepts
  - relevance
  - materiality
  - weight
  - credibility
- Evidence rules in statute and at common law
- What is meant by “proving” evidence?
  - proving business records
- Admissions
- Competency of witnesses
- Official notice – how far does it go in an expert tribunal setting?
- Dealing with opinion evidence
- Hearsay evidence: when is it in, what is it worth?
  - what it is
  - weighing hearsay evidence
  - common exceptions to the rule
- Fairness and the rule in *Browne v. Dunn*
- Imperfect memories
  - past recollection refreshed
  - past recollection recorded
- Weighing evidence
- Types of privilege and how they affect the admissibility of evidence
- Public interest immunity and national security

*Owen Rees, a former law clerk to the Supreme Court of Canada, has taught administrative law and other subjects at the University of Oxford and at Queen's University. He practices administrative, civil and commercial litigation, with a particular focus on public law.*

*“Very helpful and informative. Really well done, well organized and useful. This type of workshop is excellent because of a lot of discussion and sharing of experience.”*

*Jo-Anne Smith*

Senior Research Officer, Canadian International Trade Tribunal.



Each workshop has been accredited by the Law Society of Upper Canada for 3 hours towards the professional development requirement for certification.

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October 28-29, 2008 • Sheraton Hotel, Ottawa

The Canadian Institute's 8<sup>th</sup> Annual

# Advanced Administrative Law & Practice

Essential Professional Development for Counsel and Tribunals

## Top Reasons to Attend

- ✓ Get up to speed on key case law developments from across Canada
- ✓ Learn from leading tribunal chairs and counsel
- ✓ Hear practical advice on advocacy skills for judicial review
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FEE PER DELEGATE	Register & Pay by Sept. 29, 2008	Register & Pay After Sept 29, 2008
<input type="checkbox"/> Conference Only	\$1895 + 5% GST = \$1989.75	\$2095 + 5% GST = \$2199.75
<input type="checkbox"/> Conference & 1 Workshop <input type="checkbox"/> A or <input type="checkbox"/> B	\$2390 + 5% GST = \$2509.50	\$2590 + 5% GST = \$2719.50
<input type="checkbox"/> Conference & both Workshops	\$2885 + 5% GST = \$3029.25	\$3085 + 5% GST = \$3239.25

I am attending, please add the conference materials CD-ROM to my order \$195 + \$15.95 (S & H) (+ applicable taxes)

STEP 2

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STEP 3

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### Hotel Reservations

For information on hotel room availability and reservations, please contact Sheraton Ottawa Hotel at 613-238-1500.

### Program Materials

Conference participants will receive a comprehensive set of conference materials prepared by the speakers, as an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

### Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference 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.

### Cancellation and Refund Policy

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